JETIR.ORG ISSN: 2349-5162 | ESTD Year : 2014 | Monthly Issue
JOURNAL OF EMERGING TECHNOLOGIES AND INNOVATIVE RESEARCH (JETIR)
An International Scholarly Open Access, Peer-reviewed, Refereed Journal

Plea Bargaining in India: An Overview*

Dr. Ambika
Assistant Professor
Himachal Pradesh National law University Shimla

"In many courts, Plea Bargaining serves the convenience of the judge and the lawyers, not the ends of justice, because the courts simply lack the time to give everyone a fair trial." ----------**Jimmy Carter**

ABSTRACT

The famous adage "Justice delayed justice denied" is very important. Delay in trial is denial of justice. Fairness, independence and a justice-based approach are the hallmarks of the Indian judiciary. The Constitution promised "justice-social, economic and political" to all its citizens. Delay in disposal of cases is a black mark on the system. Cases are piling up heavily in the courts. It is shaking public confidence and confidence in the justice system. Rapid trial is a sense of criminal justice. "Plea bargaining" has become an integral part of the criminal justice system in the United States. Therefore, the thrust of the paper is to understand the concept of plea bargaining in India, its merits, demerits and the role of judiciary.

Keywords: Plea-Bargaining, Justice, Fairness, Trial, Judiciary etc.

1. Introduction

Plea Bargaining is traditionally associated with the Anglo-American system. It originated in the United States in the nineteenth century. Plea-bargaining is a process that guarantees the speedy disposal of cases[1]. The English courts adopted the method of arguing from the **Turner case**[2] in England. Arguments are being negotiated in countries such as Canada, Australia, South Africa and Nigeria, while some countries such as Germany, Italy and Poland are gradually adopting this concept in criminal cases.

Muralidhar Meghraj Loyot v. Maharashtra,[3] Kasambhai Ardul Rehanbhai v. State of Gujarat,[4] and U.P. v. Chandrika, (2000),[5] did not consider it necessary to give the judiciary recognition. For a long time Pendency served as the locomotive of subordination. The Law Commission has suggested that "plea bargaining" should be submitted as an alternative technique for handling criminal cases, in order to postpone the exclusion of criminal cases.

In 1991, the Law Commission recommended the introduction of the Code of Criminal Procedure, 1973. For the first time, the Law Commission of India in its 142nd Report (1991) discussed the issue of introducing plea bargaining in criminal justice. Therefore, the Law Commission of India (1996) in its 154th Report recommended arguments for resolving cases.[6] The Justice Malimath Committee Report 2003[7] also supported the 154th Report of the Judicial Commission. All of these recommendations were taken into account by the Criminal Law (Amendment) Act 2005. The Parliament of India has introduced the Plea Bargaining Rules by including Chapter XXI from Section 265A to Section 265 L. It came into force on July 5, 2006. This paper seeks to assess the current law in relation to the petition.

2. Nature, Meaning and Definition of Plea bargaining

According to the Oxford Dictionary, the word "Plea" means appeal, prayer, request or official statement on behalf of the respondent. The word "Bargaining" means compromise, negotiation, bargaining. Therefore, request-bargaining is an appeal or official statement made by the accused to settle with the victim.

Argumentative negotiations take place when the defendant pleads guilty to a minor offense or accepts a different allowance from the state. Judicial discretion can be divided into two forms of request bargaining. The first form is the level of legal participation in request bargaining. The second form is judicial discretion in punishment. The level of legal interest in plea bargaining cannot be categorized. This petition is a direct result of the lack of clear and comprehensive rules for legal leadership in bargaining. Implicit impedance talks about the judge's position as an impartial referee.

The broader expansion of cases under consideration by the criminal courts is the explanation behind approving these arrangements. Since 2006, it has been argued that all parties should work with the criminal courts in India. Therefore, “plea bargaining” can be seen as a hallmark between prudence and defense in a criminal case, in which the convict did not trade the proposal as he had argued his case. This reduces the cost required for. This allows focusing on more ideal cases. Argument - Allows the court to settle the penalty of bargaining. The important point of plea bargaining is that the facts expressed in an application for plea bargaining are not used for some other

purpose. These days the request is usually made to most of the criminal defendants. This gives the offender the opportunity to reduce his discipline by tolerating his guilt.

Black's Dictionary of Law defines this request as a negotiated settlement between the prosecutor and the criminal defendant.[8] This involves the prosecutor admitting guilt at some concession, dismissing a more lenient sentence or other charges. Defining the plea bargaining in the 142nd Law Commission Report (1991) it is an agreement to seek the consent of the prosecutor or to withdraw the action to take any particular course.[9] The rapid disposal of criminal cases is the main reasons for the introduction of the concept of plea bargaining in India.[10]

3. Types of Plea Bargaining

Different types of arguments are discussed as follows:

I) Charge Bargaining:

The charge bargaining means the elimination of a portion of the trial charges in lieu of approval of the error. While the blame admits that he submitted something unacceptable at this point, there may be bargains regarding the fees. It depends entirely on the will of the accused. The indictment may admit or deny it. After the indictment is negotiated, the defendant faces an unequal charge. It can be additionally divided into several charges and one type of charge. On several charges, some of the charges were dropped.

II) Punishment Bargaining:

Sentence bargaining involves guarantee of lighter or alternative sentences in return for a defendant's pleading guilty. This sentence seeks to guarantee the trial after the bargaining offenders are found guilty, so that the court can prescribe a clear sentence or badge sentence. It will be straightforward with the opening judge. The offender must be made aware of the possibility of being forcibly removed in the event that he does not plead guilty. However, if he assumes that he has admitted his error, the examiner may be interested in the short sentence or the good sentence he is seeking earlier.

III) Fact Bargaining:

The third type of plea is Fact Bargaining in which negotiation involves an admission to certain facts in return for an agreement not to introduce certain other facts. He agrees that the court should not uncover the circumstances that are bothering him. There is an understanding for a specific introduction to realities in commercial form for the request of faith. The distinctive fact is that in bargaining, there is the acceptance of approval without accepting the innocence known as Nolo Conderer requests.[11]

4. The Notion of Plea Bargaining in India

The idea of plea bargaining in India has been taken from the Latin expression Nolo Conderer which means "I do not like to fight". It will be treated as a petition without any challenge. The Indian criminal justice system has failed to deliver justice quickly and cheaply. The criminal cases are increasing. Punishment speed is low. The court's assets need to be fundamentally expanded so that each charge is called fundamentally. Plea bargaining eliminates the risks and weaknesses associated with initiation. Similarly, the court should be encouraged to try to handle such cases that are not related to any important questions.

5. Advantages of Plea Bargaining in India

An important aspect of request bargaining is to assist the courts. This will help to reduce long-term pending cases in the courts. Plea bargaining in India have some special advantages. Various legal experts agree that this is appropriate as a strategy to replace lawsuits that plead guilty. It removes uncertainty from the legal process, creates certainty for a conviction, can be an effective negotiating tool, provides more resources for the community, and reduces population levels in local jails.[12] Plea bargaining is the primary apparatus through which judges, prosecutors, and defense attorneys cooperate and work together toward their individual and collective goals. The primary benefit of plea bargaining for both the prosecution and the defense is that there is no risk of complete loss at trial. In cases in which evidence for or against a defendant is questionable, bargains may represent a possible way for the attorneys to minimize their potential losses by settling on a mutually acceptable outcome. Plea bargaining can also be a way for the courts to preserve limited resources for the cases that need them most.

6. Disadvantages of plea bargaining in India

Plea-bargaining can lead to improper punishment. It removes the right to have a trial by jury, it may lead to poor investigatory procedures, it still creates a criminal record for the innocent, Plea bargains eliminate the chance of an appeal and it provides soft justice for the guilty. It promotes a satirical perspective of the legal process.

According to foreign thinkers, there are significant legal and constitutional issues in the debate. Ordinary courts traditionally consider confession involuntary when prompted by a promise borrowed from a person in power. In addition, admitting a crime waives the constitutional right to trial as well as the subordinate trial rights. According to the "Doctrine of Unconstitutional Circumstances", the amnesty of constitutional rights is not valid when it is conditionally required to obtain favorable treatment by the government

Defense attorneys, trial judges and investigators are key components in the plea bargaining process. In plea bargaining, the prosecution can avoid most of the difficult task such as preparing for the basic cases and trying them out. There may be desires for professional advancement. The plea bargaining process is influenced by the conflict of interest. Lawyers can rationalize decisions that serve their interests. Upon receipt of an attorney's fee, his personal interest will be in resolving the client's case as quickly as possible, i.e., by admitting guilt.

The amount received by the attorney to represent the local defendant may not be adequate compensation for the trial, but this amount is sufficient as a fee to negotiate the defendants' request. In theory, the decision to plead guilty was made by the accused rather than the lawyer. However, many advocates argue that "client control" is an important part of the negotiation process. When clients are unwilling to follow their advice, these attorneys may use a variety of contracts, including threatening to terminate their representation, including attempting to mislead clients. Although prosecution and defense lawyers are key players in the solicitation process, legal involvement in the process is rare.

This partnership can take many different forms. In some courts, trial judges hold chamber meetings. They proposed that if the accused was found guilty they should submit the prescribed sentence. Among others, judges refer to prosecution and defense attorneys. Indicate how they have acted in certain contexts in the past or indicate a series of sentences. Judges who do not participate in any clear bargaining may commit charged bargaining by significantly reducing the fines imposed by the defendants' indictments. Some officials argue that judges should be barred from participating in practice. The personal presence of the judges in the consultation process, if there is no agreement between the prosecution and the defense, can lead to a malicious attitude, after the trial of the case.[13] . Despite these negative dimensions, Plea bargaining remains a major feature in the criminal justice process.

7. Plea Bargaining and Criminal Procedure Code, 1973

Section 265-A to 265-L of the Criminal Procedure Code, 1973 deals with Plea bargaining. It is a tool that guarantees that risk takers get good equity at the right times. This avoids the threat of observers, unnecessary postponement and unjustifiable costs. Thus, Indian law of plea bargaining does not advocate for offenses such as death penalty, life imprisonment, and imprisonment not exceeding 7 years, offense against the country's economic states and offenses against women and children under the age of 14 years.

7.1 Application of Plea Bargaining in India

Chapter XXIA[14] deals with plea bargains in India. Plea bargains can be obtained in two situations as per section 265 A.

1. When the officer-in-charge of a police station sends the report to the magistrate after the examination is completed.
2. When a cognizance has taken by magistrate of an offence on complaint and the process is issued under section 204.The provision does not apply where such offence affects the socio-economic condition of the country or women or a child below the age of fourteen years.[15]

7.2 Plea Bargaining Procedure in India

According to Section 265B, when the accused applies, the process begins. The application must be filed by accused in the court in which such offence is pending for trial. The application shall contain a brief description of the facts of the case. It shall be accompanied by affidavit stating that he has voluntarily preferred after understanding the nature and extent of the punishment and has not previously been convicted for the same offence. After receiving the application the court shall issue notice to public prosecutor or the complainant of the case and to the accused to appear on the date fixed for the case.

When the parties appear on the fixed date, the court shall examine the accused in camera and the other party of the case shall not be present. If the court is satisfied that the application has been filed by the accused voluntarily then it shall provide time to the public prosecutor and the accused to work out a mutually satisfactory disposition of the case. It may include giving compensation to victim by the accused. Thereafter the court may fix the date for further hearing of the case.

If the court finds the application has not been filed voluntarily by the accused or has been convicted previously for the same offence then the court shall proceed further as per the provisions of the Criminal Procedure Code from the stage such application has been filed.[16]In working out a mutually satisfactory disposition, the court shall follow the following procedure:

1. If the case is instituted on police report the court shall issue a notice to the Public Prosecutor, Police officer, accused and the victim to participate in the meeting to work out a satisfactory disposition of the case.

2. If the case is instituted other than on police report the court shall issue a notice to the accused and the victim to participate in the meeting to work out a satisfactory disposition of the case. It shall be the duty of the court to ensure throughout the process that it is completed voluntarily by the parties. The accused and the victim can participate in this meeting with his pleader engaged in the case.[17]

If the satisfactory disposition of the case has been worked out, the court shall prepare a report of such disposition. The report shall be signed by the presiding officer and persons participated in the meeting. If no such disposition has been worked out, the court shall record observation and proceed further as per the provisions of the Criminal Procedure Code.[18]

7.4 Disposal of cases

Following the application of the procedures under Section 265D, the Court shall award the compensation to the victim and hear the parties on the quantum of the punishment and 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 Act, 1958 or any other law for the time being in force.[19]

According to Section 265F, the court shall deliver its judgment in the open court. The judgment shall be signed by the presiding officer of the court.[20] The decision of the court is final. No appeal will be made against such decision. However, the accused can file a writ petition in the state High Court under Articles 226 and 227 of the Constitution or a special leave petition in the Supreme Court under Article 136 of the Constitution.[21] It works as a check for illegal and unethical bargaining. The statements or facts made by the accused for the petition filed under Section 265B shall not be used for any purpose other than the purpose of this Chapter.[22] As defined in the Juvenile Justice (Child Care and Protection) Act, 2000, this does not apply to any juvenile or child.[23]

These provisions allow benefits to the accused where possible. Under Section 12 of the Probation of Offenders Act, 1958, a person who has committed a crime and is disposed of under Section 3 or 4 of that Act cannot bear the disqualification associated with the indictment. Thus, government employees released on probation under the Probation of Offenders Act, 1958, are protected from disqualification. The request should encourage lawyers to resort to bargaining and understand plea-bargaining application. In the changing global scenario, plea-bargaining may be one of the best options for an alternative dispute resolution mechanism to deal with the challenges of resolving pending cases. There are other reasons for the accumulation of cases. In India, for example, the courts are not sufficient to resolve the number of pending cases. There is also a shortage of public prosecutors.

8. The Role of the Judiciary on Plea Bargaining

Indian courts have examined the concept of plea bargaining in several of the following cases. It did not approve of the concept of solicitation bargaining in India on the basis of official indictment. **Muralidhar Meghraj Loya Vs. State of Maharashtra,**[24] the esteemed Supreme Court has the opportunity to examine the plea bargains

for the first time. It happened that it was the duty of the state to enforce the law and not to hurt the accused for lesser punishment. Therefore, it should not be introduced in the Indian penal system.

For the first time in Mumbai, a former RBI clerk accused in a fraud case has applied for bargaining before a sessions court demanding a lesser sentence instead of admitting his guilt. In the present case, a Grade I employee, Sakha-Ram Bandekar, is accused of scamming Rs 1.48 crore from the RBI. From 1993 to 1997, they issued vouchers against the names. He transferred the money to his personal account. Subsequently, he was arrested by the CBI on October 24, 1997. He was released on bail in November. Special CBI Judge A.R. Joshi indicted on March 2 this year. The accused then applied to the court on August 18. He is 58 years old and said he wants the request. The court ordered the prosecution to file its answer. The decision given in the case of the petition is final. No appeal will be allowed against such decision. If the accused is a first time offender he can be released on probation.

The CBI opposed the application and the accused is facing serious charges. Petition should not be allowed in such cases. Corruption is a serious disease. It is very harsh, which affects the quality of the country. This can lead to dire consequences and can satisfy everyone except distant victims and a quiet community. The court did not accept the petition. This case represents a growing legal trend. In the opinion of experts, in the case of bargaining, it reduces the huge backlog in Indian courts. This requires the accused to plead guilty and he escapes with a lengthy trial. There is very little time currently spent by the courts to resolve millions of cases.[25]

In India, socio-economic crimes beginning with the Prohibition of Dowry Act, 1961 and the Domestic Violence Act, 2005 enacted a number of laws to protect women. There are no provisions in the petition under these laws. Where crime is complicated, the argument process cannot be improved. Very few cases can be resolved using the Bargaining Law, which is resolved by mutual consent of both parties. The purpose of the amendment to reduce the burden of the case is lost as the petition does not apply to a large number of statutes.

Another concern is about crimes that provide the minimum punishment by law. **Kirpal V. The state of Haryana,** [26]the trial court convicted the petitioner on the basis of his earlier conviction in the case. But the High Court extended the rigorous imprisonment to seven years as prescribed by law. Subsequently, the Supreme Court stated that if the accused had made any request the trial court or the High Court did not have the power to assign a minimum limit under the law. The trade-offs of solicitation bargaining here are very limited, because a person convicted of an offense with a minimum sentence of less than seven years will not resort to solicitation bargaining if the minimum sentence is prescribed by law.

In the case of **Pradeep Gupta V. State**,[27] the petitioner has filed a plea bargaining petition . The court said the defendants could argue these petitions. Under Section 173 of the Criminal Procedure Code, a sentence of seven

years or less than seven years can be reported against anyone. The role of the accused and the nature of the crime must be taken into account.

State of U.P. v. Chandrika[28] the court has ruled that the request is unconstitutional and illegal. This promotes a combination of corruption. It also contaminates the justice system. This leads to the conviction of an innocent accused and a short sentence. Our administration is deadly in terms of time and money. It is uncertain and unpredictable in its outcome. The judge may be displaced from the path of duty to do justice. He can plead guilty to an innocent offense or impose a light sentence on the convict. This practice lowers the standard of justice.

In Kasabbai Abdul Rehman Bhai Sheikh Adi V. State of Gujarat and other[29] the accused have been convicted of forgery. The court agreed that the argument was unconstitutional and illegal. It challenges the legal process. In another landmark judgment, Borden **Kircher v. Hayes,**[30] the U.S. Supreme Court, held that the constitutional basis for request bargaining was not an element of punishment. It is up to the accused to accept or reject the prosecution motion. The Supreme Court upheld the life imprisonment of the accused in this case. He rejected the convict's offer.

Tippa Swamy vs. State of Karnataka,[31] the Supreme Court remanded the case to the Judicial Magistrate. The reason for this was when the Karnataka High Court faced an appeal. On appeal, the High Court sentenced him to three months rigorous imprisonment. But the High Court ignored the nature of the sentence given by the lower court on the basis of the petition. Therefore, the Division Bench argued that sentencing the accused after conviction or after appeal is a violation of Article 21 for a light sentence in the trial court. It is neither fair nor just. It is clear that bargaining is not appreciated by the Supreme Court as a concept in the Indian criminal system.

State of Uttar Pradesh vs Chandrika [32]Special leave petitions were filed by State of U.P. The Allahabad High Court accepted the petition during the trial. It was entertaining because the incident happened a long time ago. The appellant is in prison as an under trial prisoner and convicted. It is desirable for the trial court to give him an alternative to the remainder of the sentence of imprisonment. Thus the sentence was changed. The Supreme Court criticized the approach taken by the High Court. The Supreme Court said the learned judge ignored the settled law. Little did he know that the concept of 'plea bargains' had not been recognized. This is contrary to public policy under our criminal justice system. The concept of a compromise solution in criminal cases is not acceptable, except for compounded crimes. This method is not encouraged to determine cases related to criminal appeals or serious crimes.

Question before the Gujarat High Court in the **State of Gujarat v. Natwar Harachandji Thakor**[33] will the new legal references and the new draft (negotiation of charges) be effective and legal to register the plea of the accused? The High Court stated that the purpose of the law is to provide easy, cheap and speedy justice. Therefore nothing should be constant. Change is the only thing that is sustainable in the world. Furthermore, **Kachia Patel ShantilalKodarlal vs. State of Gujarat,**[34] the esteemed Supreme Court and another have rejected the practice of dismissing the petition. The courts then began to show a positive attitude toward the concept of plea bargaining. In **State v. U.P. V. Nasruddin**[35] the Supreme Court had already reduced the sentence for this period.

It is very well believed that everyone should have an open mind, because the mind is like a parachute; when it opens it starts working. However, huge arrears and lengthy trial and consequent difficulties need to be seriously considered, in view of the advantage of solicitation bargaining as an alternative method of spending and dealing with parties. It is not available to addicted criminals. We must remember the adage, "Every saint has a past and every sinner has a future." Consequently, solicitation bargains were added to the Criminal Procedure Code, 1973 in 2005.

9. Conclusion

Plea bargaining definitely helps in the fast disposal of cases and reduces the burden on the courts. It helps to draw mutual understanding between the prosecutor and the defendant. It can be seen as a form of alternative dispute resolution and a rehabilitative approach to criminals.[36] It is also imperative to note that the investigating officer is an important party in the process of reaching at a mutual settlement. The involvement of the police often attracts criticism as custodial torture inflicted on accused by the police is a penetrating issue in India. Moreover, it may lead to unjust sentencing of the accused as it makes room for corruption. In light of the various pronouncements given by the Courts in India, it can be said that the concept of Plea Bargaining in India definitely has two sides of interpretations and perceptions. However, the criminal justice system has reformed over time and has made plea bargaining conducive to the legal and society standards. With the tremendous number of criminal cases stacking up the courts, the concept of Plea Bargaining is imperative as it provides for the fast and expeditious means of disposing cases. The law relating to the plea bargaining should be encouraged by the judiciary and 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 practiced regularly. 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.

References

1 Ms. Amrit Pal Kaur;. Justice in Plea Bargaining–Is it a coercion to Compromise, Assistant Professor in Law, University Institute of Legal Studies, Panjab University, Chandigarh, 109Bharati Law Review, April – June, 2016 Published in Articles section of www.manupatra.com, page no. 213-228.

2. R v. Turner, (1970) 2 EWLR 1093

3. AIR 1976 SC 1929

4. AIR 1980 SC 854

5 .AIR 2000 SC 164

6. The 142nd Report of the Law Commission of India (1991); 154th Report of the Law Commission of India (1996)

7. Justice Malimath Committee Report on Reforms in Criminal Administration of Justice, Government of India, 2003.

8. The Black's Law Dictionary (8th edition), 2004

9. 142nd Law Commission of India Report, *Concessional Treatment for Offenders who on their own initiative choose to plead guilty without any bargaining* (1991), available at: http://lawcommissionofindia.nic.in/101-169/Report142.pdf accessed on 10th Oct, 2020

10. Supra Note 1 at 218.

11. Dr. Muhammad Ashraf, Professor, Faculty of Law, A.M.U, Aligarh (U.P): Plea Bargaining in India – An Appraisal

12. K.P. Pradeep, Advocate, High Court of Kerala, Plea Bargaining – New Horizon in Criminal Jurisprudence

13. Plea Bargaining- New Horizon in Criminal Jurisprudence by K.P. Pradeep, Advocate, High Court of Kerala

14. The Criminal Procedure Code,1973, Section 265 A

15. Id,section 265 A

16. Id, section 265 B

17. Id, section 265 C

18. Id, section 265 D

19. Id, section 265E

20. Id, section 265F

21. Id, section 265G

22. Id, section 265K

23. Id, section 265L

24. AIR 1976 SC 1929

25. htt://www. Legalserviceindia.com/articles/plea_bar.htm

26. 1999 Cri.L.J. 5031 (SC)

27. Judgment delivered on September 03, 2007

28. AIR 1999 SC 164)

29. AIR 1980 SC 854

30. 434 U.S. 357 (1978)

31. AIR 1983 SC 747, 1983

32. AIR 2000 SC 164

33. 2005 Cri.L.J 2957, (2005) 1 GLR 709

34. 1980 Cri.L.J. 553

35.2000 (10) SCC

36. Justice Malimath Committee on Reforms of Criminal Justice System, Parliament of India, *Report of the Committee on* Reforms of Criminal Justice System,2003.