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PLEA BARGAINING UNDER CRIMINAL JUSTICE ADMINISTRATION SYSTEM IN INDIA: A SOCIO-LEGAL STUDY

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Abstract
Plea bargaining has been introduced with many objectives, as such to reduce the back log cases and over burden of the court. It has been introduced in the code of criminal procedure, 1973 by amendment in the year 2005 and it was enforcement in the year 2006. Though our criminal justice administration system is one of the powerful institutions in the world, it now runs with the pending of 3 crores or more cases in the lower criminal courts. As a result of this pending cases, the litigants and under trial prisoners cannot get justice in time. So, it is the only option to induct plea bargaining in our criminal justice administration system to dispose the pending cases and to deliver the justice towards the litigants in time. Plea bargaining has been inserted in new chapter XXIA in the code of criminal procedure, 1973(section 265 A to 265 L). It is a new conception to India. Plea bargaining is an American conception. In the present paper, the researcher has discussed the meaning and conceptual analysis of plea bargaining. The author has further explained the legal provisions pertaining to plea bargaining under the criminal justice system in India. An attempt has been made by the scholar to discuss the applicability and procedure of plea-bargaining mechanism. The writer has further discussed some of the leading cases relating to plea bargaining in India. At the end, the researcher has given some suggestions for better implementation of plea bargaining for strengthening and streamlining our criminal justice system.

Keywords: Plea bargaining, Justice, Court, Administration and criminal cases etc.

Introduction

In a democratic country like in India, Judiciary possesses an important place in establishing the state of justice. Indian criminal justice system seems to be ineffective in proving speedy and economic justice. Because courts are flooded with excessive arrears, the trial life of span is exceedingly long the expenditure is also very high. We all know that Justice delayed is a Justice denied. So, it's a matter of concerns as how actually how many people do get justice in due time. It is rightly said "If there is one sector which has kept way from the reforms and process it is administration of Justice" So, the problem of back log cases as hunting in Indian courts to a long time. There have been many firefighting measures introduced by the Government to deal with the pendency cases and to pacify the suffering of under trial prisoners like Lok adalats, Fast track courts, family courts, mobile Panchayat, Nyaya and Gramnyalayas have been setup.

One such measure is Plea Bargaining. Plea Bargaining fostered by Indian legislature is said to be a concept derived from the west. In 2005, the legislature introduced the provisions of Plea bargain by inserting chapter xxi-A through Criminal law (Amendment) Act, 2005 and Sec. 265A to L were added in the code of the criminal procedure 1973.[1]

[1] Plea Bargaining, Indian Express

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Applicability of plea bargaining

Plea bargaining is applicable in the following cases:

1. Application for the offences, where punishment of 7 years imprisonment is provided.
2. Not applicable, where victim is a women or child below 14 years of age or affects the socio – economic condition of the country. (Offences affecting socio- economic condition of the country are not filed by the central govt.)
3. Not applicable any juvenile as defined U/s.2 (k) of juvenile justice (Care and protection of children) Act .2000.
4. Not applicable if accused has been convicted previously of some offences.

Procedure

a. Application supported by an affidavit by accused showing a willingness
b. Application to be moved in the court where trial is pending
c. Court shall examine the accused in camera to satisfy itself about violation of accused.

Origin

The practice of 'Plea bargaining, 'in America goes back a century or more. One study found it, For example, in Alameda country, California, in about the 1880s. The Judges in the country even talked about the gave the credit for guilty pleas, "Plea bargaining was not pervasive as it is now …. Not even close it … But it was by no means rare. [2]

Reason for introduce the Act

The reason and objects of the Bill states the disposal of criminal trials in the courts takes considerable time and that in many cases trials do not commence for as long as a period as 3 to 5 years after the accused remitted to judicial custody. Larger number of persons accused of criminal offences are unable to secure bail, for one reason or another and have to languish in jail as under trial prisoners for years. Though not recognized so far by criminal jurisprudents, it is seen as an alternative method to deal with huge arrears of criminal cases. To reduce delay in the disposal of criminal trial and appeals as also alleviate the suffering of under trail prisoners, it is proposed to introduced this chapter of plea bargaining as recommended by Law commission of India in 154th Report on the Code of the procedure and VS. Malimath Committee as also endorsed the commission's recommendations. It means pre- trial negations between defendant and the prosecutions during which the accused agrees to plead guilty in exchange for certain commissions by the prosecutor. The benefit of the plea bargaining would however not be admissible to habitual offenders.[3]

Meaning of "Plea Bargaining"

"Plea bargaining is the process whereby the accused and the prosecutor in a criminal case workout a mutually satisfactory disposition of the case subject to the court approval. It usually involves the defendant's pleading guilty to lessen offence as to only on some of the courts of a multi-count indictment in return for a higher sentence than that possible for the greater change" — Black's Law Dictionary.[4]

[2]Verma J.K(2011) Plea Bargaining (Concept and Potential, Published by all India Reporter Pvt.Ltd, P 402
[3] Malik &Raval, (2012) "Law and Social Transformation in India" Law Publisher, Haryana. P. 381-401
[4] https/www.legislature service in india.com

In general connotation "plea bargaining" means pre-trial negotiations between the criminals either on their own account with or without being represented by their counsel vis-a-vis the prosecution whereby the persons who commit crimes agree to plead guilty in exchange for certain concessions offered by the prosecutors, and the courts before which the cases are coming for trial. "Plea" means request, the bargain means attempting to settle issues.

Plea bargaining is defined as a process whereby both are a criminal/ defendant and prosecutor could collectively reach to a mutually satisfactory disposition in a criminal case, subject to the approval of the court. It also means accepting the plea for a reduced sentence.

Plea bargaining as a concept is a derivative from Latin namely Nolo contender, the English equivalent of which is "I do not choose it" it also means "no contest".

The plea bargaining is also called as plea of Nalvult, means: I don't wish to contest. It is treated as an expression of implied confession on a quasi-confession of guilt. In USA it is not an admission of guilt but unwillingness to accept declaration of guilt. It reduces the agony of trial and expenses. It is the discretionary power of the court. Statistics show that, more than 90% of cases in USA are settled through plea bargaining. "A plea bargaining (also plea agreement, plea deal on copping a plea) is an agreement in criminal cases in which a prosecutor and a defendant arrange to settle the case against the defendant. The defendant agrees to plead guilty on no contest (and often allocate/advise with authority), in exchange for some agreement from the prosecutor as to the punishment. A plea bargaining can also s involve within it ambit acceptance of a prosecutor to charge a lesser crime that is to reducing the number of vigor of charges, and dismissing some of charges against the defendant.[5]

Bargain in Criminal Case

The question is, can be bargain a conviction and negotiate some sentence without much trouble foe state. The plea bargaining is somewhat an answer. It is also called: plea agreement, plea deal on copying a plea, which an agreement between the prosecutor and defendant and defendant whereby the Defendant agrees to plead guilty to a particular charge in return for some concession from "the procedure whereby a bargain or deal is struck between the accused of an offence and prosecution with the active participation of the trial judge. It can further we explained as:

(i) Withdrawal of one or more charge against an accused in return for a plea guilty.
(ii) Exemption of charge from a more serious change to a lesser charge in return for a plea of guilty.
(iii) Recommendations by the prosecutor to sentence judges as to leniency of sentences in lien of plea of guilty.[6]

A type of Plea Bargaining:

The plea bargaining may involve fact bargain, charge bargain, but in general it is of two Types:

(a) Charge bargain and
(b) Sentence bargain

[5]https/blog.pleaders.in
[6]http/www.commonili.org

Charge Bargain: -

Plea bargaining in which a prosecutor agrees to drop change on some of the counts on reduce the charge to a less serious offence by the accused is commonly returned to as charge bargain. It may involve:

(i) The reduction of charge to lesser or included offence.
(ii) The withdrawal on stays of other charge.

An agreement to reduce multiple charges to one all-inclusive charge.

Sentence Bargain: -

A sentence bargain occurs when an accused is revealed in advance what will be his reduced sentence if he pleads guilty. Sentence bargain may allow the prosecutor to obtain a conviction to the most serious charge, while assuring the accused of an acceptable sentence. Sentence bargain may include the following:

(i). A recommendation by a prosecutor for a certain range of sentence on for specific sentences.
(ii). A joint recommendation by a prosecutor and defense counsel for arrange of sentence on for A specific sentence.
(iii). an agreement by a prosecutor not to oppose a sentence recommendation by defence Counsel.
(iv). an agreement by a prosecutor not to seek more severe punishment.

Why for plea bargaining?

The scheme of plea bargaining is not a matter of choice rather it is a situation out of compulsion.
With the sharp increase in the institution of criminal cases almost all the criminal jurisdictions over the world find it difficult to cope up with the pending cases.

Avoid uncertainty of trial

In most cases, the plea bargaining is to void uncertainty of trial and risk of undesirable result to the other side. Obviously, the scheme gives both, prosecution and defence, with some control over the outcome of the cases. The accused is left to the other side. Obviously, the scheme gives both, prosecution and defence, with same control over of the cases. The accused is left to choose between certainty of accepting sentence for a less serious or the uncertainty of trail in which he might be found not guilty of original more serious charge.

Expedition

As criminal courts become more and more crowded, there is an hiked pressure to resolve the cases as quickly as possible. Regularly trial can take month years even decades. Resolution of case through plea bargaining can be arranged in a couple of days. Thus, reduction the time consumed in resolution of case. It affronts total guarantee for expedition's disposal of a case.

Advantages

Incentives to accuse - plea bargaining may have following specific incentives for an accused:

(i) It is a good method to short out criminal cases involving vigorous and gave punishments which are not otherwise compoundable.
(ii) It saves the over burden on the exchequer of the state/government.
(iii) It brings harmony between the criminals and victims as the persuasion of the prosecutor and the court.

(iv) It is a boon for the offender if his case is a accommodative within the framework of facing one half or one fourth of punishment where the benefit of excluding the period already spent by the accused spent while undergoing the criminal process. and

(v) It extends an opportunity to the criminals as well as victims to avail protections guaranteed under part-III of the constitution of India.

Incentives for Judge

Crowded and loaded cases have made the job of judges quite cumbersome. Time to serve can definitely be utilized for impairing qualitative justice in more serious cases. This can ultimately hike the prestige of the judiciary as well as the faith of common man in the efficiency of the system.

Incentive for Prosecutors

Like a judge, prosecutor with the clogged calendar and long cause last always finds it difficult to prepare each case ideally for being presented before the court. This may not be humanly possible as well as plea bargaining, being much quicker and requiring less time, tends to lighten the burden of the prosecutor, affording him an opportunity to do justice to more serious cases by preparing them in an effective manner.

Benefits to the Criminal Justice System:

Criminal justice system may also have certain distinct advantages. As far as India is concerned, so far we don't have any empirical study to examine about the total expenditure included in running the criminal justice system but then as per the new report the cost incurred by the state exchequer in processing a criminal case relating to deflection of Rs.19000/-which remained pending for about 33 years, was found to be around one crore rupees.[7]

The Supreme Court of India has examined the concept of plea bargaining in the case of ***Kasambhai v. StateofGujarat***[8]and***MurlidharMegrajLoyat v. State of Maharastra***[9]. In Kasambhai's case 2, the Supreme Court resisted a plea of guilt leased on plea bargaining, as it would be opposed to public policy, if an accused were to be convicted by including him to plead guilty.

The Indian Criminal Justice system is based on the principle of proportionality. Describing the virtues and desirability of the principle; The Supreme court reiterated its views in Ruli Ram's case and also observed in ***Union of India v. Kuldeep Singh***[10]**.**

Proportion between crime and punishment is a goal respected in principle. And in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crime with equal severity is now unknown in civilize societies. But such a radical departure from the principle of proportion proportionality has disappeared from the law only in recent times. Even now for single grave infraction drastic sentences are impost. Anything less than a venality of greatest severity for any serious crime is thought them to be a measure of toleration that is on warranted and unwise but infect. Quite apart from those consideration that make punishment unjustifiable when it

[7]Refore 142tm & Report of The law Commission of India ch-11,para-2.10
[8]1980 AIR854,1980 SCR(2) 1037
[9]AIR 1976 SCI 1929
[10]AIR 2004 SC 827: 203 AIR SCW 7045: 2000 Cr.Lj836

is out of proportion to the crime. Uniformly disproportionate punishment has so undesirable practical consequences.

In other significance case of ***Vijay Moses v. CBIs, Uttarakhand High Court***[11](Justice Prafulla Pant) in March 2016 allowed the concept of plea bargaining, wherein accused was changed under Section 420, 468 and 471 IPC in the said case. Accused supplied substandard material to ONGC and that too at a wrong part, which caused immense to ONGC, who got the investigation done through CBI by lodging a criminal case against the accused. Despite the fact that ONGC (Victim) and CBI (Prosecution) had no objection to the plea-bargaining application, the trial court rejected the application. The trial court rejected the application on the ground that the affidavit (365-B) was not filed by the accused and also that the compensation was not fixed.

In ThippeswamyVs State of Karnataka[12] Supreme Court observed we are of the view that this is case in which plea bargaining seems to have taken place because on the appellant pleading guilty to the charge, the learned magistrate imposed upon him only a sentence of fine Rs. 1,000/- even though the offence of which held as convicted was one under section 304-A of the Indian Penal code…. It is obvious that the reason of plea bargaining, the appellant pleading guilty and did not avail of the opportunity to defend himself against the charge, which of course he would certainly not have followed if he had known that he would not be, let off with a mere sentence of fine let would be sentenced to imprisonment. It would be clearly violated of Article-21 of the constitution to induce or lead an accused to plead guilty under a promise or assumed that he would be let off lightly and then in appeal on revision, to enhance the sentence in such a case it would not be reasonable, faith and just to act on plea of guilty for the purpose of enhancing the sentence.

In Kirpalsingh Vs. State of Haryana[13], wherein on the basis of plea bargaining the trial court sentence the petitioner to the period already under gone but the High Court enhanced the sentence to the minimum prescribed under law being rigorous for 07 years, the Supreme Court Observed.

The Petitioner would have succeeded in his plea bargain by getting the minimum sentence prescribed by the law and order that is what the High Court has granted Neither the trial court nor the high court has jurisdiction to law pass the minimum limit prescribed law and on the premise that a plea bargain was adopted by the accused.

Legality of plea bargaining came up law for the Supreme Court in the ***State of Uttar Pradesh vs. Chandrika***[14], the count Observed

It appears that the learned judge has overlooked the settled law or is unaware that the concept of plea bargaining is not recognized and is against public policy under our criminal justice system. Section 320 C.r.p.c. provides for compounding of certain offences with the permission of the court and certain others even without permission of the court. Except the above the concept of negotiated settlement in criminal cases is not permissible.

[11]Times of India, Oct 13, 2007
[12]AIR 1983 SC 747 : 1983 Cr.Lj.1271
[13]1999 Air Scw4868 : 1999 Crlj 5031
[14]Air 2000 SC 164 : 1999 AIR SCw 4251 : 2000 Crlj. 384

This method of short circuiting the hearing and deciding the criminal appeals on cases involving serious offences requires no encouragement. Either the state nor the public prosecutor not even the judge can bargain that evidence would not be led on appreciated in consideration of getting flee bite sentenced by pleading guilty.

For this purpose, we would first refer to the decision in ***MadanlalRamchandraDaga vs. State of Maharastra***[15], wherein this court held.

In our opinion, it is very wrong for count to enter into bargain of this character offences should be tried and punished according to the guilt of the accused. If the court thinks that leniency can be shown on the facts of this case it may impose a lighter sentence. But the court should never be a party to a bargain by which money is recovered foe complaint through their agency. We do not approve of the action adopted by the High court.

Social- Legal aspects

There are two sides each coin; similarly, each act of any person is also either good or bad, and it is the rule, since existence of the society, good (dharma or satya) has to be accepted and the bad prohibited (evil, adharma or satya). This rule still exists, and shall be till the end of the civilization, earlier, society was customarily based on morals. But, as soon as society replaced by the state, morality too get replaced by the law, if we want to change any existing custom or behavior in society, it would be change by the instrument of law only, otherwise not.

The Social Legal Study is a unique subject and studies the social problems of the societies and their solution here, though legal approach. In fact, there are two mode of changing law. First is, "Law changed the society which means that is law of the land complied the society to be changed according to law. When any dispute involving the question of law, came before the judiciary, the judiciary on the basis of rule of law, forced the society to change itself, the existing custom or law. Second is, "The society changed the law. It means Law is made by the society according to its requirement by its democratic institution i.e. Legislative or by adopting custom or usages. The prime function of legislature is to enact the laws, according to the desire of the society. Whenever any question arises in court of law, regarding validity of that law if court finds that constitutional, moral and just, then it holds its valid, but if not so, then declares it in valid and unconstitutional.

Where any law is set by the society in the form of enactment or custom, then it is said that the society changed the law. On the other hand, if such law is immoral, unjust and un constitutional then society has to be changed according to the valid law, It is said, law has changed society, In both way the law and the society are interlink and inter dependent.

Progress of Society dependent upon the proper application of law to its needs

Justice Bhagwati has observed that the progress of a society is dependent upon the proper application of law according to needs of society. Society today recognizes more than ever before the importance of its rights and obligations, the judiciary have to mould and shape the law to deal with such rights and obligations. Mere enactment of particular piece of legislation cannot solve the problems of society, unless the judges interpret and apply the law to ensure that the benefits go to the right quarters and to see that the rights and duties guaranteed by the Constitution and laws are made available to the people of this country. Further, he said that – "It is the judge, who infuses life-blood into the dry skeleton

[15]Air 1968 1267 : 1968 Crlj 1467

provided by the legislature and creates a living organism appropriate and adequate to meet the needs of society. "[16]

Concluding observations

From the forgoing discussion, the following conclusions may draw and suggestions can be made in respect of the law relating to plea bargaining.

Although, plea bargaining is used world-wide in the criminal justice system in countries like India, it is still at its fancy. The system may be useful but it leads to negative results of misusing, abusing on non-using of law at some stage on the other of the process of plea bargaining and justice delivery system. Generally, offenders prefer to come out of criminal cases in their entirely by adopting the available tactical methods like using lacunae in law, the system of administration prevailing in courts, and in the opportunistic psychology of the parties involved in the case. Statistics indicate that, the benefits are availed so far only by an ignorable number of offenders. In fact, in India, this system did not gain public importance due to lack of awareness among the common people. There is also scope for levelling any type of change against an accused on arrested person so as to harass him and to drag him to accept the system of plea bargaining, for those police and prosecutors have discretionary power in making changes against an accused. In such a process, innocents may sometimes face uncalled for agony and frustration.

Suggestions

The following suggestions are proposed based on the study:

It is, therefore, suggested that, if the Chapter XXIA of Cr. P.C. 1973 may be amended so as to provide for relief of release as in the case of compoundable offences so that, at least falsely implicated persons in criminal cases can come out from the protective and exhaustive process of criminal justice administration. Ultimately, the objective of modern criminology is to reform the criminals and not the crimes.

1. A provision has to be reflected making it mandatory for the court while issuing summons to the accused about plea bargaining
2. A provision has to be inserted to setup committee to consider the cases referred from the court to deal with the process of plea bargaining, so that the disposition arrived at, would be made in more voluntary environment and if the committee opines that, satisfactory disposition can't be workout, it should be send the plea-bargaining case back to the court.
3. Provision should be inserted for the hearing of Plea bargaining in the open court and the court should weigh the financial and social condition of the victim as well as the accused before permitting settle a case.
4. Section 265A (1) should be widened so that the classification for the benefit of plea bargaining should not be merely based on the number of years of punishment for a particular offence but it should also consider the severity of the crime.
5. Section 265 A (2) should be amended to give clarity about the offences which come under Socio-Economic offences. This can act as a safeguard against arising this power arbitrarily.
6. Under Sec. 265B, when the court is rejecting a plea-bargaining application, the order must be kept confidential to prevent prejudice to the accused.

[16]Supra Ref. at P-7

7. Under section 265B, there is no provision for the withdrawal of an application of plea bargaining once the application is made, it will become mandatory for the accused to go with the process. To avoid such situation, amendment has to be made by intertwining a provision for the withdrawal of application of plea bargaining.
8. In Section 265 C, a time frame about be stipulated for working out mutually satisfactory disposition.
9. In the second provision of Sec. 265 C (a), a provision should be inserted to allow the victim to participate through a lawyer so that the victim would be component enough to look after his interest and to inspect the proceeding in such case.
10. To promote transparency, a provision should be inserted for the court to record the final Plea-bargaining disposition arrived under Section 265C.
11. In the disposition made under Sec. 265D, the court should be given a basic level of discretion to revise the amount so that compensation amount would be reasonable.
12. A provision should be inserted to make the Jail Superintendent's duty bound to conduct awareness, the programme in prison info mining under trial prisoners about plea bargaining.
13. Last but not the least, a faithful implementation of the above suggestions will help in a better way towards strengthening the process of plea bargaining, as an effective alternative mode of solving criminal cases.

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