

Concept Of Plea Bargaining In India

Neeraj* & Bhawna**

Assistant Professor, Geeta Institute of Law, Panipat, Haryana (India)
Email: *advocateneerajjain@gmail.com, **bhawnabhardwaj1321@gmail.com

Abstract: Crimes like Causing death by rash or negligent act; rash driving; Defamation; Destruction of evidence; Giving False Evidence; Misappropriation; Criminal Intimidation; Assault; Causing Hurt; Criminal Trespass; Personation; Cheating etc can be under the purview of the plea Bargaining. Introduction of plea bargaining in India Judicial system has been criticized by a group of society with an argument that it will demoralized the Public confidence in criminal justice system whereas other group of society welcomed this concept as a revolutionary judicial reform in India with a hope that the over burdened criminal courts of India will get a relief and the criminal judicial system will also speedup its disposal of pending cases.

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Introduction:

"In many cases, plea bargaining serves as a convenience of the judge and the lawyers, not the ends of justice, because the court simply lacks time to give everyone a fair trial. Hon'ble CJI J. Ranjan Gogoi said recently at a public function that over 1,000 cases are pending in courts across the country for 50 years, while a whopping two lakhs plus cases are pending for 25 years.

He also said that out of about 90 lakhs pending civil cases, more than 20 lakhs are at a stage where summons have not been served yet.

A plea bargaining is an agreement between the defence and prosecutor in which a defendant pleads guilty or no contest to criminal charges. In exchange, the certain charges are dropped or reduced by the prosecutor and recommendation is made to the judge for passing a specific sentence which is acceptable the defence.¹ The pendency of cases is a great lacuna in the Indian judicial system. As observed by CJI Ranjan Gogoi one of the effects of pendency of cases is that it brings a lot of disrepute to the judicial system. The problem has the potential of making the system itself irrelevant.

Therefore, there is an increased pressure on the prosecutors and judges to move the cases quickly through the system. Trials can take days, weeks or sometimes months while quality pleas can often be arranged in minutes. In a criminal trial, the outcome is usually unpredictable but a plea bargain provides both

prosecution and defence with some control over the result.

The criminal justice system which is being practiced today isn't an outcome of a day or month. It has undergone through various stages. The earliest stage was when eye for an eye and tooth for a tooth was the rule but gradually it was realized that it doesn't serve the purpose. Then came the concept of blood money that is if any wrong was committed then the accused used to pay money to the victim and the matter ends then and there only.

With the concept of welfare state, it was realized that the purpose of punishment should be deterrent and not merely compensatory.

Plea bargaining is basically meant to reduce the time frame of a criminal Trial and is used by various countries as a tool for the settlement of cases.

This has been also introduced in Indian judicial system by criminal law (Amendment) Bill, 2003 under which a new chapter XXI-A named Plea Bargaining has been added to the Code of Criminal Procedure, 1973.

This was actually recommended by the 154th report of the Law Commission of India as an alternative for dealing with huge arrears of the Criminal cases. Further, this recommendation if law commission was also welcomed with open hands by Justice Malimath Committee on Criminal Justice Reforms.

It favoured concessional treatment of offenders who, on their own volition, plead guilty. The said amendment in Code of Criminal Procedure was made after this recommendation only.

Types Of Plea Bargaining:

Plea Bargaining can be broadly classified into two categories:

1. Charge Bargain

* Neeraj, Advocate, High Court For Punjab And Haryana.

** Bhawna, Assistant Professor, Geeta Institute Of Law, Panipat.

¹ Code Of Criminal Procedure, 1973.

2. Sentence Bargain

In a charge bargain, the accused is allowed to plead guilty to a lesser charge or to only some of the charges against him. The prosecution has a large discretion in charges and they can charge the defendant with the highest charge that is applicable. Charge Bargain gives the accused an opportunity to negotiate over the charges and reduce them to lesser or no charge.

In sentence bargain, however the accused can bargain for a lesser sentence for a stated charge rather than a reduced charge. Both Charge bargain as well as the sentence bargain is subject to the approval of the court.

For example. In return for dismissing charges for first degree murder, a prosecution may accept a guilty plea for manslaughter subject to the approval of the court.

Who Can File Application For Plea Bargaining:

The concept of plea bargaining is applicable to an accused against whom:

- Police report has been forwarded by the officer in charge of the police station alleging commission of offence by the accused;
- A Magistrate has taken cognizance of an offence on complaint.

The provisions of the chapter are not applicable to:

- Any Juvenile or
- Child

Plea Bargaining is not available to an accused:

- If he has been charged with offences punishable with death, life imprisonment, or a term exceeding seven years.
- The offence with which the accused had been charged affects the social-economic condition of the country, or
- Offence has been committed against a woman, or a child below the age of fourteen years.

Procedure For Plea Bargaining Under Code Of Criminal Procedure:

• A person accused of an offence may file an application for plea bargaining in the Court in whom such offence is pending for trial.

• The application shall contain a brief description of the case and shall be accompanied by an affidavit of accused stating that he has voluntarily preferred the application and has not previously been convicted by a Court with the same offence.

• If the Court finds that the application was made involuntarily by the accused or he has been previously convicted by a Court, it shall proceed with the trial of the case.

• After receiving the application, the Court shall issue notice to the Public Prosecutor or the

complainant and to the accused to appear on the date fixed for the case.

• The Court shall examine the accused in camera, where the other party in the case shall not be present, to satisfy itself that the accused has filed the application voluntarily.

• Where the Court is satisfied that the application has been filed by the accused voluntarily, it shall provide time to the Public Prosecutor or the complainant and the accused to work out a mutually satisfactory disposition of the case which may include compensation and other expenses to be given to the victim.

• Throughout the process of working out a satisfactory disposition of the case, it shall be the duty of the Court to ensure that it is completed voluntarily by the parties participating in the meeting.

• The Court shall prepare a report of the satisfactory disposition worked out by the parties and shall dispose of the case by awarding the compensation and hear parties on quantum of punishment and releasing accused on probation of good conduct or after admonition under section 360 or for dealing with the accused under the provisions of the Probation of Offenders Act, 1958 (20 of 1958) or any other law for the time being in force.

• If the Court finds that minimum punishment has been provided under the law for the offence committed by the accused, it may sentence the accused to half of such minimum punishment; or it may sentence the accused to one-fourth of the punishment provided or extend able, as the case may be, for such offence.

• The judgment shall be pronounced in open Court.

• Period of detention undergone by the accused has to be set off against the sentence of imprisonment.

• The statements or facts stated by an accused in an application for plea bargaining shall not be used for any other purpose except for the purpose of plea bargaining application.

Finality Of Judgment:

The judgment delivered by the Court under section 265G shall be final and no appeal shall lie against it except the special leave petition under Article 136 and writ petition under Articles 226 and 227 of the Constitution.

How Plea Bargaining Serves The Purpose:

Implementation of plea bargaining is expected to benefit the huge number of under trials languishing in jails as well as cut down on the backlog of the cases which has reached unmanageable proportions. The plea bargain is not applicable to cases where punishment exceeds seven years therefore; serious

offences are outside the purview of the plea bargain system. Also, crimes against women and children and against SCs and STs are outside the purview of the plea bargain.

Crimes like Causing death by rash or negligent act; rash driving; Defamation; Destruction of evidence; Giving False Evidence; Misappropriation; Criminal Intimidation; Assault; Causing Hurt; Criminal Trespass; Personation; Cheating etc can be under the purview of the plea Bargaining.

It also helps the accused who have to remain as under-trial prisoner awaiting the trial by obtaining a speedy trial with benefits such as

- a) End of uncertainty
- b) Saving in the cost of litigation

c) Being able to know his fate and to start off fresh life without fear of having to undergo a possible prison sentence at a future date disrupting his life or career.

As said by constitutional expert Subhash Kashyap "it is a win-win situation. The accused gets the waived term if he confesses the crime while speedy disposal and decreasing backlog reduces the pressure on the prosecution and the judge."

He also said that a large number of lawyers would be against this concept as it may affect their business.

Advantages And Disadvantages Of Plea Bargaining:

Just as a coin has two sides similarly the concept of plea Bargaining has also various Advantages and Disadvantages. Let's discuss them briefly.

Advantages Of Plea Bargaining Vis A Vis Defendant:

- It provides relief to thousands of under-trials who are languishing in jails waiting for their trial across the country. As held by the Hon'ble Supreme Court in Hussainara Khatoon's case the right to speedy trial is a fundamental right within the meaning of Article 21 of the Indian constitution which guarantees Right to Life.

- He has to serve lesser term in jail.

- It ensures speedy and less expensive justice which resolves matter quickly as against an ordinary trial which is time consuming and there is lot more stress.

- Pleading guilty or no contest in exchange for a reduction in number of charges or the seriousness of offences looks a lot better on defendant's record than the convictions that might result following trials. This becomes important when the defendant is ever convicted in future.

- Getting convicted for an offence is not only a stigma on the life of the accused but also on the lives of all who are connected with him like his family and friends. Charges can be reduced by the prosecutor that are perceived as socially less offensive to less

offensive charges in exchange for a guilty plea. A defendant convicted of critical charges or stigmatizing offences are at a greater risk of being harmed or killed in prison than if they are convicted of an offence that doesn't carry the same stigma.

Advantages Of Plea Bargaining Vis A Vis Prosecutor And Judges:

An offence is considered to be a wrong not only against an individual but also against the whole society. Plea Bargaining is a radical concept that provides a win-win situation for both the prosecutor as well as the accused.

- It helps to reduce the burden on the Indian Judicial System by reducing the backlog of the cases that are pending before various courts in the country.

- Another benefit of plea bargaining is that there is an assurance of conviction which is quite important for the prosecution even if it is for a lesser crime or charge.

- Also, as the outcome of a trial is quite unpredictable, the concept of plea bargain helps both the prosecution and accused some control over the results.

- Speedy trial is as much important to the victim as it is to the accused. Plea Bargaining ensures expeditious relief as well compensation to the victims.

Disadvantages Of Plea Bargaining:

- Firstly, plea Bargaining operates as a set back to the deterrent effect of law.

- This is an unconstitutional short cut and amounts to infringement of the right to fair trial of the accused.

- Arrangement under the Plea Bargaining can be misused by an accused to get reduced regime in connivance with the prosecutor and investigating agency.

- Victim can be bribed to agree to settle for a lesser charge.

- Plea Bargaining encourages crime condonation on payment of fine or compensation or both. It would encourage criminals, increase crimes and breed corruption.

- Court could turn into auction house. Therefore care must be taken that it is conducted before an independent committee set up in all courts.

- Last but not the least there is a possibility of an innocent defendant pleading guilty and get convicted.

Conclusion:

Introduction of plea bargaining in India Judicial system has been criticized by a group of society with an argument that it will demoralized the Public confidence in criminal justice system whereas other group of society welcomed this concept as a

revolutionary judicial reform in India with a hope that the over burdened criminal courts of India will get a relief and the criminal judicial system will also speedup its disposal of pending cases. An examination of various factors hauling a bearing on the scheme of plea bargaining indicates that if applied carefully may secure our criminal justice system in a batter way and can serve it from collapse apart from instilling a new hope in the society about efficacy of the system. Hence implementation of the scheme with an open mind and full fairness is the need of the hours.

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