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Plea Bargaining: A New Chapter in Indian Legal System

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Abstract:
In modern times, plea bargaining has become the primary procedure through which we dispose of the vast proportion of cases of serious crime but this concept was unknown during most of the history of the common law. Only in the nineteenth century do we find significant evidence of its practice in America. Plea Bargaining is basically an American concept and its origin can be traced back in America during the 19th Century. Over the years, Plea bargaining has emerged as a prominent feature of the American Judicial System.

Keywords: *American Judicial System, Common law*

1. Introduction

Year 2005 witnessed a historical development in the Criminal Justice System in India with the introduction of a new chapter, viz. Chapter XXI [1] on Plea Bargaining in the Criminal Procedure Code. It was introduced through the Criminal Law (Amendment) Act, 2005, which was passed by the Parliament in its winter session. It became effective from 5th July, 2006. In India, Plea Bargaining has certainly changed the face of the Indian Criminal Justice System. Plea Bargaining is applicable in respect of those offences for which punishment is up to a period of 7 years. Moreover it does not apply to cases where the offence committed is a Socio-Economic offence or where the offence is committed against a woman or a child below the age of 14 years. Also once the court passes an order in the case of Plea Bargaining no appeal shall lie to any court against that order.[2]

2. Plea Bargaining: Meaning

An agreement as a result of negotiation between the prosecution and defense (at time, also the judge) which settles a criminal case, usually in exchange for a more lenient punishment. Typically the defendant will plead guilty to a lesser crime or for a more fewer charges than originally charged, in exchange for a more lenient punishment than the defendant would get if convicted at trial. It is seen as a win-win for all the parties as the prosecution has a certain conviction on the record, the defendant is provided a more lenient sentence than the risk of a higher one at trial and the judge is freed to move to other cases and dispute to resolve. [3]

Plea Bargaining can conclude a criminal case without a trial. When it is successful, Plea Bargaining results in a plea agreement between the prosecutor and defendant. In this agreement, the defendant agrees to plead guilty without a trial, and, in return the prosecutor agrees to dismiss certain charges or make favorable sentence recommendation to the court. Plea Bargaining is expressly authorized in statutes and in court rules.

Plea Bargaining can be described as a process whereby the accused may bargain with the prosecution for a lesser punishment. In simple words, Plea Bargaining is an agreement (contract) between the accused and the prosecution regarding disposition of the criminal charge leveled by the prosecution

against the accused. In layman's language, it is bargaining done by the accused of a serious and severe offence, with the authority for a lighter punishment in lieu of a full-fledged trial.[4]

3. Historical Background

It would be wrong to assume that the concept of Plea Bargaining found favor of courts only in the recent past. In fact it is used in the American Judiciary in 19thcentury itself. The bill of Rights makes no mention of the practice when establishing the fair trial principle in the sixth amendment but the constitutionality of the Plea Bargaining had constantly been upheld there. In the year 1969, James Earl Ray pleaded guilty to assassinating Martin Luthar King, Jr. to avoid execution sentence. He finally got an imprisonment of 99 years.

More than 90 percent of the criminal cases in America are never tried. The majorities of the individuals who are accused of a crime give up their constitutional rights and plead guilty. Every minute, a criminal case is disposed off in an American Court by way of a guilty plea or Nolo Contendera Plea. In a landmark judgment Bordenkirc her Vs Hayes5, the United State Supreme Court held that, "the constitutional rationale for Plea Bargaining is that no element of punishment or retaliation so long as the accused is free to accept or reject the prosecutions offer. The Apex Court however upheld the life imprisonment of the accused because he reject the 'Plea Guilty" offer of 5 years imprisonment. The Supreme Court in the same case however in a different context observed that, it is always for the interest of the party under duress to choose the lesser of the two evils. The courts have employed similar reasoning in tort disputes between private parties also. In countries such as England and Wales, Victoria, Australia, "Plea Bargaining" is allowed only to the extent that the prosecutors and defense can agree that the defendant will plead to some charges and the prosecutor shall drop the reminder. [6]

4. Plea Bargaining in America

The Plea Bargaining experienced a sharp rise in the 1920s in America as the criminal trials in United States provide to be most expensive and time consuming in the world. Criminal trial in the United State of those days was an elaborate exercise and comprised of peremptory challenges in a lengthy jury selection process, numerous evidentiary objections, complex jury instructions, motion for exclusion, etc. Plea Bargaining emerged as an effective mechanism to avoid the complex process of a criminal trial and soon it gained popularity. The practice of Plea Bargaining was approved by the Supreme Court of the United States mainly on the assumption that the persons who are convicted on the basis of Plea Bargaining would ordinarily be convicted, if they had chosen to stand trial.[7]

The plea won the approval of Supreme Court of United States and its endorsement as "an essential component of the administration of Justice" in Santobellov case.[8],The Chief Justice Burger explained there that the Plea Bargaining is to be encouraged because; If every criminal charge were subjected to a full-scale trial, the states and the Federal Government would need to multiply by many times the number of judges the Court facilities.

5. Plea Bargaining in Indian Context

To reduce the delay in disposing criminal cases, the 154thReport of the law commission first recommendation the introduction of Plea Bargaining as an alternative method to deal with huge arrears of criminal cases. This recommendation of the Law Committee finally found a support in "Mali math Committee Report". The NDA government had formed a committee, headed by the former Chief Justice of the Karnataka and Kerala High Court, Justice V.S. Malimath to come up with some suggestions to tackle the ever growing number of criminal cases. In its Report, the Mali math Committee recommended that a system of Plea Bargaining be introduced in the Indian Criminal Justice System to facilitate the earlier disposal of criminal cases and to reduce the burden of the courts. To

strengthen its case, the Mali math Committee also pointed out the success of Plea Bargaining system in U.S.A.[9]

The concept of Plea Bargaining attracted enormous public debate. Critics said it is not recognized and against public policy under our criminal justice system. The Supreme Court also time and again blasted the concept of Plea Bargaining saying that negotiable in criminal cases is not permissible.

Moreover in State of Uttar Pradesh Vs Chandrika [10], the Apex court held that it is settled law that on the basis of Plea Bargaining court cannot dispose of the criminal case. The court has to decide it on merits. If the accused confesses its guilt, appropriate sentence is required to be implemented. The court further held in the same case that, mere acceptance or admission of the guilt should not be a ground for reduction of sentence, nor can be the accused bargain with the court that as he is pleading guilty the sentence be reduced despite this huge hue and cry, the government found it acceptable and finally Section 265A – 265L[11], have added in the Code of Criminal Procedure so as to provide for raising the Plea Bargaining in certain types of criminal cases.

6. Silent Features of Plea Bargaining

Following are the silent features of Plea Bargaining;

1. It is applicable in respect of those offences for which punishment is up to a period of 7 years.
2. It does not apply to cases where offence is committed against a woman or a child below the age of 14 years.
3. When court passes an order in the case of plea bargaining no appeal shall lie to any court against that order.
4. It reduces the charge.
5. It drops multiple counts and press only one charge.
6. It makes recommendation to the courts about punishment or sentence.

7. Types of Plea Bargaining

There are three main types of Plea Bargaining[12] namely;

1. Charge Bargain
2. Sentence Bargain
3. Fact Bargain

8. Object of Plea Bargaining

By introducing the concept of Plea Bargaining in the Criminal Procedure the object of the legislature is;

1. To reduce the pending litigation
2. To decrees the number of under trial prisoners.
3. To make provision of compensation to the victim of crimes by the accused.
4. To cut delay the disposal of criminal cases.

9. Drawbacks of Plea Bargaining

Some of the major drawbacks of the concept of Plea Bargaining as is recognized in India are as under;

1. Threat to right to fair trial.
2. Involving the Police in Plea Bargaining process would invite coercion.
3. By involving the court in Plea Bargaining process the court impartially is impugned.
4. Involving the victim in Plea Bargaining process would invite corruption.
5. If the plead guilty application of the accused in reject then the accused would face great hardship to prove himself innocent.

10. Requirements to invoke Plea Bargaining

To ensure fair justice, Plea Bargaining must encompass the following minimum requirements namely;

1. The hearing must take place in court.
2. The court must satisfy itself that the accused is pleading guilty knowingly and voluntarily.
3. Any court order rejecting a Plea Bargaining application must be kept confidential to prevent prejudice to the accused.

12. Conclusion

To conclude, Plea Bargaining is undoubtedly, 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 court is too overburdened to allow each and every case to go on trial. Only time will tell if the introduction of this concept is justified or not.

References

1. Section 265 A to 265 L, The Criminal Procedure Code, 1973
2. Legal Service India
3. Legal Dictionary
4. Shree Ram's The Law, Vol. II, Issue X October 2014, A monthly Journal cum Magazine on Law and Judiciary.
5. Bordenkircher Vs Hayes, 434 U.S. 357, 98 S. Ct. 663, 54 L. Ed. 2d 604, 1978 U.S.
6. By Advocate Subha Ghosh, Legal Service India.
7. Supranote 4 at 25 – 26.
8. Santobellov.New York, 404 U.S. 257, 260, 1971.
9. Malimath Committee Report
10. State of Uttar Pradesh Vs Chandrika, 2000 Cr. L.J. 384(386), A.I.R. 2000 SC 164.
11. Criminal (Amendment) Act, 2005
12. Mrs Patil Deepa Praveen, Analysis of Plea Bargaining in India Cr.L.J. Jan. 2010 atp18