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PLEA BARGAINING: A TOOL TO NEGOTIATE JUSTICE AND AID THE OVERBURDENED COURTS.

AUTHORED BY - RUUHANI THUKRAL

ABSTRACT:

To delay justice is injustice and to ensure justice prevails the notion of "Plea Bargain" comes into play. It curbs the problems of already overburdened courts while preserving the fount on which justice is served simultaneously. The process herein starts, with the accused confirming his guilt of the offense voluntarily, followed by moving the application and then a mutual settlement is arrived between the parties. The concept revolves around the fact that those offenders who will not have much time in court could apply for the settlement thereby reducing the delays and speeding up the process of case disposal.

Plea bargain has its roots in the maxim "Nolo Contender" which suggests "I do not wish to contest." It is the price for the honesty shown by the accused in accepting his guilt. The paper tries to highlight the core of the Plea Bargain, by considering its application process, and intricating the viewpoint of the victims, accused, and the judiciary. Finally, it lays down certain landmark pronouncements over the Plea Bargain and its way forward.

Keywords: Plea Bargain, negotiation, overburdened courts, justice, mutual satisfactory settlement.

CHAPTER I: INTRODUCTION

The archaic streamline of the courts to deal with any matter is followed by the procedure that involves proving the guilt of the accused beyond reasonable doubt and then declaring the guilt along with the imposition of the punishment. However, considering the overloading of the cases and the burden upon the judiciary and to save the time and money of the parties the concept of "Plea Bargaining" was added, through Criminal Law Reforms in 2005, introducing the chapter XXIA under the *Code of Criminal Procedure* from Section 265 A – 265 L, which now is covered under Section 289 in *Bharatiya Nagarik Suraksha Sanhita.*

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Plea Bargaining, in layman's language, could be stated as a bargaining process that involves the accused accepting the guilt in whole or in part in exchange for a lighter punishment. The process of plea bargaining revolves around the concept of negotiation wherein the accused accepts all the charges over him and prays the court for less punishment. It is an informal procedure commencing with the submission of the application by the accused and moving it to court followed by the scrutinization and examination of the voluntary confession of the accused and finally ends with the direction of the court to both the accused and prosecution to work on "mutually satisfactory disposal" of the case.

Plea bargaining has its roots in the Latin phrase "Nolo Contendere," which means "*I do not wish to contest.*"
In Black's Law Dictionary, "*Plea bargaining has been defined as "a negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offense or one of the multiple charges in exchange for some concession by the prosecutor, usually a more lenient sentence or a dismissal of the negotiated charges"*[1]

Today the condition is such that the difference between the rate of commission of crime and those getting the conviction is exceedingly high. Due to already overburdened courts the cases which do not involve serious charges and might have the chances of getting settled early also get delayed. So, in these cases, the notion of Plea Bargaining aids and comes as a savior to settle the dispute amicably and timely considering the "mutual satisfactory disposal" between the parties to the disputes.

TYPES OF PLEA BARGAINING

The idea of plea bargaining allows the accused to deal with the court, this dealing could concern lesser charges, reduced punishment, or a certain kind of factual bargain. All these factors lead to several types of Plea Bargaining. Some of these include:

1) Charge Bargaining- It is well understood that charges are framed against the accused in the criminal case under which he is given distinct kinds of punishment. When it is a charge bargain the accused makes a deal wherein, he accepts to be guilty under certain charges in return for a drop of some or other serious charges. In the case of one or more

[1] Bryan Garner, Black's Law Dictionary (8t edn, Thomson &West 2004) 1190

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charges, the serious charge gets dropped leading the accused to be punished under less serious charges.[2]

2) Fact Bargaining- Fact bargaining revolves around the concept where the accused deals with the prosecution to not state certain facts that could be aggravating[3] Or defaming in nature, and return he accepts the guilt.
3) Sentence Bargaining- As the name states, this bargain is wherein the accused consents to the guilt in consideration for a lesser sentence. Here, the judge tries to impose the punishment suggested by the prosecutor.[4] If that is not possible due to the aggravating nature of the crime, then the accused could be asked to withdraw the plea of guilty.

CHAPTER II. PLEA BARGAINING

UNDER BHARATIYA NAGARIK SURAKSHA SANHITA

Plea bargaining under the *Bharatiya Nagarik Suraksha Sanhita* is covered under Chapter XXIII, from Sections 289-300, and could be divided into various heads that lay down the procedure for making a plea in court.

I. APPLYING FOR THE PLEA: SECTION 289[5]

Plea bargaining though available with the accused, comes with certain exceptions. The plea could be obtained in certain cases only like:

i) Offences not punishable with death or imprisonment for life or a term exceeding 7 years.
ii) Offences that affect the socio-economic condition of the country, as defined by the Central government.
iii) Offences committed against women.
iv) Offences committed against children below 14 years.

II. MOVING THE APPLICATION: SECTION 290[6]

The application can be moved in the court by the person against whom charges are framed i.e. accused. Section 290 defines how the application could be made for obtaining a plea:

[2]Plea bargaining, (Last Visited on Oct 31st, 2024) https://www.bbau.ac.in/dept/HR/TM/LL.M.%20203%20Unit%204.Plea%20Bargaining.RM.pdf
[3] Ibid.
[4] *plea Bargaining supra* Note 2.
[5] Bharatiya Nagarik Suraksha Sanhita, § 289, No. 46, Acts of Parliament, 1949 (India).
[6] Bharatiya Nagarik Suraksha Sanhita, § 290, 2023, No. 46, Acts of Parliament, 1949 (India)

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i) A person accused of an offense may apply within 30 days from the date of framing of the charge in the court.

ii) The application shall be accompanied by a brief description of the case, including the offense to which the case relates, an affidavit stating the voluntariness of the accused while applying for the plea, and that he has not been previously convicted for the same matter.

iii) After the application is received by the court, a notice is served to the complainant or public prosecutor and the accused is to appear on the certain date fixed by the court.

iv) When both the parties appear on the fixed date then the court shall examine the accused in camera in the absence of the other party and:

a) If the court finds the application by the accused voluntarily it may give time to both parties to work on a mutually satisfactory disposition of the case, not exceeding 60 days. The victim shall be provided with the compensation and compensation during the case and thereafter the date shall be fixed for further hearing.

b) If the application filed turns out to be involuntary or the accused has been convicted for the same offense to which he is charged now, then the court shall proceed with the provisions of this Sanhita from the stage when application has been filed.

III. GUIDELINES FOR MUTUALLY SATISFACTORY DISPOSITION: SECTION 291[7]

In working out a mutually satisfactory disposition under clause (a) of sub-section (4) of section 290, the Court shall follow the following procedure, namely:

(A) If the case is instituted on the police report the court shall issue notice to the Public Prosecutor, the police officer who has investigated the case, the accused, and the victim of the case to mutually decide the case and shall ensure the complete process is voluntary.

(B) If the case is instituted otherwise than on police report, the Court shall issue notice to the accused and the victim of the case to participate in a meeting to work out a satisfactory disposition of the case. And the court shall ensure the complete process is voluntary.

Provided further that if the victim of the case or the accused so desires, he may participate in such meeting with his pleader engaged in the case.

[7] Bharatiya Nagarik Suraksha Sanhita, § 291,2023, No. 46, Acts of Parliament, 1949 (India)

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IV. REPORT OF DISPOSITION TO BE SUBMITTED BEFORE COURT: SECTION 292[8]

Wherein after the meeting

i) if the satisfactory disposition worked under Section 291 the Court shall prepare a report of such disposition which shall be signed by the presiding officer of the Court and all other persons who participated in the meeting and

ii) if no such disposition has been worked out, then the court shall proceed with the provisions of this Sanhita from the stage when the application has been filed

V. DISPOSING THE CASE: SECTION 293[9]

After the mutually satisfactory disposition successfully works out the court shall dispose of the case

a. the victim shall be given compensation, the parties must be heard, based on the quantum of punishment, the accused shall be released on probation of good conduct or after admonition or must be dealt with under the provisions of the Probation of Offenders Act, 1958 or any other law for the time being in force.
b. After hearing if the court is satisfied that Section 401 of the Probation of Offenders Act, 1958, or any other law for the time being in force apply to the accused it may release the accused on probation.
c. after hearing the parties under clause (b), if the Court finds that minimum punishment has been provided under the law for the offense committed by the accused, it may[10]Sentence the accused to half of such minimum punishment, and if the accused has not been previously convicted, he may be awarded one-fourth of the minimum punishment.
d. if the offense does not fall under (b) or (c), one-fourth of the punishment shall be provided and in case of not being previously convicted, then one-sixth.

VI. JUDGEMENT OF THE COURT: SECTION 294[11]

The judgment shall be delivered in the open court and shall be signed by the presiding officer.

[8] Bharatiya Nagarik Suraksha Sanhita, § 292,2023, No. 46, Acts of Parliament, 1949 (India)
[9] Bharatiya Nagarik Suraksha Sanhita, § 293, 2023, No. 46, Acts of Parliament, 1949 (India)
[10] Ibid Bharatiya Nagarik Suraksha Sanhita, § 293, 2023, No. 46, Acts of Parliament, 1949 (India)
[11] Bharatiya Nagarik Suraksha Sanhita, § 294, 2023, No. 46, Acts of Parliament, 1949 (India)

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VII. FINALITY OF THE JUDGEMENT: SECTION 295[12]

The judgment delivered shall have no appeal against it except the special leave to appeal under Article 136 or Writ petition under Article 226 or 32.

VIII. POWER OF THE COURT: SECTION 296[13]

Discharge its functions under this Chapter, a Court shall have all the powers vested in respect of bail, the trial of offenses, and other matters relating to the disposal of a case.

IX. SETTING OFF THE PERIOD OF DETENTION: SECTION 297:[14]

The provisions of section 469 shall apply, for setting off the period of detention undergone by the accused against the sentence of imprisonment imposed under this Chapter, in the same manner as they apply in respect of the imprisonment under other provisions of this Sanhita.[15]

X. SAVINGS: SECTION 298[16]

The provisions of this Chapter shall have effect over all other provisions of this Sanhita notwithstanding that they are inconsistent with it.

XI. ACCUSED'S STATEMENT NOT TO BE USED: SECTION 299[17]

The statements or the facts by the accused shall not be used for any other except for this chapter.

XII. NON -APPLICABILITY OF THIS CHAPTER: SECTION 300[18]

The chapter shall not apply to any juvenile or child under section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

[12] Bharatiya Nagarik Suraksha Sanhita, § 295,2023, No. 46, Acts of Parliament, 1949 (India)
[13] Bharatiya Nagarik Suraksha Sanhita, § 296,2023, No. 46, Acts of Parliament, 1949 (India)
[14] Bharatiya Nagarik Suraksha Sanhita, § 297,2023, No. 46, Acts of Parliament, 1949 (India)
[15] Ibid, Bharatiya Nagarik Suraksha Sanhita, § 297, 2023, No. 46, Acts of Parliament, 1949 (India)
[16] Bharatiya Nagarik Suraksha Sanhita, § 298, 2023, No. 46, Acts of Parliament, 1949 (India)
[17] Bharatiya Nagarik Suraksha Sanhita, § 299, 2023, No. 46, Acts of Parliament, 1949 (India)
[18] Bharatiya Nagarik Suraksha Sanhita, § 300, 2023, No. 46, Acts of Parliament, 1949 (India)

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CHAPTER III. PLEA BARGAINING

FROM THE POINT OF VIEW OF THE VICTIM, ACCUSED AND THE JUDICIARY:

1) **Victim's Perspective**: Plea bargaining is somewhere a victim-centered process in which they get the right to receive compulsory compensation from the court. They can bargain with the court on their decisions. Earlier they had to satisfy themselves with whatever the court has pronounced however this process considers the victims and helps them to save their time and money. If they are ready to bargain, this method serves as a savior for them by saving them from a long judicial process. Hence it helps the victim to choose what suits them the most.
2) **Accused Perspective**: Plea Bargain not only helps the victim but the accused as well on certain grounds which includes fast disposal of the case, saving time and money. The statement of the accused cannot be used anywhere as per Section 299. The accused if pleads guilty and the judge is satisfied could be given lesser punishment. There could be cases where he may not be punished but could be released on probation or admonition. Also, there lies no appeal against the judgment passed by the court in these cases.
3) **Judiciary Perspective:** In the run of Overburdened courts and overcrowded prisons. The process acts as a rescue mechanism to manage the caseloads and to process out the offenders who are not going to have much jail time, hence ensuring a speedier trial. Hence it helps the judiciary to effectively manage the caseloads leading to better resolution and a constructive justice delivery system.

CHAPTER IV: JUDICIAL PRONOUNCEMENTS

Certain cases concerning Plea Bargains are:

1. Murlidhar Meghraj Loya v. State of Maharashtra[19]Court stated.

   "*Many economic offenders resort to practices the Americans call 'plea bargaining', 'plea negotiation', 'trading out' and 'compromise in criminal cases' and the trial magistrate drowned by a docket burden nods assent to the sub rosa ante-room settlement. The businessperson culprit, confronted by a sure prospect of the agony and ignominy of tenancy of a 7 being a plea of guilt, coupled with a promise of 'no jail'. These advance arrangements please everyone except the dis- tant victim, the silent*

[19] *Murlidhar Meghraj Loya v. State of Maharashtra 1976 AIR 1929, 1977 SCR (1)*

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society."[20]

2. In, Kasambhai Ardul Rehmanbhai Shaikh v. State of Gujarat & Anr[21]
   The court said the "*practice of a bargain would also tend to encourage corruption and collusion and as a direct consequence, contribute to the lowering of the standard of justice."*[22]
3. Kripal Singh v. State of Haryana[23], the court held that.
   "Neither the trial Court nor the High Court has jurisdiction to bypass the minimum limit prescribed by law on the premise that a pre-bargain was adopted by the accused."[24]

However, in

4. State Of Gujarat v. Natwar Harchandji Thakor[25] The court laid down the positive parameter for the practice and stated:
   "*We are also tempted to state and suggest that given the inordinate delay in the disposal of cases in general and criminal cases in particular, and a huge backlog of cases in Courts, in the changed circumstances, the introduction of the concept of "plea bargaining" in our Criminal Jurisprudence and jurisdiction requires re-thinking and re-consideration.*
   In some jurisdictions in other countries, "plea bargaining" in some cases, where a larger interest is not involved and when the dispute revolves around the individuals, has been, successfully, introduced. It will be interesting to refer here to the concept of "Nolo Contendere", practiced in some jurisdictions like the United States."[26]

CHAPTER V: CONCLUSION

In conclusion, it could be inferred that plea bargaining as a practice could be implemented to bring about a new and helpful change in the judicial system. It would benefit the parties as well as the courts and would assist in bringing constructive reform in the judicial system. However, keeping in view, the nature of the practice, there must be assurance concerning the fact that the accused voluntarily accepts the plea of guilt. The victim shall also not be forced to

[20] Ibid
[21] Kasambhai Ardul Rehmanbhai Shaikh v. State of Gujarat & Anr AIR 854 (1980)
[22] Ibid
[23] Kripal Singh v. State of Haryana (two thousand) (1) ALD(CRI)613
[24] Ibid
[25] State of Gujrat v. Harchandji Thakor (2005) CRILJ2957
[26] Ibid

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compromise the matter if it does not help their interest.

Plea Bargain because of its nature shall always remain a doubtful practice and considering the burden upon the judiciary to deal with the overloaded cases, the practice could be used as a measure to speed the disposal of the case. It is inevitable in the present system to help both the courts and parties but could only be helpful when it is applied with effective safeguards.

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