

PLEA BARGAINING IN INDIAN LEGAL SYSTEM

Prativa Panda¹, Ph. D. & Smruti Ranjan Sahoo²

¹ Associate professor Principal, University Law College, Utkal University, BBSR. Odisha.

² Research Scholar, KIIT Law School .Odisha

Abstract

Plea bargaining is a novel concept in India. In modern era of criminal justice system, the vast majority of criminal convictions are produced through bargained pleas. It is the process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to the court approval. It usually involves the defendant's pleading guilty to lesser offence as to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that possible for the graver charge. Therefore, plea-bargaining refers to pre-trial negotiations between the defendant through his/her counsel and the prosecution during which the accused agrees to plead guilty in exchange of lesser punishment. In India, position is very different from US. In the US and Europe, plea bargaining is a widely prevalent practice which helps expedite the legal process. Plea bargaining allows the accused to bargain with the court on the sentence that will be awarded. In India, it was introduced by way of an amendment Act of 2005 in Code of Criminal Procedure. This paper has made an attempt to critically evaluate the concept and applicability of plea bargaining in India criminal law as well as judicial attitude towards this concept.

Keywords - Fundamental rights, speedy disposal, Bargaining, Criminal Law



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INTRODUCTION:

Plea Bargaining can be defined as a process where the accused bargains with the prosecution for a lesser punishment. In other words, Plea Bargaining is an agreement or a settlement between the accused and the prosecution regarding disposition of the criminal proceeding. *According to Oxford Dictionary* "Plea Bargaining is an arrangement between prosecution and defendant whereby the defendant pleads guilty to a lesser charge in exchange for a more lenient sentence or an arrangement to drop other charges."

The idea of plea bargaining or mutually satisfactory disposition is to avoid expenses, unpredictable trials and the potential for harassment in all the small and medium crimes. It reduces the flow of criminal cases in the system and save the time, resources and energy of the system managers to deal with serious crimes, which threaten the national security and may cause large-scale damage to life and property.

¹ Dr Prativa Panda, Associate professor Principal, University Law College ,Utkal University ,BBSR. Odisha.

² Smruti Ranjan Sahoo, Research Scholar, KIIT Law School .Odisha

Origin:

This is not a new concept but it existed even in 19th century. In the United States, Plea-bargaining is significant part of the criminal justice system. In American Criminal Justice System, it is rule rather than exception. Majority of criminal cases are settled by plea-bargaining rather than by a trial by jury. The Supreme Court of USA in *Brady v. United States*³ upheld the constitutional validity and the significant role of the concept of plea-bargaining plays in disposal of criminal cases

Law Commission of India in its 142nd and 154th report suggested the concept of Plea-bargaining and they observed that this tool will be alternative to be explored to deal with huge arrears of criminal cases. Malimath Committee was also substantially in agreement with the views and recommendation of the Law Commission. According to them it will help in procuring speedy trial with benefits such as end of uncertainty, saving of cost of litigation, avoiding prolonged trial and legal expensed of the parties. They recommended where the offences are not of a serious character and the effect is mainly on the victim and not on the society, it is desirable to encourage settlement without trial.

Object of Plea Bargaining:

Plea bargaining is said to have the following objectives:

- 1) Reduces the pending litigation
- 2) Decreases the number of under trial prisoners
- 3) Makes provision of compensation to the victim of crimes by the accused.
- 4) Speeds up the disposal of criminal cases. End of uncertainty of a case
- 5) Saving legal expenses of both the parties i.e. accused and State.
- 6) Less congestion in jails.

Applicability of plea bargaining in India:

Chapter XXI A, of the Code of Criminal Procedure, 1973 allows plea bargaining to be used in criminal cases where:

- 1 Offences that are penalized by imprisonment below seven years.
2. If the accused has been previously convicted of a similar offence by any court, then he/she will not to be entitled to plea-bargaining.
3. Plea-bargaining is not available for offences which might affect the socio-economic conditions of the country.

³ Santobellov. New York,404,U.S 257,260,1971

4. Also, plea-bargaining is not available for an offence committed against a woman or a child below fourteen years of age.

Procedure of Plea Bargaining: The process of plea bargaining was brought in as a result of criminal law reforms introduced in 2005 Section 4 of the Amendment Act introduced Chapter XXIA to the Code having sections 265 A to 265 L which came into effect on 5th July, 2006. The following are the procedure of plea bargaining available to the accused under the Criminal Procedure Code, 1973:-

Section 265-A:

It states that, the plea bargaining shall be available to the accused charged of any offence other than offences punishable with death or imprisonment or for life or of an imprisonment for a term exceeding seven years. Section 265 A (2) of the Code gives power to notify the offences to the Central Government..

Section 265-B:

It provides that ,an application for plea bargaining shall be filed by the accused which shall state description of the case .The plea bargaining in his case and that he has not previously been convicted by a court in a case in which he had been charged with the same offence.

Section 265-C:

This section prescribes the procedure to be followed by the court in working out a mutually satisfactory disposition. In a complaint case, the Court shall issue notice to the accused and the victim of the case.

Section 265-D:

It deals with the preparation of the report by the court as to the arrival of a mutually satisfactory disposition or failure of the same.

Section 265-E:

It prescribes the procedure to be followed in disposing of the cases when a satisfactory disposition of the case is worked out.

Section 265-F:

It deals with the pronouncement of judgment in terms of such mutually satisfactory disposition.

Section 265-G says that no appeal shall lie against such judgment.

Section 265-H deals with the powers of the court in plea bargaining. A court for the purposes of discharging its functions under Chapter XXI-A, shall have all the powers vested in respect

of bail, trial of offences and other matters relating to the disposal of a case .

Section 265-I makes Section 428 applicable to the sentence awarded on plea bargaining.

Section 265-J: contains a non obstante clause that the provisions of the chapter shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of the Code and nothing in such other provisions shall be construed to contain the meaning of any provision of chapter XXI-A.

Section 265-K:

It says that the statements or facts stated by the accused in an application for plea bargaining shall not be used for any other purpose except for the purpose of the chapter.

Section 265-L:

It makes the chapter not applicable in case of any juvenile or child as defined in Section 2(k) of Juvenile Justice (Care and Protection of Children) Act, 2000.

Unless the aforesaid procedure contemplated in Chapter XXI-A is followed the same cannot be a valid disposal on plea bargaining. Even though 'plea bargaining' is available after the introduction of the said amendment is available, in cases of offences which are not punishable either with death or with imprisonment for life or with imprisonment for a term exceeding seven years, the chapter contemplates a mutually satisfactory disposition of the case which may also include giving compensation to victim and other expenses. The same cannot be done without involving the victim in the process of arriving at such settlement.

Kinds of Plea Bargaining:

Charge Bargaining:

It is a bargain or promise between the prosecutor and defendant to deduct some of the charges brought against the defendant in exchange of guilty acceptance. When accused accepts for guilty that he has committed the wrong then with the approval of prosecution, there can be charge bargaining but it solely depends upon the will of prosecution. Prosecution may accept or neglect it. After charge bargaining the defendant will face specific charge.

Sentence Bargaining:

It is a promise by the prosecutor, after acceptance of guilty, to recommend the court specific sentence or bargained sentence or it can be done directly with the trial judge. For this purpose, accused must be informed about the sentence likely to be imposed in case he does not accepts his guilt but if he does so then prosecutor demands for lesser sentence or favorable sentence instead what he was demanding earlier because of showing some sort of innocence regarding his guilt or for saving court's time.

Benefits in respect of Victim:

- a) He can easily get the compensation.
- b) He can save himself from long drawn Judicial Process.
- c) Less time and money consuming.

Benefits in respect of Accused:

- a) In case of Minimum Punishment, he will get half punishment.
- b) If no such punishment is provided, then he will get one fourth of the punishment provided.
- c) He may release on probation or admonition.
- d) He may get the gain of period already undergone in custody under section 428 of Cr.P.C.
- e) No appeal lies against the judgment in favour of him.
- f) Admission of accused cannot be used for any other purposes except for Plea-bargaining.
- g) Less time and money consuming.

JUDICIAL TRENDS:

In *Murlidhar Meghraj Loya v. State of Maharashtra*⁴ the Hon'ble Supreme Court for the first time got an opportunity to examine Plea Bargaining and held that it's the duty of the State to enforce the law and not to barter with the accused for lesser sentence. Supreme Court declared that introduction of Plea bargaining is a necessary evil. Therefore, it should not be introduced in Indian Penal System.

In *Kasam Bhai Abdul Rehman Bhai Shiekh v. State of Gujrat*⁵ Supreme Court held that awarding sentence on basis of plea bargaining is illegal and unconstitutional.

In *Thippaswamy v. State of Karnatka*⁶ and opined that concept of plea bargaining is violative of Article 21 of the Constitution to induce or lead an accused to plead guilty under a promise or assurance that he would be let off lightly.

In *State of UP v. Chandrika*⁷ the court reiterated that conviction on plea of guilty entered by appellant as a result of plea bargaining is contrary to public policy because judge is likely to be deflected from his path of duty to do justice and he might convict an innocent accused of accepting plea of guilty or let off a guilty accused with lighter sentence thus subverting the process of law and frustrating the social objective. Therefore, it was

⁴ AIR 1976 SC 1929

⁵ AIR1980 SC 854

⁶ (1983)1SCC194

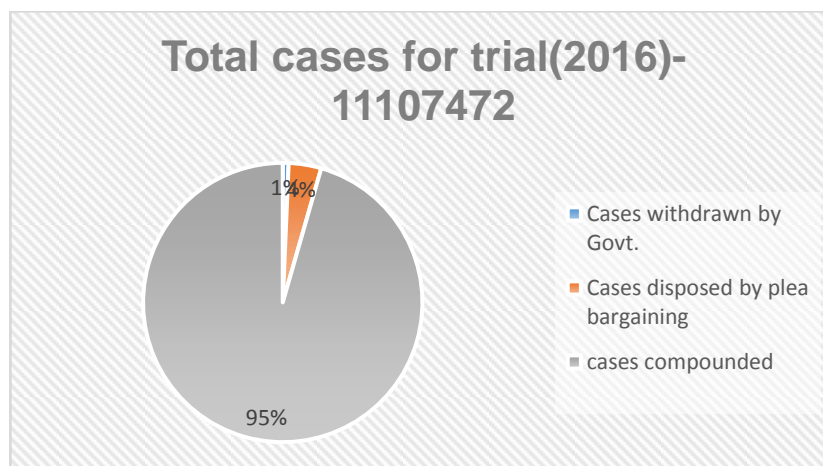
⁷ 2000 Cr.L.J384 (386

argued that by plea bargaining court cannot dispose of criminal cases and court has to decide it on merits.

Hon'ble Supreme Court in the case of *Kachhia Patel Shantilal Koderlal v. State of Gujarat*⁸ had strongly disapproved the practice of plea bargaining. Interestingly, there after the courts started showing positive attitude towards concept of Plea Bargaining as in *State of UP v. Nasruddin* Supreme Court held that reduction of sentence with respect to period already undergone as a result of plea bargaining would open a gate leading to serious miscarriage of justice.

In *State of Gujrat v. Natwar Harchanji Thakore*⁹ Gujarat High Court has recognized the utility of this method as an alternative measure of redressal to deal with huge arrears in criminal cases and it shall add a new dimension in the realm of judicial reforms.

Statistical dataof NCRB (2016)



As per the data of National Crime Records Bureau 2016 the total IPC Crime cases for trial was 1, 11, 07,472. It was estimated that only 1% of cases were withdrawn by the Govt. whereas only 4% of cases were disposed by plea bargaining and 95% of cases were compounded. The data shows the acceptance of plea bargaining in the judicial system of India.

Critical Analysis

It has become a disputed concept because there are many views regarding the stated point. Some authorities stress that introduction of plea- bargaining in India is exceptionally good as it will reduce heavy backlog prevalent in Indian Judiciary as well as reduce

⁸ 1980 CriLJ553

⁹ 2005 CriLJ 2957, (2005) 1 GLR 709

congestion in jails and other reasons whereas some authorities denied about it on the basis that the socio- economic conditions existed in US and India are very different. Law Commission in its report recommended it with the justification and reasons for accepting it. They stressed mainly on the points stated above. On the other hand, Opponent of this concept thinks that:

1. It is showing too much softness towards defendants.
2. The process is unfair with the innocent. It is like legalizing a crime to an extent, we already have provisions under probation of offenders Act, executive pardon.
3. According to one study of the US, one-third of the people who plead guilty would be acquitted if they went to trial.

Major drawbacks of plea-bargaining:

- Involvement of the police in plea-bargaining process would tempt coercion on innocent people.
- If once guilty application of the accused is rejected then he would face great hardship to prove himself innocent.
- Court is impartially challenged due to its involvement in plea- bargaining process.
- Involvement of the victim may lead to corruption.

Conclusion:

The concept of plea bargaining is not entirely new in India. Indian has already recognized it when it got its Constitution in 1950. Article 20(3) of Indian Constitution prohibits self-incrimination. However, it is still not totally accepted in spite of its commencement for the last many years. The courts are even reluctant to follow this procedure. Bargaining is effective in keeping the judicial system moving along at an appropriate pace. Financially, it provides the benefit of money saved for taxpayers, lawyers, and defendants, in addition to reducing the effect of costs on the outcome of the case because bargaining lessens the defendant's need of a lawyer if the defendant can plead quickly. Because plea bargains aid in the expedient and fair resolution of criminal cases, pleas must be continued in order to maintain functioning State.

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