



Plea bargaining: An alternative remedis

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Abstract

Plea bargaining, in law, the practice of negotiating an agreement between the prosecution and the defense whereby the defendant pleads guilty to a lesser offense or (in the case of multiple offenses) to one or more of the offenses charged in exchange for more lenient sentencing, recommendations, a specific sentence, this is taken from American where this concept is very common. Recently plea-bargaining process was in news when *Tablighi Jamaat* persons who belonging to different countries has file application in court for plea bargaining process and obtain release from criminal cases by paying the fine imposed by court. Justice is a divine thing which every system of justice is expected to achieve as much as possible. Everyone on earth desire justice for him or her. Judiciary play a vital role in a democratic country like India. Very few people get justice on time due to economic condition of the country. Indian judiciary is over burdened by crores of pending case. It was a demand of time to legislate and introduce a tool to help in disposing the pendency of cases in lower courts in India. For this purpose, Plea bargaining became part of criminal procedure under chapter XXI-A in 2005 which came into force in 2006. This research article focusses on plea bargaining and its impact on criminal law system in India. This research is focused on the relevant provisions of plea bargaining in the Criminal Procedure Code 1973 and its implementation, achievement judicial pronouncement. It also aims to trace the problems in the implementation of the amendment Act 2005. And finally, we conclude with some meaningful suggestion to the model of plea bargaining.

Keywords: code of criminal procedure, justice, speedy trial, negotiations

Introduction

Justice should not cost with time because Justice Delayed Is Justice Denied. Speedy justice may be ensuing with the help of Plea Bargaining. This article is an attempt to contrast the concepts of Plea Bargaining In India. The concept of plea bargaining is very popular in the United States from very beginning and successful there. Plea bargaining is a negotiating agreement on the terms of punishing an accused. Defence starts this process. The prosecution and defence participate in the process of intercession, wherein the accused pleads guilty and in return the accused gets a lesser punishment.

In this agreement the accused pleads guilty to the charge in return for the leniency or some concession regarding the punishment. This process is very useful for speedy justice. Court in the case of plea bargaining has power to reject the plea in the same way as other plea of the accused. The negotiation is variable country to country viz; in some countries like in England, sentence bargaining is between accused and judge while the charge bargaining agreement is between accused and prosecution. In Germany the agreement is between accused, judge and prosecution. In India, as according to the code of criminal procedure, plea bargaining agreement is between prosecution and accused^[1].

Developing countries like India have pendency of cases. Speedy justice is the directive principle under Article 39-A as well as fundamental right under Article 21 as declared by the Supreme court^[2] in many cases. The concept of plea bargaining ensures speedy justice in a criminal. The problem of pendency of cases is old in India. Judiciary as a pillar of the democracy is responsible to establish rule of law by providing speedy justice. In India, the number of judges is very less as compare to number of pending cases. We can

afford 8 to 10 judges at one million population while we need 80 judges over one million population. Government is committed to take steps sufficient to overcome the pendency of cases, the concept of plea bargaining is a measure among the steps of government towards solving the problem of plea bargaining. For this purpose, Chapter XXI-A added in 2005 in the Criminal Procedure Code^[3].

Concept of plea bargaining

It can be defined as a legal process of negotiation between the accused and prosecution. In other words it may be a negotiation between prosecution and lawyers of accused. The result of the negotiation is that the accused will plead guilty and in consideration he may expect the reduction of sentence or charge or getting a less sentence. Some prosecution discount and probability of acquittal is the motion of parties in the plea bargaining^[4].

It may be defined as plea of guilty by a person accused of a crime in a criminal trial. During this bargaining the accused is assured to be let off lightly and due to which he pleads guilty and does not want to contend or avail charge. In the case of *Tippeswamy v State of Karnataka*^[5], the apex court has held that the accused person will not follow this course if he knows that he will not be let off with a mere sentence of fine but will be sentenced to imprisonment. Further the Supreme Court has held in this case that if sentence is enhanced in appeal or revision, it would be clear violation of fundamental right under Article 21 of the Indian Constitution^[6].

Plea bargaining is very much necessary in some cases i.e. if the case of prosecution is weak, an important witness is died or not available for testimony. Plea bargaining is also necessary in small cases to reduce the burden of the court, to help police, plea bargaining is important. Congestion in

court is major problem for which a system like plea bargaining is very much necessary. Thus, the problem of the backlog of cases can be solve by plea bargaining ^[7].

Plea bargaining is a procedure which is not considered as a trial. Article 10 of the Universal Declaration of Human Rights provides that everyone has fair and public hearing by an independent judiciary /tribunal. In *Rattiaran v. State of Madhya Pradesh* ^[8], the supreme court made it clear that fair trial is a part of Article 21. Fair trial is not possible without it being speedy trial. Chief Justice Burger in the case of *Banodells v. New York* ^[9] has said that the concept of plea bargaining should be encourage. It is no possible to any democratic country to afford full trial in all cases. It is not possible because the number of judges is very less ^[10].

limitation to use plea bargaining is given under the chapter XXI. charged offence must be other than those offences for which punishment of death or life imprisonment or imprisonment extending seven years has been provided. 2. offence must not be against women. 3. offence must not be against child below the age of 14 years and many other limitation as provided in the code ^[11]. The basic object of this is to apply only for small offences.

In plea bargaining the accused person may plead guilty to a *sentence* lesser than what he may award. He plead for a lesser *charge* of only some of the charge. There may be *fact* bargaining so that prosecution need not give evidence on that fact or facts. Thus, plea bargaining may be dividing into three categories, (1) Charge Bargaining, (2) Sentence Bargaining, (3) Fact Bargaining. In international criminal jurisprudence there are two types of plea bargaining viz; express plea bargaining and implied plea bargaining. In implied plea bargaining there is no direct bargaining but the court taking a lenient view where the accused plead guilty instead of claiming to be tried ^[12].

Evolutions of Plea Bargaining

There was no concept of plea bargaining in legal history of common law. The first evidence of knowledge of plea bargaining is found in England in 19th Century. Jury trial was a summery procedure and this was the beginning of plea-bargaining history in English common law. With some limits, during that time English Courts allows private prosecutor to compromise criminal litigation. Jeremy Benthamwarns against the unnecessary conviction. Stephen Wright said that he would plead guilty to robbery in order to spare the court trouble and he express hope that the court and jury would recommend executive communication of the death sentence mandated for this crime ^[13].

In India, 142nd and 154th Law Commission reports is the beginning of the plea bargaining. Malimath committee report also suggested about the introducing of the concept of plea bargaining in the Code of Criminal Procedure. To reduce the burden of courts and to clear the backlog of pendency of criminal cases and Criminal Law (Amendment) Act, 2005 under section 265-A TO 265-L (Chapter XXIA) OF THE CODE OF CRIMINAL PROCEDURE, 1972. The concept of plea bargaining was introducing. The concept of plea bargaining was borrowed from the US Law ^[14].

Plea bargaining has been introduced in the Code of Criminal Procedure 1973 in the year 2005 under chapter XXI-A. Chapter XXI-A consists of 12 sections from section 265A to section 265 L. The applicability of the plea-bargaining remedy available only to the offences where punishment is less than seven years. According to section 265 A, the

offences where punishment is death penalty of life imprisonment or imprisonment more than seven years are not covered under this remedy. Offence against women, children less than fourteen years also not covered by this remedy of plea bargaining. All offences declared by the central government as socio economic offences condition are also not come under the preview of plea bargaining. Offences against the socio-economic condition of the State is not permissible to be bargain at any cost. The only important purpose of the concept of plea bargaining is to reduce pendency in criminal courts. It does not mean to protect the criminals. Socio economic offence are the offences relating to Dowry Prohibition Act, SC/ST Act etc. in *Kirpal v State of Haryana* ^[15], The apex court has held that the criminal courts in India has no jurisdiction to bypass the minimum sentence prescribed by the law ^[16].

The accused person may file an application for plea bargaining in the court where the case is pending. The accused is required to give an affidavit in which he stated that he has understand the nature and extend of punishment after the result of plea bargaining as well as he stated in the affidavit that he has not been previously convicted by a court for the same kind of offence. In this process, court will issue notice to prosecution or complainant. Accused will be examined in camera. There will be a mutual satisfactory disposal of the case if the court found that the application is voluntary. For the mutual satisfactory disposal of the case the court will give time to both the parties. One of the purposes of the concept of plea bargaining is to provide speedy justice ^[17].

According to section 265-B, a person who has been convicted previously for the same offence will not be allowed to file application for plea bargaining but it is the duty of the court to decide whether a case is fit for plea bargaining or not. According to section 265-C, it is the duty of the court to satisfy that the process is voluntary and no pressure, coerced of accused or other influence involve in this case. According to section 265-D, it is the duty of the court to prepare a report after case has been mutually satisfies. This report shall be signed by presiding officer and by both the parties. According to section 265-F & section 265-G, once a case is disposed of under this section, no appeal shall lie against the judgement. However, this judgement may be challenged under Article 136, 226 and 227of the Constitution. All statement of the accused made under this chapter no XXI-A of the Code of Criminal Procedure, 1973, shall not be used in future for any purpose ^[18].

In all applications under section 265 B, the court have to see that the application has been filed voluntarily by the accused and for that purpose, to satisfy himself that the application is voluntarily, the court must examine the accused in camera and in the absence of the prosecution, to satisfy himself that the application is voluntarily. The plea-bargaining process does not apply if the offence is punishable with death penalty, or imprisonment for life or of imprisonment for a term exceeding seven years. The plea-bargaining process also not apply where offences affecting the socio-economic condition of the country or against a women or child below 14 years. The judgement in the plea-bargaining process shall be delivered in the open court. The judgement in the plea-bargaining process shall be final. The statement of the accused shall not be used for any other purpose except plea bargaining process in the present case. Plea bargaining

process shall not apply to any juveniles or child as defined in sub clause (K) of section (2) of the Juvenile Justice (Care & Protection of Child) Act, 2000^[19].

Conclusion

The Criminal Procedure Code, 1973 gives the administrative structure to regulating Plea dealing in India. The Indian Criminal Justice framework has been troubled by tremendous pendency of criminal cases and the rising populace of under preliminaries in Indian prisons. Saving litigation cost, ensuring speedy trial, relieving the parties of anxiety, decongesting prisons and ending uncertainty over the outcome of criminal cases are some of the advantages of the process of plea-bargaining process. It was held in *Brady v United States*^[20] that plea bargaining secure high conviction rate for the prosecution. The prosecution should actively involve in this process and encourage the accused to for the process.

It is the observations of many criminal law jurists that the concepts of plea bargaining is absolutely indispensable to the true justice and thus it destroys the basic concept of justice. The concept of plea bargaining is harmful to both to the accused as well to the State. The concept of plea bargaining is harmful to the accused who by engaging in it forfeits those important rights that have been incorporated into the trial process like defense, cross examination etc., for his defense. Plea bargaining is harmful to the State because it reduces the deterrent impact of the law. Plea bargaining process gives room to discretionary decision making^[21].

There is a presumption that the police do not want to give proper attention and investigation in plea bargaining cases. There is a lack of awareness among undertrial prisoners about the concept of plea bargaining. Prosecution officer and police need to promote the accused for the concept of plea bargaining. The scope of plea bargaining need to be enhanced and there must be a time frame to dispose of the cases by mutual satisfaction. There is need to clarity and predictability in this provision. It should be used as an efficient and alternative remedy. Extremely cautious approach is not always appropriate, it may restrict its scope. The amendment is a good step to reform the criminal system which need to modify more. There should be some meaningful reforms in the plea-bargaining process. Judge should refuse settlement unquestioningly. Court must assume a larger role in plea bargaining process. Court should make sure that the accused can fully understand the consequences of the plea bargaining and the guilty plea and that the accused understand that he is forfeiting all right to a trial.

This remedy should be used with cautious with a balance between a rampant use of this remedy and the possibilities that plea bargaining offers in order for it to be an effective and efficient alternative remedy. As its scope is restricted, it gives plea bargaining a new form in India as comparative to America. This amendment in 2005 in CRPC gives a better tools for criminal justice but little more amendment should be made.

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