International Journal of Law
www.lawjournals.org
ISSN: 2455-2194
Received: 18-09-2021, Accepted: 03-10-2021, Published: 19-10-2021
Volume 7, Issue 5, 2021, Page No. 154-159

A comparitive anaysis on the concept of plea bargaining-with special reference to UK, USA and India

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Abstract
The concept of plea bargaining as mechanism for quick disposal of cases has been recognized in a lot of countries across the globe. It is also been incorporated in the criminal procedure laws of a lot of nations. Plea bargaining basically means, a negotiation or an arrangement which takes place before the trial, this arrangement takes place between the accused and the prosecutor where in in the accused voluntarily agrees to plead guilty for the offences committed by him. In return to him pleading guilty, the prosecutor offers to provide some sort of concession in the punishment to the accused. America amongst all the other Nations should be considered a pioneer of this mechanism. This mechanism was introduced and made applicable in India only in recent times. India also has borrowed this mechanism from the United States. This mechanism was put in use in India in order to bring down the number of criminal cases where in in the commencement of trial did not take place even after a period of three and in some cases five years. In India the rate of acquittal is higher compared to the rate of conviction. This is due to the lack of evidence in a lot of cases to prove the accused to be the guilty. Henceforth, the concept of plea bargaining was introduced under chapter XXIA of the code of criminal procedure, in India.
This paper analysis the process of plea bargaining in India and other nations with special reference to the United States of America and the United Kingdom.

Keywords: plea bargaining, negotiation, jurisdiction, violently, accused, victim, criminal trial

Introduction

Plea bargaining is a very novel concept in a lot of criminal jurisdictions. In the modern era of the criminal jurisdiction, a majority of criminal convictions are usually produced through the process of bargained pleas. Bargaining is a process where in mutual satisfactory disposition is achieved in a criminal case where in the accused and the prosecutor works out a plea negotiation which is subject to the approval of the court [1].

Plea bargaining is a concept wherein the defendant enters into a compromise with other parties concerned to a suit. Under such a compromise the defendant voluntarily agrees to plead guilty to all the charges that are filed against him and in return, the other party that is the prosecutor provides him with some concession. This concession would either be by offering a reductio in his sentence or merely by applying lesser charges against the guilty.

The concept of plea bargaining requires both the accused as well as the prosecutor to enter into the voluntary transaction where is there is no use of force in order to achieve the settlement [2].

The fundamental justification to employ such a mechanism of disposition of cases is that, Firstly, there is an enormous backlog of cases in almost all of the court across the globe, and plea bargaining is undoubtedly one of the most convenient and effective mechanism of reducing the number of backlog effectively by ensuring quick disposal of cases, as in a plea bargain arranged between the two parties the accused themselves voluntarily plead guilty to all the offences charged against them. Secondly, the prosecutors of almost all the countries are overburdened with the rapidly increasing number of cases, henceforth if some numbers of cases are quickly disposed off, by the means of plea bargaining, then the prosecutors could more efficiently focus on the other cases. Thirdly, this is also is in the benefit of the accused as he can save both his time as well as money as this way, he will not have to defend himself during the trial [3].

In most of the nations across the globe, primarily in the USA, plea bargaining is one of the most common methods of disposing off a case. However, this case disposal mechanism has not proven to be equally effective in all jurisdictions.

Literature Review

- A comparative Study on Plea Bargaining in India and Other Countries [4]-this article written by Jeevalaya V, is a well drafted article which focuses on the concept of plea bargaining in India and other Nations. It provides for a very detailed international perspective on the concept of plea bargaining. The article throws light on the procedure followed under the criminal procedure code for plea bargaining in India and also has a number of relevant case laws relating to plea bargaining.

- **Plea bargaining in US and Indian criminal law:** Confessions for Concessions [5]-is an article authored by K. V. K Santhy. This article is undoubtedly one of the finest articles which draws out a fine comparison between the concept of plea bargaining employed in the United States to that of India. The author has focus on various aspects of plea bargaining in both the Nations and has supported the same with sufficient case laws and judicial perspectives.

- **Plea bargaining in India:** an appraisal [6]- this article is authored by Dr Muhammad Ashraf and Professor Absar Aftab. This article in detail explains the American model of plea bargaining and further relates it with Indian circumstances. The article focuses on the application of American model of plea bargaining to India and highlights the advantages of doing the same. The article also provides the reader with a list of recommendations in order to better the employment of plea bargaining in India.

- **Plea bargaining:** a means to an end [7]- this article is authored by Rosy Athulya Joseph. The article explores the origin and concept of plea bargaining in India. It throws light on the current state is a plea bargaining under the Indian criminal law. The article for the critically analyses chapter XXIA of the code. Further the author has also bought in suggestions for better implementation of plea-bargaining laws in India.

- **An analysis of plea bargaining:** India and UK [8]- this article is authored by Swati Mohapatra. The article focuses separately on plea bargaining mechanism employed in India and the United kingdoms. Further, draws out the advantages and drawbacks in both the systems. By simple reading of this article one can understand the complete procedure involved in in application of plea bargaining in India as well as in the United Kingdom.

- **Plea Bargaining in England [9]:** this article is authored by Philip A Thomas. This article presents to the reader everything that one needs to know about the plea-bargaining mechanism employed in the United Kingdom. The article provides a detailed analysis of everything from the origin of plea bargaining in the UK to its current status quo. Radical also points out the merits and demerits of the mechanism and how United Kingdom could actually benefit out of plea bargaining if the same is applied appropriately

Defination of Plea Barganing and its Types

It is accepted that plea bargaining generally takes the form of a mutual agreement between the two parties, that is the defense and prosecution upon which the accused to the defendant admits the offence committed by them and in return for which, a reduction in their charge or sentence is offered, this process is termed as prosecutorial plea bargaining.

The term plea bargaining refers to a negotiation that is held between the prosecutor and the defendant prior to the commencement of the trial. In, plea bargaining, the defendant or the accused agrees to plead guilty before the court of law and in return the prosecution agrees to provide a certain concession or some form of relief, be it in the form of reduction of sentence in prison or reduction of a certain fine imposed on the person found guilty [10]. The concept of plea bargaining has not found clarity in its definition, especially in the criminal code. It is vaguely an agreement that has benefit to both the parties and works towards the interests of both. However, this form of bargaining also benefits the courts by saving the court time and various Procedure, that would be due had the trial taken place as per regular course. Therefore, a plea bargain can also be said to reduce the number of cases in the court and lead to a faster and quicker resolution of the dispute [11].

There are three different types of plea bargaining, they are as followed;

- **Charge bargaining:** It is a form of plea bargaining that is quite highly prevalent in practice. In this the consideration on the accused remains same and he has to plead guilty, and prosecution provides him relief by dropping certain charges that are levied against him. For example, if the person is deemed to serve decades in prison if found guilty, then the prosecution offers to drop certain charges, thereby reducing his sentence in return of a plea of guilt [12].

- **Sentence bargaining:** It is a form of plea bargaining in which the person essentially pleads guilty for all the charges levied against him, as against in charge bargaining where certain charges are dropped. But, in this form of plea bargaining the incentive is provided to the accused in the form of reduction in the sentence from what would have given under a regular trial [13].

- **Fact bargaining:** This is a rather immoral form of bargaining and highly condemned by the courts. In this form of bargaining the prosecution offers to hide certain facts or rather agree not disclose certain facts in return for a plea of guilt from the defendant [14].

Origin and Development of the Concept of Plea Bargining

It would be rather improper to say that the concept of Plea bargaining only came into practice in the recent times and did not find favor in the courts earlier. Rather, it can be found that the practice was in place in the American Judiciary even in the earlier parts of the nineteenth century. Though this practice did not acquire any mention in the Bill of Rights, that established the principles of fair trial in the United States through the Sixth Amendment, yet it can be seen in various instances where the courts have upheld the practice and held them to be constitutionally valid in the United States of America [15]. The mechanism of plea bargaining was put into effect in the year 1969 itself, wherein James Earl Ray pleaded guilty for assassination Martin Luthar King, Jr. In the recent times, it is shown as per statistical data that 90 percent of the Criminal cases are never tried and are resolved via plea bargaining resulting in the accused giving up his constitutional rights and pleading guilty before the court.

Whereas in certain commonwealth countries such as Australia, the United Kingdom, the practice of plea bargaining is controlled so as to only allowed the accused to plead guilty for certain charges and the prosecution dropping certain charges in return [16]

The European countries in the recent times slowly legitimizing the concept of plea bargaining, though the Scandinavian nations largely prohibit this practice.

In India, plea bargaining wasn't recognized by law, henceforth, not much importance was given to it neither did it have any mentioning under any statutes. However, reference could be relied upon Section 206 of the Code of Criminal Procedure and the Section 208 of the Motor Vehicles Act, where certain provisions are incorporated in which the defendant is provided with an opportunity to

plead guilty, following which the case is closed. However, the provisions only employ such an opportunity upon the accused, where the nature of crime can be classified as a less grave offence or a petty offence. Later in reference with the Laws in the United States, the Law Commission of India recommended the application of plea bargaining. In India although plea bargaining had no mentioning in the Criminal Procedure Code, yet a number of cases which as per law or public policy were being tried in a similar manner. Such type of cases is mostly being related to traffic, municipal or other petty offences committed usually by the young or by the non- habitual offenders. The provisions relating to plea bargaining introduced by the Amendment Act, 2005 and the same is not applicable to socio-economic offences, offences against women and children and offences which are punishable with seven or more years of imprisonment.

Plea Barninging in India

Historical background

In India, the concept of Plea bargaining did not have any recognition until the recent amendment of 2005 known as the Criminal Law (Amendment), 2005, in which there was an insertion of Chapter XXIA into the code, which defined and introduced the concept of Plea bargaining in the Indian Statutes for the first time. However, as the word suggests, this was the first introduction in 'Statutes', as the concept itself has deeper references in Indian History. The first noted reference can be seen in the 142nd Law Commission report, where various judicial scholars were employed to identify certain solutions to the rising number of pending cases before the Courts in India. In one of the suggestions in report, which was headed by Justice MP Thakkar [17], the practice of American Plea Bargaining was referred to, so as to employ the same in India, in order to try and reduce the number of pending cases before the courts, allowing the courts to dispose of trials at a faster rate.

Further, in the 154th Report [18] of the commission, which was chaired by Justice K Jayachandra Reddy. It was established in detail as to how the provisions of plea bargaining would be employed in the Indian Judiciary. Later on, 2005 Amendment was bought into picture. Before which, the final discussion regarding this concept that took place in the Malimath Report of 2003 [19]

Current scenario

The application of plea bargaining in India is made only for the offences for which punishment is imprisonment of 7 years or less and plea-bargaining mechanism of case disposal cannot be e applied in cases which impact the economic or social condition of the country, in cases which violate any law against children under the age of 14 or women [20]. The concept of plea bargaining in its current form is embodied under section 265A-L of the code of criminal procedure.

In India there are certain circumstances under which an accused is not considered eligible to take recourse under section 265A-L of the code. The circumstances are, the accused has been convicted previously for same offence or if he or she has filed the application for plea bargaining involuntarily [21].

Further, an application it is required to be e produced in the court which must be affixed with facts of the case in brief along with an affidavit in which the accused is declaring that he has voluntarily agreed for a plea-bargaining arrangement. The next step is for the court to acknowledge the application and the affidavit attached with it. After which and in camera examination of the accused would be conducted. Indian camera examination the parties would work out a sentence for conviction which is comparatively more merciful than the charges that would be originally applied for the offence committed [22]. And then the punishment sentence to the accused would be reduced by almost one fourth of the punishment that is fixed in the act for commission of the offence. And the victim also would be provided reasonable amount of compensation [23].

In this manner, plea bargaining provides for a legal solution which is prompt and does not entails any argumentation, except for requirement being for the facts to be presented and for the conviction sentence to be applied as recommended by the prosecution

Judicial approach

In the beginning, Indian judiciary, held a strong viewpoint against the introduction of plea bargaining. Before plea bargaining was included into the criminal procedure code, a landmark case of, Murlidhar Meghraj Loya v state of Maharashtra [24], was decided on this topic of application of plea bargaining in the year 1976, in this case the accused was found retailing adulterated food. The accused on being caught, reached the local magistrate in an informal manner with the a malified intention to obtain a lenient sentence from the court by pleading guilty in a manner analogous to the system of application of the mechanism of plea bargaining. Justice Krishna Iyer in this case commented that "our system has enabled the 'business culprit' to escape the system of justice by exchanging his misery behind the bars for the presence of convincing everyone but for the victim and the society". This condemnation was further upheld in the case of state of Uttar Pradesh v Chandrika [25] whereby the apex Court overruled the order in which the High Court had given an assent to plea bargaining arrangement. The Court further observed that the principle of plea bargaining was not in harmony with the precincts of Article 21 [26] as then it was not an established procedure of law [27].

However, these cases precede the time when plea bargaining was introduced into the code and the same has to be taken into consideration. In the case of vijay moses das v cbi [28], for the very first time the court allow for plea bargaining. Following which, plea bargaining is now widely accepted and recognized in the Indian judicial system [29].

Plea Bargaining in the United States of America

Historical background

In the United States, the origin of plea bargaining can be tracked back to the 19th century. The mechanism of plea bargaining was accepted with open arms by the criminal jurisdiction of the United States. Towards the end of the twentieth century, the authority and control of the public, media and politicians also came to consensus with respect to the application of plea bargaining to dispose of criminal cases. Substantive expansion what about in the criminal jurisprudence of the country give scope for further development it and promotion of the application of plea bargaining [30]. Plea bargaining as a mechanism of disposal of cases, gained momentum towards the 1920s. The popularity of this mechanism grew to an extent when it begins to spearhead the processing of almost all criminal cases in the states. Although the sixth amendment to the

constitution of USA does not make any explicit mentioning of the concept of plea bargaining

Current scenario

In the United States, when an accused is arrested, he is first main to appear before the court where in he is made well aware of his rights and the criminal allegations pressed against him. Post which charges are filed against the accused by the prosecuting attorney and then he is once more made to appear before the court, this time he would make his appearance along with entitlement to make a plea. If the accused pleads *nolo contendere*, it simply shows his unwillingness to contend the conviction. Irrespective of the gravity of the offence, the accused has an opportunity to make a plea negotiation in in any e criminal case and he also has a provision to reach the plea-bargaining arrangement at a later stage of the proceedings as well. Given a Bona fide reason, the accused is entitled to withdraw from the appeal made by him previously. However, is not a constitutional right it of an excuse to be presented with a plea-bargaining deal and either is the prosecutor mandated to accept to the deal [31]. It is the discretionary power of a prosecutor either to accept or reject a plea bargain offer. What is the prosecutor but the judge also has the power to choose whether to accept or reject the plea of bargain. Neither the judge nor the prosecutor is under any kind of obligation to accept the plea, not even in the cases where in in both the parties have reached a consensus. it is the duty of the judge to ensure whether the accused has voluntarily entered into an agreement or was unduly forced to enter into one [32]. In order to ensure a satisfactory application of the provision of plea bargaining an application that implies in a straightforward manner that the plea-bargaining agreement was entered into on mutual grounds is needed to be placed on the court records.

In the current era of modern legal framework of the United States, mechanism of plea bargaining has dawned for itself an indispensable position. Plea bargaining in the United States is much more prevalent and noticeable than any other nation, it also holds and highly extensive scope. Almost 97% of federal cases and 94% of civil cases are concluded by the application of the mechanism of plea bargaining in the United States [33].

Judicial approach

An enormous number of criminal cases in America are disposed of by the means of plea bargaining on a daily basis. Brady V United States [34] is a landmark case in which the issue of constitutionality of plea bargaining was discussed for the first time. The bench in this case held that plea bargaining to be a legitimate and constitutionally valid mechanism, However, the court advanced a certain apprehension with respect to the potential misuse and abuse of this provision by highlighting certain events where in even the defendants who are innocent might in the pleading guilty nearly in order to receive mutation in the form of an agreement cracked out of plea bargaining.

Further in another landmark case Santobello v New York [35] It was held that there are a number of resources that are available to the citizens in events where in in the attempts made to crack a plea-bargaining agreement are impeded.

In the American criminal jurisprudence almost, all cases are decided by the means of plea bargaining. It would not be wrong for one to conclude that the mechanism of plea bargaining is essential, vital and an imperative element of the American criminal system.

Plea Bargaining in the United Kingdom

Historical background

The traces of early practice of the plea bargaining in the UK can be tracked back to the Anglo-Saxon period. The earliest records states that the Anglo-Saxons place them at the stage of development wherein the right to pursue the blood feud was restricted [36].

The English courts began slight application of plea bargaining in the 15th and 16th centuries a decided escalation appeared in the severity of sentence inflicted for offences. As Sir Stephens observations, the application of plea bargaining in the UK is a movement from private revenge to a system of compromises, alternate bargaining procedures remerged slowly despite official reproach. A variety of compromises and bargains were gradually introduced as an outlet for the trial system and a positive force of justice and equity. The system of compromise and bargains had proven so successful in the Anglo-Saxon period that it was no more alternative means of redress, it soon became the accepted and required mode of procedure [37].

The origins of plea bargaining in England has been appointed by the scholars to be during the period where, interaction of caseload pressure with changes in trial procedure had made trials so much more time consuming that they could no longer be put into use as a routine procedure. Plea bargaining previously has always taken place behind closed doors in England and also in Wales. Informal plea bargains use to be employed by means of sentence discount, reduced charge and good year advance, indications of sentence have been a common feature of criminal trials of England [38].

Current scenario

Plea bargaining as a case disposal mechanism is still developing in the UK. The concept of plea bargaining is not as prevalent in UK a as much as in in the USA. The reason why this mechanism is not as prevalent in UK as in US is due to the lack of various factors that act as incentives for both the parties in USA and convinces them two mutually agree on such arrangement. Moreover, the courts in England very strongly e a pose the use of this method to dispose of criminal cases. In the UK the trial court judges are vested with immense amount of discretion with respect to the sentencing policy as well as the proceedings, and this is the reason why the concept of plea bargaining is not highly accepted in the UK. When compared to the Indian scenario, most of the offences in the UK do not have a well fixed or a well stipulated sentence for most of the criminal offences apart from murder. And such immensely flexible system of sentencing brings with itself two major consequences; firstly, the pressure of reducing the stringency or the harshness of the law by replacing it with alternative methods is very less in the UK as a result of the flexible nature of sentencing as well as the enormous amount of discretion vested in the hands of the judges of the trial court. And secondly, the prosecution finds it difficult to make any kind a promise to the defendant with regards to concession or reduction in sentence, the trial court who has an ultimate discretion of sentencing.

The role of the prosecutor in the UK is very different to that

of the role played by a prosecutor in the US this is another reason why plea bargaining as a mechanism is not very prevalent in the UK. In the United States the prosecutor holds the maximum amount of discretion with respect to plea bargaining negotiations. He is in fact also called as the master of plea negotiations. Whether to proceed with the plea negotiation or not is Soli the decision of the prosecutor and he also is the one who decides the terms with respect to the offer of charge bargaining or sentence bargaining that is to be made to the accused in the USA. But however, in the UK criminal prosecutions are not generally carried out by professional prosecutors it is rather the barrister who carries out prosecution in cases of criminal offences.

When compared to the position of prosecutors in America and India, barristers in the UK hold barely any supervisory powers and henceforth cannot make any decisions with respect to dropping or reduction of charges. Moreover, if a prosecutor in the UK even just provides insights or recommendations with respect to a sentencing policy this act office is deemed to be unethical. Henceforth, application of plea bargaining in the UK as an alternative method of criminal case disposal is extremely limited and stringent.

Judicial approach

The UK courts came the closest to tackling the issue of plea bargain in the landmark case of *R v Turner* [39] in which the court referred to plea bargaining as "the vexed question of so-called plea bargaining".

Further, it was also held that any discussion must be held between the judge and the counsels on both sides. It is imperative that, as far as possible, justice must be administered in the open court and not behind the closed doors. The same was also upheld in the case of R. v. Peverett [40].

The judgment in Turner case also stated that the judge should not disclose the sentence he was minded to impose, but this element of the rules has now been superseded by the Criminal Justice Act 2003. Schedule 3 of the Act provided for advance indications of sentence whereby the accused may request for an indication of the maximum sentence, if he is convinced on pleading guilty at that very stage. If any indication is provided, the same is binding on the court.

Comparitive analysis

The application of the mechanism of plea bargaining is significantly distinct in substance as well as in procedure in in the United States, UK and India. United kingdom's falls on one end of the spectrum whereas the United States falls completely toward the other end. The UK falls on the lower end of the spectrum as the scope and application of this mechanism is very limited. India England and Wales, concept of Li bargaining can be made applicable only to an extent where in in both the parties, who is the prosecutor and the defense can mutually agree that the defendant would plead guilty to some charges that are press against him and the prosecutor will let go of the remaining charges. Plea bargaining in the UK is also only made applicable in extremely petty cases.

Talking about the country on the other end of the spectrum which is the USA. Plea bargaining in United States of America is made applicable to almost all possible offences that are committed in the state. In the USA a fuse has a privilege to take up charge bargaining as well as sentence bargaining, only exception is of earning sentence concession, which in most of the cases the accused successfully get. In the USA there are barely any cases where in the mechanism of plea bargaining is not made applicable, as almost all the defendants readily and voluntarily agree to plead guilty of the offences that they have committed right during the beginning of the proceedings. The negative flak that accused puts upon himself by accepting too deeply negotiation is largely outweighed bye by the excessive amount of time he/she would have to spend behind the bars in an event whereby they lose the case. Henceforth, most of the accused readily except to make a plea-bargaining arrangement. As far as the procedure for application is concerned, the only elements that are required is for the prosecutor to appraise the court of the plea-bargaining settlement that has been decided upon. The entire procedure of application of plea bargaining in the US is hassle free and there are absolutely no complications with respect to submission of any document or filing and application of any sort in the court of law.

As far as India is concerned, India falls in the middle of the spectrum as the laws in India also fall mid path, compared to the laws respect to plea bargaining bought into force in the United kingdoms and USA. This basically prove the fact that Indian laws are a blend or rather and amalgamation of different laws from different parts of the world. Plea bargaining though as a mechanism of quick disposal of cases is permitted in India, it comes with a number of restrictions and stipulations. It neither is as liberal as in US nor is it as cute and stringent as in UK. The procedure followed in India is much more complicated and stringent when compared with the procedure of plea bargaining that the United States follows.

Conclusion

In the light of the above discussion, we can conclude that plea bargaining has been a successful mechanism in the USA in order to dispose of criminal cases in an effective and an efficient manner. In the USA as the rate of conviction is very high, the mechanism of plea bargaining comes very handy. Due to the high rate of conviction, negotiation of a plea is most preferred by both the accused as well as the prosecutor. As this method insurance the accused with lesser sentence or at least reduction in the charges pressed against him. However, one cannot fail take note that it in the USA it is only a prosecutor and the defendant are the only concerned parties in such negotiations. But it in the UK, unlike America bargaining is not much preferred. This is because the trial court judges in UK are vested with enormous discretion with respect to the functioning of the trial system, prosecution as well as the policies of sentencing.

However, the Indian situation is different from that of UK and USA as well. In India only e the mechanism of sentence bargaining is employed. The hike in the number of pending criminal cases is an evidence of the fact that plea bargaining is not very successful in India, a reason for the failure of plea bargaining in India is also the fact that conviction in India is much lesser when compared to the number of acquittals.

On these lines, it would only be corporate for one to assume that all the three Nations, that is, the USA, the UK and India have adapted this mechanism of quick case disposal called bargaining in a manner which is the most apt to the laws and the most suitable to the circumstances of each of the nations.

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