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ANALYSIS OF PLEA BARGAINING IN INDIA

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Plea Bargaining in India –

1. INTRODUCTION: -

One of the most appalling problems of Indian judiciary is the pendency of cases whichaccount for around three crores of cases. The legislature came with a revolutionary toolof plea bargaining to address the pendency of cases. The plea bargaining has been one of the latest additions to the criminal law which came into force only in 2006 by the criminal law amendment act, 2005. It has been around ten years since the veryincorporation of the concept in the criminal law of India. The article shall aim to assessthe success of the concept in India by taking into account the provisions and the judicialpronouncements regarding it. The article shall also peep into the American model of plea bargaining as it has been pioneer in it. The article shall also compare both the Indianas well as American models of plea bargain so as to reveal the weaknesses and strengthsof either model. The article shall briefly take into account the procedures involved in the American model of plea bargaining which has made it an extraordinary andsuccessful tool. As mentioned above the sole aim of the article is to analyse the Indian model of plea bargaining keeping in mind the successful American model. The work can be used for making the Indian model of plea bargaining much more successful andeffective in the legal arena.

The latest figures reveal the pathetic conditions related to pendency of cases in Indian courts. No less than three Crore of cases are pending before the courts accordingto the latest report. A large number of the cases have been lingering for about twenty years. The Chief Justice of India has shown his concern towards this pathetic conditionof pendency of cases and thus vowed to clear the pendency in about five years. The pendency of cases in India is thus a grave concern and is of primary importance. A number of high profile criminal cases in India were delayed to such an extent that the phrase, 'Justice delayed is justice denied' seemed true. The example of some of the cases which were delayed beyond imagination is; Uphaar Cinema fire case (1997), the

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decision came after eighteen years and the main accused went scot free, Bhopal Gas tragedy (1984), the case went on for several years but never the main culprit was incarcerated, 1984 anti-Sikh riot case (1984), till date the accused are free and victims are waiting for justice.

Thus, keeping such parameters in mind, the legislature of our country came witha solution to tackle with the pendency of cases. The concept of Plea bargaining thoughold in the global judicial scenario came to India recently in 2006. The criminalprocedure code was amended and a new chapter XXI A was inserted by amendment actof 2005 containing the provisions related to plea bargaining. Ten years have gone by since the revolutionary tool of plea bargaining was incorporated in the Indian criminalprocedure code. The present work has been undertaken to assess the success of the concept of plea bargaining in India since its inception. The work has deployed simple doctrinal methodology of research and shall concentrate on the provided case laws, articles, legislation pertaining to the plea bargaining in India. The work shall also provide some suggestions if needed for plea bargaining to become an effective enoughtool to tackle the pendency of cases. The article shall discuss in brief the history of pleabargaining as a global concept and then it shall assess the model of plea bargaining applicable in India by peeping into the advantages and disadvantages of plea bargainingin India.

2. HISTORICAL BACKGROUND OF PLEA BARGAINING

The rise of plea bargaining is generally taken to begin in the 19th century but it actuallydates back hundreds of years to the advent of confession law and has probably existed for more than eight centuries. The first influx of plea bargaining cases at the appellate level in the United States occurred shortly after the Civil War. Relying on past confession precedent prohibiting the offering of incentives in return for admissions of guilt, various courts summarily rejected these bargains and permitted the defendants to withdraw their statements. These early American appellate decisions, however, did notprevent plea bargaining approach of American courts. While corruption kept plea bargaining alive during the late 19th and early 20th centuries, over-criminalization necessitated emergence of plea bargaining into mainstream criminal procedure and its rise to dominance. Between 1908 and 1916, the number of federal convictions resulting from pleas of guilty rose from 50% to 72%. Though plea-bargaining rates rose significantly in the early 20th century, appellate courts were still reluctant to approve such deals when appealed.

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The adversarial system which is complex in character made the conviction in the criminal case an uphill task, thus resulting in unwarranted delays. The ineffective justice system and the delays in criminal cases gave birth to the phenomenon called plea bargaining. The plea bargaining not only gave a sigh of relief to the accused languishingbehind bars for years owing to the delay in trial, also it proved to be a time and cost effective remedy for the judicial system to dispose of criminal cases quickly.

In United States, an overwhelming rate of around 95% of criminal convictions is reached by using plea bargain known as negotiated pleas. In England and wales around92% convictions come through plea bargains. While in British crown courts only 14.3%cases proceed for trial, the remaining ones opt for plea bargain[456].

In the case of **Bradley V. United States**, the American Supreme Court upheld the practice in 1970. The practice is also being adopted in other common law and civil lawjurisdictions within different forms[7].

As discussed above plea bargain is a relatively new concept in India which came into picture only in 2006. A detailed analysis of the Indian model of plea bargaining shall be discussed later in the article.

3. CHARACTERISTICS OF THE MODEL OF PLEA BARGAININGAPPLICABLE IN UNITED STATES

As mentioned above, the United States of America can be regarded as a pioneer in bringing plea bargaining to light. The model of plea bargaining applicable in United States of America assimilates within its purview all sorts of crimes. In all, around 90 per cent of the cases are resolved by deploying plea bargaining in United States[456]. Interestingly, there are very few rules surrounding the use of plea bargaining either in individual states or at the federal level and almost anything goes in matters related to plea bargaining. In other words, United States does not limit the kind of case that can be plea bargained, allowing it for the minimum violation or offence up to the most serious crimes, including those which could have a potential for the death penalty. In general, a guilty plea must be voluntary and intelligent[9].

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This means a defendant should understand:

- What he is doing in agreeing to a plea bargain
- He has to agree to accept the plea deal
- The acceptance should not be due to physical coercion or prosecutors promising a deal and then changing the terms after the defendant has agreed and entered a plea of guilty.

There are also rules regarding how guilty pleas should be entered in court, specifying which rights a defendant must waive and the process of entering the plea. For examplea defendant must state clearly on the record that they understand they are giving up theirright to a trial[10].

For all practical purposes there are no rules surrounding how plea are negotiated. Prosecutors and defence attorneys are required to follow an ethical code of conduct, butthese codes tend to be broadly worded and do not address plea bargaining directly. As a result, U.S. prosecutors enjoy wide latitude and power in the plea bargaining processand can agree to dismiss a case outright, or dismiss charges, allow an alternative sentence, such as a fine or community service, or negotiate a deal that includes a substantial amount of time in prison [10].

It is important to understand the difference in Plea Bargaining and Abbreviated Trial; often the latter may be confused with the former. An abbreviated trial is a shortened procedure in which the defendant agrees to plead guilty of the offence that he has committed. The Judge reviews the evidence, including the defendant's guilty plea and gives the defendant a statutorily determined reduced sentence upon a finding of guilt. The basic difference between the abbreviated trial and plea bargaining is that in the former case, the law does not provide for or require negotiation between the prosecutorand the defence regards either the charge or the sentence. In abbreviated trials, the criminal procedure code states what sentence reduction is given in exchange for a guilty plea and the defendant's waiver of his right to a full trial. Countries that allow for abbreviated trials often restrict the use of this process to less serious offenses.

4. TYPES OF PLEA BARGAINS

Plea bargaining can mainly be classified into four types

Charge Bargaining: This is common and widely known form of plea bargaining. It involves a negotiation of the specific charges or crimes that the defendants will face attrial. Usually, in return for a plea of 'guilty' to a lesser charge, a prosecutor will dismissthe higher or other charges counts.

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For example, a defendant charged with burglary maybe offered the opportunity to plead guilty to attempt burglary. It is, therefore, basicallyan exchange of concessions by both the sides.

Sentence Bargaining: Sentence bargaining involves the agreement to a plea of guilty for the stated charge rather than a reduced charge in return for a lighter sentence. It sources the prosecution the necessity of going through trial and proving its case. It provides the defendant with an opportunity for a lighter sentence. It is the process whichis introduced in India where the accused with the consent of the prosecutor and complainant or victim would bargain for a lesser sentence than prescribed for the offence.

Facts Bargaining: The least used negotiation involves an admission to certain facts, thereby eliminating the need for the prosecutor to have to prove them, in return for an agreement not to introduce certain other facts into evidence.

Counts Bargaining: In this kind of bargaining, the defendant pleads guilty to a subsetof multiple original charges.

5. PLEA BARGAINING IN INDIA

5.1 HISTORICAL BACKGROUND

The plea bargaining in India has been inserted by criminal amendment act of 2005. A new chapter XXI A has been added containing provisions related to the procedure to befollowed in plea bargaining. Section 265 A to 265 L contains the very basic provisionsranging from the application for plea bargaining to the bargains the convict could get.

The Law Commission of India advocated the introduction of 'Plea Bargaining' in the 142nd, 154th and 177th reports. The 154th Report of the Law Commission recommended the new XXIA to be incorporated in the Criminal Procedure Code. The said Report indeed referred to the earlier Report of the Law Commission, 142nd Report,which set out in extenso the rationale behind the said concept, its successful functioningin the USA and the manner in which it should be given a statutory shape. The Report recommended that the said concept be made applicable as an experimental measure to offences which are punishable with imprisonment of less than seven years and/or fine including the offences covered by section 320 of the Code. It was also recommended that plea-bargaining can also be in respect of nature and gravity of the offences and thequantum of punishment. It was observed that the said facility should not be available tohabitual

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offenders and to those who are accused of socio-economic offences of a gravenature and those accused of offences against women and children. The recommendation of the 154th Law Commission Report was supported and reiterated by the Law Commission in its 177th Report. Further, the Report of the Committee on the reform ofcriminal justice system, 2000 under the Chairmanship of Justice (Dr) Malimath stated that the experience of United States was an evidence of plea bargaining being a meansfor the disposal of accumulated cases and expediting the delivery of criminal justice.

5.2 PROCEDURE RELATED TO PLEA BARGAINING IN BRIEF

- As per **Section 265-A**, 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. The Central Government issued Notification No. SO 1042 (II) dated 11-7-2006 enumerating the offences affecting the socio-economic condition of the country.
- **Section 265-B** contemplates an application for plea bargaining to be filed by theaccused which shall contain a brief description of the case relating to which suchapplication is filed, including the offence to which the case relates and shall be accompanied by an affidavit sworn by the accused stating therein that he has voluntarily preferred, after understanding the nature and extent of the punishment provided under the law for the offence, the plea bargaining in his case and that he has not previously been convicted by a court in a case in whichhe had been charged with the same offence. The court will then issue notice to the public prosecutor concerned, investigating officer of the case, the victim of the case and the accused for the date fixed for the purpose. When the parties appear, the court shall examine the accused in Camera where the other parties inthe case shall not be present, to satisfy itself that the accused has filed the application voluntarily.
- **Section 265-C** prescribes the procedure to be followed by the court in working out a mutually satisfactory disposition. In a case instituted on a police report, the court shall issue notice to the public prosecutor concerned, investigating officerof the case, the victim of the case and the accused to participate in the meeting to work out a satisfactory disposition of the case. In a complaint case, the Courtshall issue notice to the accused and the victim of the case.
- **Section 265-D** deals with the preparation of the report by the court as to the arrival of a

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mutually satisfactory disposition or failure of the same. If in a meeting under section 265-C, a satisfactory disposition of the case has been worked out, the Court shall prepare a report of such disposition which shall be signed by the presiding officer of the Courts and all other persons who participated in the meeting. However, if no such disposition has been worked out, the Court shall record such observation and proceed further in accordance with the provisions of this Code from the stage the application under sub-section

(1) of section 265-B has been filed in such case.

- **Section 265-E** prescribes the procedure to be followed in disposing of the cases when a satisfactory disposition of the case is worked out. After completion of proceedings under S. 265 D, by preparing a report signed by the presiding officer of the Court and parties in the meeting, the Court has to hear the parties on the quantum of the punishment or accused entitlement of release on probation of good conduct or after admonition. Court can either release the accused on probation under the provisions of S. 360 of the Code or under the Probation of Offenders Act, 1958 or under any other legal provisions in force, or punish the accused, passing the sentence. While punishing the accused, the Court, at its discretion, can pass sentence of minimum punishment, if the law provides such minimum punishment for the offences committed by the accused or if such minimum punishment is not provided, can pass a sentence of one fourth of the punishment provided for such offence. Apart from this, in cases of release or punishment, if a report is prepared under S 265 D, report on mutually satisfactory disposition, contains provision of granting the compensation to the victim the Court also has to pass directions to pay such compensation to the victim.
- **Section 265-F** 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 forthe purposes of discharging its functions under Chapter XXI-A, shall have all thepowers vested in respect of bail, trial of offences and other matters relating to thedisposal of a case in such Court under the Criminal Procedure Code.
- **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

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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** 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 forthe purpose of the chapter.
- **Section 265-L** makes the chapter not applicable in case of any juvenile or childas defined in Section 2(k) of Juvenile Justice (Care and Protection of Children) Act, 2000.

5.3 FEATURES OF THE MODEL OF PLEA BARGAINING IN INDIA

The salient features of the Indian Model of Plea Bargaining are as follows:

❖ The initiative to move the legal machinery for negotiated pleas is to be taken by the accused person for only those offences for which the maximum punishment does not exceed seven years.

The application for plea bargaining is to be filed in the court in which such offence is pending for trial. This is where the Indian scheme differs from the American scheme where the application is made by the public prosecutor and the accused after negotiations between them are over.

❖ On receiving the application, the court has to examine the accused in camera, and if it is satisfied that the application has been filed by the accused voluntarily, the victim, the accused, the public prosecutor and 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 giving compensation to the victim and other expenses incurred during the case.

❖ The judge is not a silent spectator, but has a significant role to play in the process. The court is responsible for ensuring that the whole process is carried out with the full and voluntary consent of the accused. Where a satisfactory disposition of the case has been worked out, the court is bound to dispose of the case after awarding compensation to the victim as per the settlement arrived at, and after hearing the concerned parties on the issue

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of quantum of punishment. It then has to award the sentence, and this may range from one fourth to one-half of the prescribed punishment for that offence.

- The law also makes it mandatory to pronounce the judgment in open court. A clause has been added in favour of the accused stipulating that the statement or facts stated by an accused in an application for plea bargaining shall not be used for any other purpose.

- The judgment delivered by the Court in case of plea bargaining shall be final and no appeal shall lie in any court against the judgment.

- Section 265A declares that plea bargaining cannot be availed of in respect of those offences for which punishment is more than an imprisonment of seven years and/or where 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 below the age of fourteen years. The availability of the procedure is also restricted to first time offenders.

After perusal of the aforementioned sections pertaining to plea bargaining, the cautious approach of the statute has been exposed. A number of riders attached to the model of plea bargaining in India have made it exclusively available to the criminals committing the crime, punishable with imprisonment not exceeding seven years and provided that the accused should not be juvenile and the crime committed by him shouldn't be socio economic in nature. Though, proven effective concept in the west it has utterly failed to woo the Indian crowds that can be inferred from the reaction of judiciary discussed below.

6. JUDICIAL PRONOUNCEMENT ON PLEA BARGAINING

Even before the concept of plea bargaining came into picture, Supreme Court has shown its strong discontentment regarding it. Though the displeasure expressed bythe Supreme Court is not for the model existing today as it did not come into picture then.

Madanlal Ramchandra Daga vs. State of Maharashtra is a classic example of the conventional thinking of the court in which Justice M. Hidayatullah held that the case should be decided according to the guilt of the convicted.

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In ***Murlidhar Meghraj Loya vs. State of Maharashtra***, the accused were being tries forselling adulterated food under Prevention of food adulteration act, 1954. The Court gotan impression that the accused have pleaded guilty before the magistrate court in accordance with the informal tripartite agreement resembling the plea bargainingapplicable in United States. Justice Krishna Iyer expressed his anguish over the issue of agreement and simply reiterated that the Indian Criminal law does not include the scheme of plea bargaining. At the same time the learned judge expressed his positive view regarding plea bargaining and appealed that the concept needs consideration by the juristic fraternity.

The Apex Court in ***Kachhia Patel Shantilal Koderlal v. State of Gujarat and Anr*** tooka step ahead and declared the plea bargaining unconstitutional and would lead to widespread corruption. In Indian scenario the concept of plea bargaining is highly vulnerable to being abused as was held in ***Kasambhai v. State of Gujarat***.

In yet another case Supreme Court delivered a landmark judgement related to plea bargaining where it opined that plea bargaining violates article 21 of the constitution

The view of Supreme Court in ***State of Uttar Pradesh vs. Chandrika*** is the culminationof the stance court was having in the former case. The Supreme Court set aside the orderof the High court allowing plea bargain and reminded of the fact then that the concept does not exist in the Indian criminal law arena.

The aforementioned cases present a picture of way before the plea bargaining came intopicture. With the emergence of plea bargaining in the Indian legal arena, the concept met with mixed opinions from the judiciary, as can be deduced from few cases discussed below.

While commenting on the concept of plea bargaining, the Gujarat High Court observedin the ***State of Gujarat v. Natwar Harchanji Thakor***, that the very object of the law isto provide easy, cheap and expeditious justice by resolution of disputes, including the trial of criminal cases and considering the present realistic profile of the pendency anddelay in the administration of law and justice, fundamental reforms are inevitable. There should not be anything static. It can thus be said that it is really a measure of redressal and it shall add a new dimension in the realm of judicial reforms.

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In ***Pardeep Gupta v. State***, Honourable Judge observed that "The trial court's rejectionof the plea bargain shows that the learned trial court had not bothered to look into the provisions of chapter XXI A of Code of Criminal Procedure meant for the purpose of plea bargaining and rejected the application on the ground that since the applicant is involved in an offence under section 120-B Indian Penal Code and the role of applicantwas not lesser than the other co-accused. But none of the offences in which the petitioner has been booked attracted more than seven years punishment. The request ofplea bargaining is ought to be considered taking into account the role of the accused, and the nature of the offence, etc. The High Court directed the trial court to reconsider the application of plea bargaining made by the accused in the light of provisions madein the Code of Criminal Procedure and not in a casual manner.

It is clear from the review of pre as well as post amendment judgments that plea bargaining is in a poor state in Indian criminal justice system as the number of cases reported under plea bargaining are very few.

It is interesting to see that before the Criminal Law Amendment Act 2005, all plea bargain cases were rejected by courts. The situation has changed in post 2005 period tosome extent but still the judiciary tends to have a mixed approach towards this valuableaddition to the Criminal Law Justice System and by any standard it is grossly underutilized in spite of its very restricted scope of applicability.

7. COMPARISON OF THE INDIAN MODEL OF PLEA BARGAININGWITH AMERICAN MODEL

As can be deduced from the above cases the model of plea bargaining introduced in theIndian realm is just not enough to address the problem of pending cases. The Indian judiciary is yet to accept the plea bargaining as a conventional form to dispense justice.The problem with the Indian model is that the provisions seem to be introductory in nature as if the legislature thought of testing it first before bringing the exhaustive form.A number of riders have been attached to the Indian model which reflects the cautious approach of the legislature and which have rendered plea bargaining an utterly failed concept in Indian legal arena. An attempt has been made to compare the Indian model with that of the American model of Plea bargaining to identify as to where in the Indianmodel problem lies which has rendered it ineffective in achieving the goals for which itwas discovered.

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Conceptually, the Indian model is very different from that of USA. Application of the concept of Plea Bargaining is India is very restricted and it is yet to be accepted in the general masses as an integral part of the Indian Judicial System. Basic comparison between the two models is enumerated below:

- In India plea is available for the offences with provision of up to 7 years imprisonment. American model does not restrict the plea to specific offences butis available to any crime even to homicide.
- The plea in India is not available where victim is a women or child below the age of 14 years. The American model does not put such riders in the way of pleabargaining.
- The other riders put in the Indian model are that the plea is not available to juvenile, habitual offenders and the offenders of socio economic offences. The American model entertains all the cases without putting any such riders presentin the Indian model.
- In the procedural comparison between the two models the Indian model directsthe accused to apply for the plea unlike in the American model where the prosecutor and the accused make the application after the negotiations between them are over.
- In Indian model of plea bargaining it is implicit from the provisions that the victim has a power to veto the bargain reached unlike the American model wherethe victims have the limited ability to influence the terms of the plea bargains.

The comparison between the two models have revealed the exhaustive nature of the American model of the plea bargaining. The Indian model though is inclusive in natureand only specific cases can opt for it. The plea bargaining in India was introduced primarily to address the problem of pendency of cases but throughout the journey of around ten years it has neither sufficiently nor efficiently addressed the problem for which it was introduced. The reason for such could be hidden in the above comparison with the American model. The fewer cases available on plea bargaining in a country where three crores cases only are pending reflect the inefficiency of the phenomenon. The American model of plea bargain is also not free from shortcomings but it is a practical concept which can be seen that around 90% of the cases in America are disposed of through plea bargaining. In using plea bargaining from shedding the load off the shoulders of judiciary the American model has proved to be far more successfulone than the Indian model. India is new in the arena of plea bargaining and needs a lot of overhauling to become successful in bringing down the pendency of the cases.

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8. ARGUMENTS AGAINST PLEA BARGAINING IN INDIA

VOLUNTARILY ADOPTED MECHANISM

As per the legal provision dealing with Plea bargaining, it is a voluntary mechanism which is only entertained when accused opts it willingly. But the law is silent on the point that in case, the settlement reached is contrary to the purpose of the legal system.

Involvement of Police

The Involvement of the police in plea bargaining also attracts criticism. As India is infamous for the custodial torture by police. In such scenario, the concept of Plea Bargaining is more likely to aggravate the situation.

Corruption

The role of victims in plea bargaining process is also not appreciated. The role of victimin this process would attract corruption which is ultimately defeating the purpose whichis sought to be achieved by such action.

Independent Judicial Authority

The provisions of Plea Bargaining do not provide for an independent judicial authorityto evaluate plea-bargaining applications. This is one of the glaring reasons for its criticism.

The in camera examination of the accused by the court attract may lead to public cynicism and distrust for the plea-bargaining system. The failure to make confidential any order passed by the court rejecting an application could also create biases towards the accused.

Not the Final Solution

The reasons given for the introduction of plea-bargaining are the tremendous overcrowding of jails, high rates of acquittal, torture undergone by under trial prisonersetc. But the main factor behind all these reasons is a delay in the trial process. In India,the reason behind the delay in trials is many e.g. the operation of the investigative agencies as well as the judiciary, personal interest of lawyers etc. Therefore, the need of the hour is not a substitute for trial but an overhaul of the system which can be in terms of structure, composition and its work culture. All these measures would ensure reasonably fast trials.

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9. ARGUMENTS FOR PLEA BARGAINING IN INDIA FAST DISPOSAL OF CASES

The plea bargaining is beneficial for both the prosecution and the defense because thereis no risk of complete loss at trial. It helps the attorneys to defend their clients in an easyway because both the parties possess bargaining power. This is how the long-standing disputes can be resolved and the court would also not need to face encumbrance of casefiles. Moreover, Plea bargaining helps the courts in preserving scarce resources for thecases that need them most.

Less serious offenses on one's record

In a country like India, society plays a vital role. Once a person is stigmatized by societyit becomes very difficult for that person to survive. Many a time stigmatization leads toostracization. In such scenario, Plea Bargaining allows a person to plead guilty or no contest in exchange for a reduction in the number of charges or the seriousness of the offenses. This results in recording less serious offenses on the official court records of an accused. This can be good for the accused when he is convicted in the future.

A hassle-free approach

Indian is known for its long-standing case. Many cases proceedings go for 8-10 year thereby both the parties suffer. There have been instances where accused spent more time in jail than the maximum punishment for which he was accused. Such instances show a grave infringement of their human rights. Plea bargaining allows a person to plead guilty without hiring a lawyer. But If they waited to go to trial, they would have to find and hire a lawyer, and in that process, they have to spend at least some time working with the lawyer to prepare for trial and pay the lawyer. The concept of plea bargaining safeguards the interest of such persons by avoiding the hassles that they facewhen the case remains pending.

It avoids publicity

Moreover, Plea Bargaining is also a good mechanism to avoid publicity because the longer the case goes the more publicity the accuses gets. Therefore plea bargaining avoids such publicity by a fast settlement of the case. Famous and ordinary People whodepend on their reputation in the community for their living, and those people who wantto escape any unnecessary stigmatization. Although the news of the plea itself may be public yet it stays only for a short time when compared

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to news of a trial.

10. CONCLUSION

A close analysis of the plea bargaining in India exposes the pros and cons of the modelapplicable here. The advantages of the Indian model are that the role of judiciary is an active one unlike in United States where the role of judiciary is mere passive. Indian model of plea bargaining provides the victim the power to veto the bargain whereas in United States the victim has limited ability to influence the terms of the bargain. Thoughhaving few advantages over the American model of plea bargaining which is consideredpioneer and the most successful in the world, there are a plethora of shortcomings in theIndian model. The shortcomings in the Indian model have been the stumbling block forit to achieve the desired result. The article aims to become a food for thought for the juristic class so that the plea bargain in India could improve and bring down the monstrous level of pendency of cases.

It is not argued that the American model should be taken in Toto but necessary additions should be made to the Indian model to render it effective enough to address the present statistics of pendency in Courts. It has been ten long years since the conceptemerged in India, till now nothing staggering has been achieved by it which it ought toachieve. The dismal position of the plea bargaining can be assessed by the fewer numberof cases on the subject and the opinion of the judges on the same. A two fold change should be brought to make plea bargaining as successful as in west. Primarily, the law needs suitable amendments to suit the Indian needs but on the scale of the countries which have successful in this arena.

Secondly, the law relating to the plea bargaining should be encouraged by the judiciaryand the juristic class without which a particular law cannot become a common remedy.The law relating to plea bargaining should be given importance and should be practicedregularly. To address the awful state of the courts regarding pendency of cases, plea bargain only seems to be a near solution which can address the problem successfully provided it should be given a serious thought.