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PLEA BARGAINING IN INDIA – THE NEW NORMAL FOR SOLVING LEGAL CASES IN HIGH GEAR

AUTHORED BY - PRISSHA CHAWLA

ABSTRACT

The increasing quantity of criminal cases has battered Indian courts. Due to the chronic delay in resolving the cases, jails are overcrowded with prisoners who are jailed without facing a trial. In reaction to the abysmal state of the legal system, the concept of plea bargaining was developed in India. It was endorsed as an effective method of resolving case backlog and facilitating the criminal justice system's process.[1] According to then CJI Y.K Sabharwal, the introduction of plea bargaining in India would not only speed up the criminal system, but wouldalso act as a restorative form of justice in which victims would be equal players and receive adequate recompense. Plea Bargaining emerged as a compromise to ensure that criminals were appropriately punished consistent with the policy of the law to ensure that punishment not onlyserves as deterrent to offenders, but has to be in the societal interest too. The rise of plea bargaining is commonly attributed to the nineteenth century, but it actually stretches back hundreds of years to the introduction of confession law and has most likely existed for more than eight centuries. [2]Maybe our country's legislature created a reasonable solution to the problem of pending lawsuits with these reasons in mind. The Criminal Procedure Code was revised, and a new chapter XXIA incorporating plea bargaining procedures was added by the Amendment Act of 2005. Though the notion of plea bargaining is not new in the legal world, it was first introduced to India in 2006, and its consequences and functionality are examined inthe article.

KEY WORDS: Plea Bargaining, Prosecution, Defense, CrPC, Negotiation, Indian Judiciary, Law Commission

[1] https://darpg.gov.in/sites/default/files/public_order5.pdf
[2] https://blog.ipleaders.in/plea-bargaining-practice-india/

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INTRODUCTION

The basic goal of the criminal justice system is to defend the individual's right that has been infringed by other individuals, hence the criminal justice system must design a redressal mechanism to safeguard the individual's right. The rate of crime in the country is increasing as the country's population grows. As a result, the courts are inundated with criminal cases, and there are many cases pending before various criminal courts due to a lack of sufficient infrastructure for the disposal of these matters.

As the saying goes, "justice delayed is justice denied," and in the current situation, victims suffer as a result of delays in the trial process and having to wait for a longer period of time toachieve justice, which causes them to lose faith in the judicial system. However, while preserving the rights of the victims, the rights of the accused should not be disregarded because,during the procedures, the state and the accused are not in the same position, therefore their rights must also be safeguarded by following a fair and swift trial.

While offering a fair trial, the procedure becomes slow, time demanding, and expensive. In thecurrent state of the criminal justice system, speedy trial has lost its meaning, resulting in a largenumber of under-trial convicts. Though the speedy trial is not expressly guaranteed by the constitution, it is an important aspect of the criminal justice system. If there is a delay in the judicial proceedings, it is more likely that the victims will be denied justice, and the prisonerswill suffer as a result of spending more time in judicial custody than the actual punishment to be given to them.

Because of these circumstances, the courts in India needed to implement an alternate dispute resolution process. As a result, the concept of "Plea bargaining" was established in India as partof the alternative dispute resolution system to solve these challenges, minimise the burden of the court, provide rapid hearing of cases, and ensure speedy justice for the people. The Criminal Procedure Amendment Act 2005, which went into effect on July 5, 2006, introduced the formal recognition of the notion of plea bargaining[3]. [4]In India's jurisprudence there are mainly 3 typesof plea bargaining – Charge, Sentence and Fact.

[3] https://www.lawfinderlive.com/Articles-1/Article9.htm

[4] https://tripakshalitigation.com/indian-context-of-plea-bargaining/

Charge bargaining is a popular and well-known type of plea. It entails negotiating the particularcharges or offences that will be brought against the defendants at trial. A prosecutor will usuallydrop the higher or other charges counts in exchange for a guilty plea to a lesser charge.

Sentence negotiating entails agreeing to a guilty plea for the sated charge rather than a lesser charge in exchange for a shorter sentence. It justifies the prosecution's need to go to trial and prove its case. It gives the defendant the possibility for a reduced sentence.

Fact bargaining entails admitting certain facts, removing the requirement for the prosecutorto prove them, in exchange for an agreement not to put certain other facts into evidence.

RESEARCH METHODOLOGY

The research approach that is employed is qualitative, with a comparison of different judiciary decisions made, as well as descriptive and analytical methods used in the formulation of this research paper. This paper is built on previously available information, which has been examined to create an evolution of this research. The doctrinal technique i.e. various reports, papers, legal provisions, case laws etc have been used in this paper's preparation.

LITERATURE REVIEW

What is Plea Bargaining?

[5]It is an alternative form of redressal of disputes or a pre-trial negotiation in which there is an agreement between the prosecution and the defence where the accused pleads guilty or no contest to criminal charges and as a result of which the prosecution drops or reduce some of the charges and recommends that the judge enter a specific sentence that is acceptable to the defence.

In general, it is a consensual agreement between the prosecution and the defence under the judicial preview in which the prosecution makes a concession in the charges as well as the sentencing to the accused in exchange for the accused accepting the criminal accusations.

[5] https://legalserviceindia.com/legal/article-8436-plea-bargaining

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[6]PROS OF PLEA BARGAINING

- Plea bargaining reduces the burden on the courts and allows the court to devote moretime to more serious offences.
- Plea bargaining aids in reducing the costs associated with the trial process.
- It benefits the accused since it decreases the charges and, in some cases, sentences,resulting in less time in jail.
- [7]It is also useful in minimising unwanted media coverage of cases, which drags theproblem out in the open and causes unnecessary delays in justice.
- It aids in reducing the number of under-trial prisoners in jails by expediting thedisposition of cases.

[8]CONS OF PLEA BARGAINING

- [9]Plea bargaining abrogates the accused's right to a fair trial. To avoid the lengthy judicial processes, most accused relinquish their right to a free trial and admit to committing the crime. The accused not only waives the right to a free trial, but also theright to silence, because in plea bargaining, the accused is required to confess to each and every part of the offence committed by him.
- There is a certainty in plea bargaining that the accused will be convicted and labelled as a convict, and will have to face the punishment, which can take the form of imprisonment or penalties.
- Plea bargaining can be utilised only when there is strong evidence against the accusedand the accused is confident that he would be convicted for a longer sentence, as in most situations, the accused may be released owing to lesser evidence.
- In a country like India, where the majority of the offences covered by plea bargaining are committed by people from lower socioeconomic backgrounds, the accused are oftenunable to pay the victims.
- Other procedures, such as compounding of charges, are preferred since they are less time consuming, and there is a potential that the accused will be discharged without being labelled as a criminal.

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[6] https://www.lawinfo.com/resources/criminal-defense/criminal-procedure/the-pros-and-cons-of-plea- bargaining.html
[7] https://www.nolo.com/legal-encyclopedia/the-benefits-plea-bargain.html
[8] https://www.criminaldefenselawyer.com/resources/criminal-defense/criminal-defense-case/plea- bargaining-pros-cons.htm
[9] https://connectusfund.org/15-serious-advantages-and-disadvantages-of-plea-bargaining

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FEATURES OF THE MODEL OF PLEA BARGAINING IN INDIA

1. The accused individual must take the initiative to advance the legal machinery for negotiated pleas only for offences with a maximum penalty of seven years.
2. The plea negotiating application must be filed in the court where the offence is being tried. This is where the Indian method differentiates from the American model, in whichthe application is made by the public prosecutor and the accused following theconclusion of discussions between them.
3. The court must examine the accused in camera upon receipt of the application, and if satisfied that the application was filed voluntarily, the victim, the accused, the public prosecutor, and the investigating officer, if the case is one instituted on a police report,are given time to work out a mutually satisfactory disposition of the case, which may include the accused paying compensation to the victim and other expenses incurred during the case.
4. The judge is not a bystander, but rather plays an important role in the proceedings. Thecourt is responsible for ensuring that the entire process is carried out with the accused'scomplete and voluntary consent. When an acceptable resolution of the case has been reached, the court is obligated to dismiss the case after giving compensation to the victim in accordance with the settlement reached and after hearing the involved parties on the subject of penalty quantum. It must then impose the sentence, which might rangefrom one-fourth to one-half of the stipulated punishment for that offence.
5. The legislation also requires that the judgement be rendered in open court. A clause infavour of the accused has been introduced, stating that the statement or facts made by an accused in a plea bargaining application shall not be used for any other reason.
6. In the instance of plea bargaining, the Court's decision is final, and no appeal may be filed in any court against it.
7. Section 265A states that plea bargaining cannot be used in cases where the punishmentis more than seven years in prison and/or the offence affects the socio-economic condition of the country (to be notified by the Central Government) or has been committed against a woman or a child under the age of fourteen. The method is also only available for first-time offenders.

The careful approach of the Act has been highlighted after reading the aforementioned portions on plea bargaining. A number of riders linked to the plea bargaining model in India have made it exclusively available to criminals committing the crime, punishable by imprisonment of not more

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than seven years, provided that the accused is not a minor and the crime committed by him is not socioeconomic in nature

LEGALITIES WITH RESPECT TO CASE LAWS

- [10]Murlidhar Meghraj Loya v. State of Maharashtra

The defendants were charged with selling contaminated food in violation of thePrevention of Food Adulteration Act of 1954. The Court had the impression that the accused had pled guilty before the magistrate court under a casual three-sided agreement that resembled plea bargaining in the United States. The judge in this case expressed his anguish at the agreement issue, effectively repeating that the concept of plea bargaining is not permitted under Indian criminal law. Simultaneously, the scholarly adjudicator expressed his favourable opinion of supplication haggling and advocated that the juristic fraternity's concept should be considered.

- [11]Madanlal Ramchandra Daga vs. State of Maharashtra

It is a classic example of the court's conventional thinking in which the judge held thatthe case should be decided according to the guilt of the convicted.

- [12]Kachhia Patel Shantilal Koderlal v. state of Gujarat and Anr

The Supreme Court went a step farther and ruled that plea bargaining was unconstitutional and would cause uproar throughout the country. As stated in Kasambhai v. Region of Gujarat, the possibility of plea bargaining under Indian settingsis particularly vulnerable to abuse. In another case, the Supreme Court issued a landmark decision concerning plea bargaining, concluding that plea bargaining violates Article 21 of the Constitution.

- [13]State of Uttar Pradesh v. Chandrika

[10] 1976 AIR 1929, 1977 SCR (1) 1

[11] 1968 AIR 1267, 1968 SCR (3) 34

[12] 1980CriLJ553

[13] AIR 1999 SC. 164

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The Supreme Court's perspective in this case is the pinnacle of the court's position in the preceding case. The Supreme Court dismissed the High Court's motion, allowing asupplication settlement and reminding us that the concept does not exist in the Indian criminal law sphere.

- [14]State of Gujarat v Natwar Harchanji Thankor

Finally, in the aforementioned case, the Gujarat High Court upheld the constitutionality of plea bargaining, observing that "the object of the law is to provide easy, cheap, and speedy justice by resolving cases, including criminal cases, and considering the currentrealistic scenario of pendency and delay in disposal of cases, reforms in the administration of law and justice are unavoidable." As a result, plea bargaining can bring a new dimension to judicial reform.

Initially, the Indian judiciary was hostile to and wary of plea bargains. Despite the [15]Law Commission's recommendations in its 142nd, 154th, and 177th reports for the introduction of plea bargaining in the Indian judicial system, the apex court held this concept unconstitutionalin a series of judgments after studying the challenges that the Indian judicial system faces in disposing of criminal cases and also comparing the challenges to other countries and observing their way of overcoming these challenges. The Law Commission advocated in its 142nd reportthat plea bargaining be introduced into the Indian legal system on an experimental basis only for offences with punishments of less than seven years. In its 154th report, the Law Commission proposed adding a new chapter to the CrPC to allow for plea bargaining. In 2003,the Mali math committee on criminal justice system changes endorsed a law commission reportrecommending the use of plea bargaining in the Indian judicial system.

[16]The Criminal Procedure Amendment Act 2005 established the notion of plea bargaining, anda new chapter XXIA including Sections 265A to 265L was added to the Code of Criminal Procedure 1973, in which Sections 265A to 265L discussed the legislative framework of plea bargaining in India.

Section 265A addresses this application. This concept applies to: a) accused who have not beencharged

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[14] 2005 CriLJ 2957, (2005) 1 GLR 709

[15] http://www.manupatra.com/roundup/326/Articles/Plea%20bargaining.pdf

[16] https://indiankanoon.org/doc/1732853/

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with offences punishable by more than 7 years in prison, life imprisonment, or death sentence; b) an officer in charge has forwarded a report to the magistrate under Section 173 ofthe CrPC; and c) a person against whom a magistrate has taken cognizance on a complaint afterexamining the witnesses and complaint under Section 200 and has issued the process under Section 204.

There are certain exceptions for the applicability of this concept

a) It should not apply to offences that have a negative impact on the country's socioeconomic status.
b) It should also not be used to juveniles as defined in Section 2(k) of the Juvenile JusticeAct of 2000. According to Section 265B of the CrPC, the application for plea bargaining must be made in the same court where the given offence is being tried.

[17]Furthermore, Section 265C of the CrPC establishes standards for mutually agreeable disposition, and Section 265D of the CrPC requires a report of mutually satisfactory dispositionsigned by the presiding officer to be presented to the court.

If the report follows the guidelines, it is dismissed by the court and a judgement is issued. Thedecision can be appealed under Art.136 by a special leave petition and a writ petition under Article 226 and 227 of the Constitution.

If no appeal is filed, the judgement is declared final. According to Section 265I of the CrPC, the court decreases the time period of punishment based on the time spent in judicial custody for that specific instance.

According to Section 265K of the CrPC, the accused's statement recorded in the plea bargainingwill not be used in another offence other than the offence of plea bargaining.

[17] https://www.aaptaxlaw.com/CRPC/crpc-chapter-xxia-section-265a-265b-265c-265d-265e-265f-265g-265h- 265i-265j-265k-265l-plea-bargaining.html

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SUGGESTIONS

Plea bargaining was adopted in India as a cure for the overcrowded judiciary. Every person involved in the case benefits from the plea negotiating process since the prosecution is freed ofthe technicalities and lengthy discussions, and the accused can walk free. However, even aftera decade of introduction, this notion has not been successful in India. Many causes could be atblame, including a lack of understanding of the concept among the under trial convicts and police. Judicial oversight should be allowed to ensure the equitable implementation of plea bargaining in the criminal justice system. To make the concept successful, the identified flawsmust be addressed in order for the system to function. If plea bargaining is used effectively inthe criminal justice system, it will almost certainly alleviate the problem of prolonged trials and lead to the quick disposition of cases.

Following methods can be adopted for the efficient working of the plea bargaining

1. A provision for plea negotiating hearings in open court should be provided, and before reaching any settlements, the court should take into account the victim's and accused's financialand social circumstances.

2. A committee should be established that will look into the cases referred by the court to dealwith the process of plea bargaining, so that the decision made is voluntary and in a free environment, and if no decision is made, the cases will be returned to the court itself.

3. A clause should be included that requires the court to tell the accused about the notion of plea negotiating before issuing the summons

4. A provision for knowledge should be included, in which jail superintendents should tell convicts about plea bargaining so that they can use this right efficiently. The jail superintendents should be required to conduct such awareness campaigns.

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CONCLUSION

The controversial idea of Plea Bargaining is more a component of accommodation and mutual advantage than a problem of profound quality, lawfulness, or legality. There is an obvious needfor radical transformation in the criminal justice system. It could be a much-needed advancement, but only if there is the potential of a rapid and small case goal. If the only motivation for the criminal equity framework is to reintegrate hoodlums into society by subjecting them to determining sentences in jail, then plea bargaining loses the majority of itsappeal. If known, the various partners of crime' and the criminal equity framework are practising plea bargaining. Putting this process under regular scrutiny increases the likelihoodof fair deals in this bargaining. Plea bargaining is an unavoidable component of the adversarialsystem in the current environment.

The purpose of this paper has been to demonstrate that there is no inherent inadequacy in presenting plea bargaining in an adjusted structure in the Indian criminal justice framework. Plea bargaining, as it is presented in India, is correct on a fundamental level, or a penance of equity at a higher level of regulatory production. An examination of both sides' arguments suggests that plea bargaining is a fair cycle in the disposition of criminal cases that should notundermine the obstructive impact of law and discipline, produce fair treatment problems, or result in other heinous results. The plea-bargaining structure, in fact, is one of mutual advantage. It is assumed that any plea-bargaining framework in which both parties have equalaccess to similar assets and the plea is made consciously and astutely is essentially valid and does not violate the fundamental tenets of criminal law.

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