LAW AND SOCIAL CHANGE

TOPIC:

Plea Bargaining

it's relevance in India

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Introduction

India is in the news for many different reasons; one of them being criminal investigation, prosecution, and trial. Its legal efficiency is always in doubt and shadow. The statistics relating to crimes in 2011 released by National Crime Record Bureau reflect the inefficient functioning of the system[1].

Over the years taking advantage of several lacunae in the adversarial system large number of criminals are escaping convictions. This has seriously eroded the confidence of the people in the efficacy of the system.[2]

With the advent of plea bargaining in India, dynamism has been infused into the criminal justice system which has been consistently dubbed archaic. Thus it is hoped that plea bargaining would find a solution to overcrowded criminal courts, increasing under trials languishing in jails and combat the increased pressure on judiciary which is reeling under a severe backlog of cases to move cases quickly through the overburdened system.

The Law Commission of India advocated the introduction of Plea Bargaining in the 142nd, 154th and 177th reports. The 142nd Report points out the successful functioning of Plea Bargaining in USA. The Report of the Committee on the reform of criminal 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 means for the disposal of accumulated cases and expediting the delivery of criminal justice[3]. In its report, the Malimath

[1] Nani A Palkhivala, ―We the nation…lost decade (1994) UBS Publications, p 215
[2] Dr. Suman Rai, "Law relating to Plea Bargaining" 2nd edition, Orient Publishing Company, p.192
[3] http://www.hrdc.net/sahrdc/hrfeatures/HRF88.htm

Committee recommended that a system of plea-bargaining be introduced into the criminal justice system of India to facilitate the earlier resolution of criminal cases and reduce the burden on the courts.[4]

Plea Bargaining is essentially derived from the principle of 'Nolo Contendere' which literally means 'I do not wish to contend'. The apex court has interpreted this doctrine as an 'implied confession, a quasi-confession of guilt, a formal declaration that the accused will not contend, a query directed to the Court to decide on plea-guilt.

In it's most traditional and general sense, "plea- bargaining" entails pre trial negotiation between the defendant and the prosecution, during which the defendant agrees to plead guilty in exchange of certain concessions by the prosecution, Like exchange for the reduction in sentence (sentence bargaining)or for dropping of charges(in case of multiple charges), or settling for less grave charge (Charge Bargaining), the accused also has an option of settling for less incriminating presentation of facts (fact bargaining).[5]

Origin of the Concept

The roots of plea bargaining may be seen long back in United State of America. It goes back a century or more[6]. It was a prosecutorial tool used only episodically before the 19th century. In America, Fisher says, "it can be traced almost to the very emergence of public prosecution although not exclusive to the U.S., developed earlier and more broadly here than most places.'' But because judges, not prosecutors, controlled most sentencing, plea bargaining was limited to those rare cases in which prosecutors could unilaterally dictate a

[4] Recommendation 106 Malimath Commission Report, http://www.hrdc.net/sahrdc/hrfeatures/HRF88.htm
[5] http://www.lawyersclubindia.com/articles/print_this_page.asp?article_id=1488
[6] Dr. Suman Rai, "Law relating to Plea Bargaining" 2nd edition, Orient Publishing Company, p.195

defendant's sentence. Not until the crush of civil litigation brought on by the explosion of personal-injury cases in the industrial era did judges begin to appreciate the workload relief plea bargaining promised. In other words, plea bargaining is arguably another outgrowth of late-19th-century industrialization[7]. Plea Bargaining is today a very common practice in so many developed countries especially in the United State of America. Most of the criminal cases in America are settled through plea bargaining. The Federal Rules of Criminal Procedure recognize and codify the concept of plea bargaining or plea agreements[8]. The Supreme Court of United State has also approved this practice. During 19th Century even in America this was not so popular and practiced in the rarest cases. But with the rapid growth in the population as well as increase in the court trials the courts became overcrowded and by the end of twentieth century's it became almost impossible for the trial in every criminal case. This made vast majority of criminal cases resolved with guilty pleas. Presently, since plea bargaining is expressly authorized in statutes and approved by the courts in America, it is conducted in almost every criminal case and roughly ninety percent of the cases are converted into plea agreements, except in the Federal offences providing mandatory sentences and subject to United State Sentencing Guide Lines (USSG). According to Justice M.Y. Eqbal, in fact Plea Bargaining has over the years emerged as a prominent system of American Criminal Justice System. It has been immensely successful in USA and with the passage of time plea bargaining has become the norm rather than exception[9]. Non acceptance of this concept and even ban on the

[7] Dirk Olin, 'Plea Bargain' The New York Times Magazine, September 29, 2002.
[8] Rule 11(e) of the Federal Rules of Criminal Procedure (U.S.A.)- Under this rule, a prosecutor and defendant may enter into an agreement whereby the defendant pleads guilty and the prosecutor offer either to move for dismissal of charge or charges. Recommends to the court a particular sentence or agree not to oppose the defendant's request for a particular sentence, or agree that a specific sentence is the appropriate disposition of the case.
[9] Justice M.Y. Eqbal, 'Concept of Plea Bargaining' Nyaya Deep, Volume IX Issue 1 .January, (2008).

application of plea agreements may also be witness in so many countries of the world. According to Justice A.K. Sikri, "statutes codifying many federal Offences expressly prohibit the application of plea agreements"[10]. Plea bargaining was introduced in Pakistan in 1999. Under this, the accused accepts his guilt and offer to return the proceeds of corruption as determined by the investigators. If the plea is accepted by the court, the accused stands convicted, but will not be sentenced. However, the accused will be disqualified from taking part in election, holding public office, obtaining any bank loan and is dismissed from service if he is a government official. It is also used in England, Wales and Australia but to the limited extent of allowing the accused to plead guilty to some charges in return, for which the prosecutor will drop the remaining charges. But there is no bargaining over penalty and penalty is to be decided by the court. Irrespective of the facts that plea bargain has been criticized by the jurists as violation of fundamental rights such as right to trial, self- incrimination, double jeopardy and so on; gradually and slowly it is being adopted by the legislatures of series of countries including India[11].

[10] Justice A.K. Sikri 'Plea Bargaining' Nyaya Deep, Volume VII Issue 3 .July, (2006). –Federal Criminal Practice is governed by title 18 of the U.S. CODE, Part II (Criminal Procedure). Chapter 221of part II addresses arraignments, pleas, and trial. The U.S. Attorney's Manual (USAM) contains several provisions addressing plea agreements. For example, Chapter 9-16-300 (Plea Agreements) states that plea agreements should "honestly reflect the totality and seriousness of the defendant's conduct," and any departure must be consistent with sentencing guideline provisions. The Justice Department's official policy is to stipulate only to those facts that accurately represent the defendant's conduct. Plea agreements require the approval of the assistant attorney general if counts are being dismissed, if defendant companies are being promised no further prosecution, or if particular sentences are being recommended."

[11] Criminal Law (Amendment) Act, 2005.

Plea Bargaining – The Concept

The oxford dictionary quotes plea bargaining as "an arrangement between prosecutor and defendant whereby the defendant pleads guilty to a lesser charge in exchange for a more lenient sentence or an agreement to drop other charges"[12].

The amendment quotes 'Plea Bargaining' as pre-trial negotiations between the accused and the prosecution during which the accused agrees to plead guilty in exchange for certain concessions by the prosecution. The objective of 'Plea Bargaining' is believed to reduce the risk of undesirable orders for the either side. Another reason for introducing the concept of 'Plea Bargaining' is the fact that most of the criminal courts are over burdened. It can also mean, a 'Plea Bargaining' is a way offered by the prosecutor to induce the defendant to plead guilty.

Plea Bargaining can be of two types. Charge bargaining and sentence bargain.

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 his guilt 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. It gives the accused an opportunity to negotiate with the prosecution and reduce the number of charges that may have been framed against him.

[12]Definition of plea bargaining, retrieved from http://www.oxforddictionaries.com/definition/english/plea-bargaining

Sentence Bargaining: it is a promise by the prosecutor, after acceptance of being 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 courts time.

The Initial Reasons for the Introduction of the Concept of Plea bargaining:

The initial reasons seen for introduction of this concept in India were:

- Speedy disposal of pending criminal cases
- Less time consumption for new cases
- Ending uncertain cases by giving a chance to accused to plead guilty
- There will be more sentences then acquittals
- The justification for introducing plea bargaining cannot be expressed any better than what the 12 Law Commission in its 142nd Report had already done as below:-

  (1) It is not just and fair that an accused who feels contrite and wants to make amends or an accused who is honest and candid enough to plead guilty in the hope that the community will enable him to pay the penalty for the crime with a degree of compassion and consideration should be treated on power with an accused who claims to be tried at considerable time cost and money cost to the community.

(2) It is desirable to infuse life in the reformative provisions embodied in Section 360 of Cr. P. C. and the Probations of Offenders Act which remain practically unutilized as of now.

(3) It will help the accused who have to remain as under trial prisoners awaiting the trial as also other accused on whom the of Domocles of an impending trial remains hanging for years to obtain speedy trial with attendant benefit such as …..

(a) End of uncertainty

(b) Saving in litigation cost

(c) Saving in anxiety cost

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

(e) Saving avoidable visits to lawyer's office and to Court on every date or adjournment.

(4) It will, without detriment to public interest, reduce the backbreaking burden of the Court cases which have already assumed menacing proportions

(5) It will reduce congestion in jails.

(6) In the U. S. A. nearly 75% of the total convictions are secured as a result of plea bargaining.

(7) Under the present system 75% to 90% of the criminal cases if not more, result in acquittals[13].

[13] Dr. Suman Rai, "Law relating to Plea Bargaining" 2nd edition, Orient Publishing Company, p.221

The Procedure

Plea bargaining was introduced in India 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 Cr.P.C. Chapter XXI A, allows plea bargaining to be used in criminal cases.[14]

The following are the provisions from the Criminal Procedure Code which run as under:

CHAPTER XXI-A

265A. (1) Application of the chapter- This Chapter shall apply in respect of an accused against whom –

(a) the report has been forwarded by the officer in charge of the police station under section 173 alleging that an offence appears to have been committed by him other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force; or

(b) a Magistrate has taken cognizance of an offence on complaint other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years, has been provided under the law for the time being in force, and after has been provided and witnesses under section 200, issued the process under section 204,

but does not apply where such offence affects the socio-economic condition of the country or has been committed against a woman m or a child below the age of fourteen years.

[14] The Criminal Law (Amendment) Act, 2005.

(2) For the purpose of sub section (1), the Central Government shall, by notification, determine the offences under the law for the time being in force which shall be the offences affecting the socio-economic conditions of the country.

265B. Application for plea-bargaining-

(1) A person accused of an offence may file application for plea bargaining in the Court in which such offence is pending for trial.

(2) The application under sub-section (1) shall contain a brief description of the case relating to which the application 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 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 which he had been charged with the same offence.

(3) After receiving the application under sub-section (1), the court shall issue notice to the Public Prosecutor or the complaint of the case, as the case may be, and to the accused to appear on the date fixed for the case.

(4) When the Public Prosecutor or the complainant of the case, as the case may be, and the accused appear on the date fixed under sub-section (3), the court shall examine the accused in camera, where the other party in the case shall not be present, to satisfy that the accused has filed the application voluntarily and where -

(a) 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 of the case, as the case may be, and the accused to work out a mutually satisfactory disposition of the case which may include giving to the victim by the accused the compensation and other expenses during the case and thereafter fix the date for further hearing of the case.

(b) the Court finds that the application has been filed involuntarily by the accused or he has previously been convicted by a Court in a case in which he had been charged with the same offence, it shall proceed further in accordance with the provisions of this Code from the stage such application has been filed under Sub-section (1).

265C. Guidelines for mutually satisfactory disposition-In working out a mutually satisfactory disposition under clause (a) of Sub Section (4) of section 265B, the court shall follow the following procedure, namely:-

(a) in a case instituted on a 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 participate in the meeting to work out a satisfactory disposition of the case:

Provided that throughout such process of working out a satisfactory disposition of the case, it shall, be the duty of the Court to ensure that the entire process is completed voluntarily by the parties participating in the meeting:

Provided further that the accused may, if he so desires, participate on such meeting with his pleader, if any, engaged in the case:

(b) in a case instituted otherwise than on police report, the Court shall issue notice to the accused and the victim to participate in a meeting to work out a satisfactory disposition if the case:

Provided that it shall be the duty of the Court to ensure, throughout such process of working out a satisfactory disposition if the case, that it is completed voluntarily by the parties participating in the meeting:

Provided further that if the victim of the case or the accused, as the case may be, so desires, he may participate such meeting with his pleader engaged in the case[15].

265D. Report of the mutually satisfactory disposition to be submitted before the Court-Where in a meeting under section 265C, a satisfactory disposition of the case has been worked out, the Court shall prepare a report to such disposition which shall be signed by the presiding officer of the Court and all other persons who participated in the meeting and 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 265B has been filed in such case.

[15] Ratanlal & Dhirajlal, *"The Code of Criminal Procedure"*17th Edition, 2010, LexisNexis Butterworths Wadhwa Nagpur, p 537 B

265E. Disposal of the case- Where a satisfactory disposition of the case has been worked out under section 265D, the Court shall dispose of the case in the following manner, namely:-

(a) the Court shall award the compensation to the victim in accordance with the disposition under section 265D and hear the parties on the quantum of the punishment, releasing of the 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 other law for the time being in force and follow the procedure specified in the succeeding clauses for imposing the punishment on the accused:

(b) after hearing the parties under clause (a), if the Court is of the view that section 360 or the provisions of the Probation of Offenders Act, 1958 (20 of 1958) or any other law for the time being in force are attracted in the case of the accused, it may release the accused on probation or provide the benefit of any such law, as the case may be:

(c) after hearing the parties under clause (b) , 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;

(d) in case after hearing the parties under clause (b), the Court finds that the offence, committed by the accused is not covered under clause (b) or clause (c), then at may

sentenced the accused to one-fourth of the punishment provided or extendable, as the case may be, for such offence.

265F. Judgment of the Court- The Court shall deliver its judgment in terms of section 265E in the open Court and the same shall be signed by the presiding officer of the Court.

265G. Finality of the Judgment- The judgment delivered by the Court under section 265G shall be final and no appeal (except the special leave petition under article 136 and writ petition under article 226 and 227 of the Constitution) shall lie in any Court against such judgment.

265H. Power of the Court in plea-bargaining- A Court shall have, for the purposes of discharging its functions under this Chapter, all the powers vested in respect of bail, trial of offences and other matters relating to the disposal of a case in such Court under this Code.[16]

265I. Period of detention undergone by the accused to be set off against the sentence of imprisonment- The provisions of section 428 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 Code.

[16] Ratanlal & Dhirajlal, *"The Code of Criminal Procedure"* 17th Edition, 2010, LexisNexis Butterworths Wadhwa Nagpur, p 537C

265J. Savings- The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of this Code and nothing in such other provisions shall be construed to constrain the meaning of any provision of this Chapter.

***Explanation*. -** For the purposes of this Chapter, the expression "Public Prosecutor" has the meaning assigned to it under clause (u) of section 2 and includes an assistant Public Prosecutor appointed under Section 25.

265K. Statement of accused not to be used- Notwithstanding anything contained in any law for the time being in force, the statements or facts stated by an accused in an application for plea bargaining filed under section 265B shall not be used for any other purpose except for the purpose of this Chapter.

265L. Non-application of the Chapter- Nothing in this Chapter shall apply to any Juvenile or Child as defined in sub-clause (k) of section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000)[17]

Salient Features:

1. Plea-bargaining can be claimed only for 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

[17] Ratanlal & Dhirajlal, *"The Code of Criminal Procedure"* 17th Edition, 2010, LexisNexis Butterworths Wadhwa Nagpur p. 537D

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.
4. Also, plea-bargaining is not available for an offence committed against a woman or a child below fourteen years of age.
5. The opportunity of plea bargaining is not acceptable for accused in serious crimes such as murder, rape etc. It does not apply to serious cases wherein the punishment is death or life imprisonment or a term exceeding seven years or offences committed against a woman or a child below the age of 14 years[18].

For a valid disposal on plea bargaining it is important to follow the aforesaid procedure contemplated in Chapter XXI-A.[19]

As per S. 265 B, the process of plea bargaining starts with an application from an accused before the trial court giving a brief description of the case with an affidavit sworn by the accused affirming the genuineness of application as voluntarily submitted. Upon receipt of application, the trial court has to issue notice to prosecution, either to public prosecutor or to complainant in S. 190 (a) cases and also to the accused intimating the date of hearing of application. The examination of the accused shall be done in-camera, avoiding the presence of other parties. If the Court feels, after examination of the accused, the application is involuntarily submitted or the accused is not eligible for plea bargaining, the Court has to drop the proceeding but, if the Court is satisfied with the application filed it will ask the

[18] Section 265 L of CrPC, 1973
[19] http://www.mondaq.com/india/x/273094/trials+appeals+compensation/Plea+Bargaining+An+Overview

Public Prosecutor and the accused to work out mutually satisfactory disposition of the case. After hearing the parties the Court shall pronounce the award, which may include:

a. Compensation to the victim by the accused including the expenses incurred during the pendency of the case and releases the accused on probation of good conduct.

b. May sentence the accused to half of such minimum punishment as provided for the offence.

Judgement given by the Court shall be final and no appeal shall lie in any Court against such judgement except by the special leave petition under Art 136 for writ petition under Articles 226 and 227 of the Constitution to the High Court.

The Immoral Compromise

In 2007, Sakharam Bandekar Case, became the first such case in India where the accused Sakharam Bandekar requested using plea bargaining lesser punishment in return for confessing to his crime. However, the court rejected his plea and accepted CBI's argument that the accused was facing serious charges. In this case Mr. Sakharam Bandekar, a grade I employee of RBI, was accused of siphoning off Rs 1.48 crore from the RBI by issuing vouchers against fictitious names from 1993 to 1997 and transferring the money to his personal account. The CBI arrested him on October 24, 1997, and released on bail in November. The Court of Special CBI judge A R Joshi had framed charges on March 2,

2007. The accused made an application for Plea Bargaining on the ground of old age, ie., 58 years and tried to take the benefit of just passed amendment to criminal law providing for this new process. The CBI opposed plea bargaining attempt saying; "The accused is facing serious charges and plea bargaining should not be allowed in such cases. "Corruption is a serious disease like cancer. It is so severe that it maligns the quality of the country, leading to disastrous consequences. Plea bargaining may please everyone except the distant victims and the silent society." Agreeing with the CBIs reasoning the court rejected Bandekar's application.[20] Finally, the court convicted Bandekar and sentenced him to 3 years imprisonment. [21]

The Supreme Court was very much against the concept of Plea Bargaining before its introduction. After the US has experimented, reformed and practiced the process of plea bargaining in 19th Century, India, a century after, is discussing the implementation of the provisions which brought plea bargaining in very limited cases in a limited manner.

It is termed as immoral compromise in criminal cases. Apart from academia the apex court also was not in favour of this practice in the circumstances prevailing in India. While Law Commission of India was continuously researching and recommending introduction of plea bargaining, the Supreme Court of India was questioning its moral base and apprehending its consequences because of dishonest circumstances prevailing around.

[20] "First plea bargaining case in city". Oct 15, 2007. Retrieved 2 January 2014, http://timesofindia.indiatimes .com/city/mumbai/First-plea-bargaining-case-in-city/articleshow/2458523.cms?referral=PM

[21] RBI clerk sent to 3 yrs in jail". Oct 16, 2007. Retrieved 2 January 2014; http://timesofindia.indiatimes.com/ city/mumbai/RBI-clerk-sent-to-3-yrs-in-jail/articleshow/2461828.cms?referral=PM.

The Supreme Court criticized this concept in its judgment namely, *Murlidhar Meghraj Loya v. State of Maharashtra*[22], as follows**:**

> *—…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 businessman culprit, confronted by a sure prospect of the agony and ignominy of tenancy of a prison cell,_trades out' of the situation, the bargain being a plea of guilt, coupled with a promise of _no jail'. These advance arrangements please everyone except the distant victim, the silent society…*[23]

Again the Supreme Court in *Kachhia Patel ShantilalKoderlal v. State of Gujarat and Anr*[24] strongly disapproved the practice of plea bargain. It observed that practice of plea bargaining is unconstitutional, illegal and would tend to encourage corruption, collusion and pollute the pure fount of justice.

In another case *Kripal Singh v. State of Haryana*[25] observed that neither the Trial court nor the High Court has jurisdiction to bypass the minimum sentence prescribed by Law on the premise that a plea bargain was adopted by the accused.

[22] AIR 1976 SC 1929
[23] Case Judgment abstract
[24] 1980 CriLJ553
[25] AIR 1979 SC 1360

In *Kasambhai v. State of Gujarat*[26], expressed an apprehension of likely misuse.

In *State of Uttar Pradesh v. Chandrika*[27], the Supreme Court held that it is settled law that on the basis of Plea Bargaining court cannot dispose of the criminal cases. Going by the basic principles of administration of justice merits alone should be considered for conviction and sentencing, even when the accused confesses to guilt, it is the constitutional obligation of the court to award appropriate sentence. Court held in this case that mere acceptance or admission of the guild should not be reason for giving a lesser sentence. Accused cannot bargain for reduction of sentence because he pleaded guilty.

Hence considering the static nature of honesty in the Indian history, it is logical for the top court to question the implementation of this concept. The moral factor can be always questioned. It can also be looked both ways i.e. from the accused and the prosecutors perspective. A full one hundred percent implementation may be a distant dream, but there have been references made by the courts on this concept and hence the implementation cannot be termed as impossible.

This topic can be debated along the judicial lines and may never have a definite conclusion or answer. It will depend on case to case basis and on the context of crime. At the same time may impact the motivation to indulge in crime. It therefore needs a careful study and need time to time modifications and amendments to custom to the changing trends in the Indian judiciary.

[26] AIR 1980 SC 854
[27] 2000 Cr.L.J 384 (386)

Relevant cases

Below are few examples of relevant cases where plea bargaining has featured:

1. *Vijay Moses Das v CBI,* The second reported case from Uttarakhand was successful. A person who was accused of supplying substandard material to ONGC and also at a wrong Port causing immense losses to ONGC sought plea bargaining. The CBI investigated and initiated prosecution under sections 420, 468 and 471 of IPC. Accused proposed to plea bargaining and the ONGC (Victim) and CBI (Prosecution) had no objection to such request, but trial court rejected on the ground that Affidavit under section 265B was not filed by accused and compensation was not fixed. Justice Prafulla Pant of Uttarakhand High Court, hearing the Criminal Miscellaneous Application directed the trial court to accept the plea bargaining application.

2. In *Guerrero Lugo Elvia Grissel v The State Of Maharashtra* on 4 January, 2012, the Bombay High Court Bench: A.M. Khanwilkar, Rajesh G. Ketkar reviewed the procedure prescribed for plea bargaining and upheld the opinion of the trial Court that the Court has no discretion to award sentence other than one-fourth of the punishment provided for or extendable, as the case may be, for the offence in question in cases covered by clause (d) of Section 265-E of the Code. On this finding, the final order passed by the Magistrate of awarding sentence of 21 months to the petitioners is unassailable. High Court was considering a pure question of law as to the interpretation of Section 265-E of the Code of Criminal Procedure, 1973.

The accused (foreign nationals) were arrested on charge of theft of diamond worth crores of rupees from a jewellery shop in an international exhibition during August 2010. Under Section 265-B accused applied for plea bargaining.

The Additional Chief Metropolitan Magistrate examined the plea of the accused, as required under Section 265-B (4) of the Code, and recorded his satisfaction that, from the plea of the accused, they have moved the application for plea-bargaining voluntarily and without any sort of pressure on them. The parties followed the guidelines given under section 265-C and finally arrived at the mutually satisfactory disposition. The complainant claimed that he had received Rs. 55 lakhs in cash at Hong Kong and that he had accepted the said money from the accused as satisfactory disposition as compensation. As agreed, the accused are willing to deposit Rs. 5 lakhs in the Court as expenses incurred during the case by the State. The State is agreeable to the disposition and the said money may be deposited with the Registrar of the Court on behalf of the State of Maharashtra. Under section 265-E, the court shall dispose of the case in the manner provided under the section as sub-section (a) and (b) are not applicable to the accused. The benefit of releasing the accused on probation of good conduct under the Probation of Offenders Act is not attracted as the crime is exceptional and committed in India by foreigners. The case of the applicant falls under section 265-E(d) as the offence committed by the accused is punishable with 7 years, the court may sentence the accused to one-fourth of the punishment provided or extendable, i.e. offences under sections 380, 34, 109, 120 (B) of IPC. Court gave judgment in terms of section 265 (F) by convicting the accused for 1/4th of the maximum punishment extendable i.e. 7

years, which comes to 21 months. Bombay High Court while confirming the sentence, justified the scheme of plea bargaining as recommended by Law Commission in its 142nd report and provided by the amendment to criminal procedure in 2005[28].

3. In *Ranbir Singh v State*[29], the Petitioner challenged sentencing accused to imprisonment for six months besides penalty of Rs.5000 under Section 304A IPC and in default to undergo an additional imprisonment for one month and also the sentence to pay the fine of Rs. 5,000/- under Section 279 IPC and in default of payment of fine to undergo Simple Imprisonment for one additional month in a case where the Petitioner had entered into plea bargaining. The Trial Court has power to direct the sentence for imprisonment of 1/4th of the sentence provided if an accused enters into plea bargaining however, while awarding the sentence of 1/4th of the sentence provided the learned Trial Court is bound to look into the mitigating circumstances. None of the mitigating circumstances were considered while awarding the maximum punishment. Petitioner is the only bread earner and has two minor children and old parents to support. Despite being poor the Petitioner gave an amount to the satisfaction of the victims. He has also placed on record the affidavit of the legal heirs of the deceased to state that the parties have entered into a settlement and no dispute remains between them. The prosecution on the other hand contended that the offences under Section 304A IPC of killing by rash and negligent driving are on the rise and stern action was needed for deterrent effect.

[28] *Guerrero Lugo Elvia Grissel v The State Of Maharashtra* http://indiankanoon.org/doc/173657747
[29] http://indiankanoon.org/doc/115079753/ decided on 5th September, 2011 by Delhi High Court

Even Section 265E Cr. P.C. permitted the Court to award a sentence to 1/4th of the punishment provided even on the mutually satisfactory deposition being arrived at between the parties. Moreover the judgment by the trial court is final and no appeal lies against it as prescribed under Section 265G of the Code.

Delhi High Court held that ―though it cannot be said that in view of these mitigating circumstances the Petitioner should not be awarded any imprisonment and should be let off, however, he should not have been awarded the maximum punishment as done by the learned Trial Court. The court modified the sentence to four months imprisonment under Section 304A IPC and a fine of Rs. 1,000/- Section 279 IPC and in default to undergo Simple Imprisonment for a period of one week.

4. Bombay High Court at Goa on 13th July, 2011 held that it was mandatory for a court to follow the procedure prescribed while deciding the petition of the accused for plea bargaining. The High Court set aside an order passed against a foreigner‘s application for plea bargaining, by a judicial magistrate first class court in a case of overstaying. Mr. Okeke Nwabueze Nnabuike, a Nigerian national, has challenged the order passed by the JMFC court, rejecting his application for plea bargaining.

Advantages

Time saving: Examining possible plus points of Plea bargaining in India, it will help in cutting short the delay, backlogs of cases and speedy disposal of criminal cases, saving the courts time, which can be used for hearing the serious criminal cases, putting a certain end to uncertain life of a criminal case from the point of view of giving relief to victims and witnesses of crime, saving a lot of time, money and energy of the accused and the state, reducing the congestion in prisons, raising the number of convictions from its present low to a fair level to create some sort of credibility to the system.

Compensation to victims: The victims of crimes might be benefited as they could get the compensation. They need not get implicated or involved either as witness or seeker of compensation or justice any longer than required for acceptance of plea bargaining. Whether they get money or not their time might be saved.

Benefits for Accused: The accused might be a beneficiary as he might get half of minimum prescribed punishment. If no such is prescribed, accused might get one fourth of punishment prescribed, or released on probation or after admonition or get concession of considering the period of undergone in custody as suffering the sentence under section 428 of CrPC. He will be relieved of extended trial i.e, appeals consuming unending time. Accused is also benefited even when plea bargaining fails as his admission cannot be used for any other purpose. Ultimate benefit for him is that his time and money is saved.

Disadvantages

Unfair: The system will be too soft for the accused and allow them unfair means of escape in a dishonesty ridden society in India. It is an alternative way of legalization of crime to some extent and hence not a fair deal. It creates a feeling that Justice is no longer blind, but has one eye open to the right offer. Prosecutors and police, foreseeing a bargaining process, will overcharge the defendant, much as a trade union might ask for an impossibly high salary.

Contempt for system: It may create contempt for the system within a class of society who frequently come before the courts. A shortcut aimed at quickly reducing the number of under-trial prisoners and increasing the number of convictions, with or without justice. While countless numbers of poor languishing in the country's prisons while awaiting trial, only a few might get a chance of bargaining.

Conviction of innocent: This process might result in phenomenal increase in number of innocent convicts in prison. Innocent accused may be paid by the actual perpetrators of crime in return to their guilty plea with assured reduction in penalty. Thus illegal plea bargaining between real culprits and apparent accused might get legalized with rich criminals corrupting police officials ending up in mockery of the system of justice. When plea bargaining is certainly not resulting in acquittal or limited to penalties or payment of damages, accused may not find it as useful and plea bargaining may not operate as incentive at all.

Coercion: Element of coercion is not ruled out as the police is involved in the process. i.e. forcing the accused to avail plea bargaining to put an end to the trial.

Derailment of Trial: Once the guilty plea comes forward and recorded on the file and in the mind of the judge, the trial will be surely derailed. The court may not strictly adhere to or depart from the requirement of proof of beyond reasonable doubt and might lead to conviction of innocent.

The right to appeal: A plea bargain may be arranged in a few minutes time, but once entered into, it does not always allow a further appeal in the matter. However, the right to appeal is not a fundamental right as envisaged by the constitution. It is a mere 'creature of the statute'[30] which may be granted or abridged. Also, an adequate alternative to appeal, that is, writ petition in the Supreme Court[31] by a special leave petition or in the High Court[32], has been provided by Section 265-G.

The objective of introducing plea bargaining was stated as reducing the time-frame of criminal trials. Hence, its very purpose and intent, that is, to expedite the trial process, will be defeated if all cases which have already been disposed of by the court under chapter 21-A, be allowed to go for appeal.

[30] Swaran Singh and Ors.v. State of Punjab and Ors (2000) 5 SCC 668
[31] See Article 139 of the Constitution of India
[32] See Articles 226 and 227 of the Constitution of India

Conclusion

The plea bargaining concept no doubt undermines the public's confidence in the criminal justice system and as a result of this it will lead to the conviction of innocent, inconsistent penalties form similar crimes and lighter penalties for the rich.

Plea bargaining will undoubtedly remain a disputed concept. Few people have welcomed it while others have abandoned it. It is true that plea bargaining speeds up caseload disposition, but it does that in an unconstitutional manner. But perhaps we have no other choice but to adopt this technique. The criminal courts are too over burdened to allow each and every case to go on trial. Only time will tell if the introduction of this new concept is justified or not.

Even the Supreme Court has upheld that delay of one year in the commencement of trial is bad enough; how much worse could it be when the delay is as long as three or five or seven to ten years or more. Speedy trial is the essence of criminal justice and there is no doubt that delays in trial itself constitutes denial of justice. Initially, the concept of plea-bargaining was criticized by a group of society including legal experts and intellectuals by stating that it will demoralize the public confidence in criminal justice system and also lead to lesser penalties to rich class, conviction of innocent people and therefore, it has become disputed concept now.

Today, it issued by all great countries like USA, Europe, Canada and some authorities stated that the prevalent conditions in India are very different from US, even then to meet out the huge backlog of cases in India and ultimately it will have to be done with the consent of both the parties i.e. accused and prosecution, and hence it makes sense to implement plea bargaining despite different conditions. Therefore, India cannot abstain itself from this law. This practice has been accepted by Indian Judiciary. It can reduce the heavy backlog of cases in Indian courts; as it requires today and we hope that overburdened criminal courts will soon get a relief with it and rate of disposing will become rapid.

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