Indexed with IIJIF
Impact Factor : 1.021
ISSN: 2456 - 608X
International Journal of Legal Research and Studies
An UGC Approved Online Law Journal

PLEA BARGAINING AND VICTIMS ROLE: IN INDIAN CONTEXT

Neeraj Malik
Assistant Professor, Chhaju Ram Law College, Hisar
maliklawresearcher@gmail.com

***Abstract*-- The term "Plea Bargaining" refers to pre-trail negotiations between the accused and the prosecution during which the accused agrees to plead guilty in exchange for certain concessions by the prosecution. In India by virtue of the Criminal Law Amendment Act, 2005, provisions relating to plea bargaining was inserted under a New Chapter XXIA into the Criminal Procedure Code, 1973 which has come into effect from July 5, 2006.**
Key-Words: Plea Bargaining, Victim

INTRODUCTION

In its most straight and common sense, plea bargaining refers to pre- trial negotiations between the prosecution and the defense during which the accused agrees to plead guilty in return for certain concessions by the prosecutor. Plea bargaining as most criminal justice reformers believe, is more suitable, flexible and better fitted to the needs to the society, as it might be helpful in recurring admissions in cases where it might be difficult to prove the charge laid against the accused.[1] Basically it is process to make sure the victims to receive acceptable justice in reasonable time without risking the prospects of hostile witnesses, inordinate delay and unaffordable costs. It reduces the arrears and pendency in the system by diverting to large numbers of crimes for alternative settlement without trial under control of court to ensure fairness in the process.[2] On recommendation of Malimath Committee, the Code of Criminal Procedure has been recently amended by adding Chapter XXIA, consisting of Section 265A-265L. Not only will it expedite the disposal of cases, it may also result in adequate compensation for the victim of crime, since he along with prosecutor will be in a position to bargain with the accused.

DEFINITION OF PLEA BARGAINING

As such there is no perfect definition of plea bargaining. As the term implies, plea bargaining involves an active negotiation process whereby an offender is allowed to confess his guilt in court in exchange of a lighter punishment that would have been given for such an offence. An application for plea bargaining can be filed by an accused person in the court in which such offence is pending for trial.

Black's Law Dictionary[3] defines it as:

> *"The process whereby the accused and the prosecutor in criminal case* ***work out a mutually satisfactory disposition*** *of the case subject to the court approval. It usually involves the accused pleading guilty to a lesser offence or to only one or some of the courts of a multi-count indictment in return for a lighter than that possible for the graver charge."*

A plea bargaining is an agreement reached in a criminal case to finally settle it. In a case instituted on a police report, the parties to the agreement are the accused, the investigating officer, the prosecutor and the victim. All of them must agree to settle the criminal case in which the accused pleads guilty to the offence for which a trial is pending. In any other cases, the parties to the agreement are the accused and the victim. They must agree to settle the criminal case in which the accused pleads guilty to the offence for which a trial is pending. The agreement to settle a case must be under the guidance and the supervision of the Court.

CONCEPT OF PLEA BARGAINING

[1] Justice Pasayat A., "Plea Bargaining," 5 Nyaya Deep, National Legal Services Authority, vol. VIII, (2007).
[2] Rao K. S. & Panaji M., "Alternative Dispute Resolution in Criminal Jurisprudence," 263 Cr. L J Sept. (2009).
[3] 8th edition, 1190 (2004)

Indexed with IIJIF
Impact Factor : 1.021
ISSN: 2456 - 608X
International Journal of Legal Research and Studies
An UGC Approved Online Law Journal

In its most traditional and general sense, "plea bargaining" refers to pre-trial negotiations between the accused, usually conducted by the counsel and the prosecution, during which the accused agrees to plead guilty in exchange of certain concessions by the prosecutor.

Plea Bargaining falls into two broad categories i.e.

- *"Charge bargaining"* which refers to a promise by the prosecutor to reduce or dismiss some of the charges brought against the accused in exchange for a guilty plea.
- *"Sentence bargaining"* refers to a promise by the prosecutor to recommend a specific sentence or to refrain from making any sentence recommendation in exchange for a guilty plea.

Both methods affect the dispositional phase of the criminal proceedings by reducing accused's ultimate sentence.[4]

Types of Plea Bargaining		
Charge Bargaining	**Sentence Bargaining**	**Fact Bargaining**
This is common and widely known form of plea. It involves a negotiation of the specific charges that the accused will face at trial. Usually, in return for a plea of 'guilty' to a lesser charge, a prosecutor will dismiss the higher or other charges' counts.	Sentence bargaining involves the agreement to a plea of guilty (for the sated charge rather then a reduced charge) in return for a lighter sentence. It sources the prosecution the necessity of going through trial and proving its case. It provides the accused with a opportunity for a lighter sentence.	The least used negotiation involves an admission to certain facts in return for an agreement not to introduce certain other facts into evidence

PLEA-BARGAINING - ROLE OF LAW COMMISSION OF INDIA

In the initial years, the Indian approach towards the concept of plea-bargaining does not appear to be encouraging. It may be imperative to mention here that the Law Commission of India advocated the introduction of provisions relating to plea-bargaining in the 142nd, 154th reports. The initiative taken by the government in this regard may be as under:

142nd Report

In its 142nd the Law Commission discussed the matter of plea bargaining with many states and jurists and came to some of the following observations:[5]

- Only the offender himself may invoke the scheme.
- There will be no negotiations for plea bargaining with the prosecuting agency or its advocate none of whom will have any role to play in the matter of moving the competent authority for invocation of the scheme.
- The competent authority will be a 'plea-judge' designated by the Chief Justice of the considered High Court from amongst the sitting judges competent to try cases punishable with imprisonment of up to seven years. And a Bench of two retired High Court judges nominated in this behalf by the Chief Justice of the state concerned in respect of offences punishable with imprisonment for seven years or more.

[4] Criminal Procedure: An Analysis of Constitutional Cases and Concepts, 407-408 (1987) 142nd Report of Law Commission of India on Concessional Treatment for offenders who on their own initiative choose to plead guilty without any bargaining, 142.5 (1991).

[5] Supra note 4 at 142.53-54

Indexed with IIJIF
Impact Factor : 1.021
ISSN: 2456 - 608X
International Journal of Legal Research and Studies
An UGC Approved Online Law Journal

- The application will be entertained only after the competent authority is, upon ascertaining in the manner specified in the scheme, is satisfied that is made voluntarily and knowingly.
- The competent authority will hear the application in the presence of the aggrieved party and the public prosecutor and after affording a short hearing to them.
- The competent authority shall have the power to impose a jail term or fine or direct the accused applicant to pay compensation to the aggrieved party for compounding the offence in regard to the offences, which are compoundable with or without the leave of court.
- The competent authority shall award a minimum jail term of say six months or one year in respect of specified offences if the scheme is extended in this behalf in the light of the provisions in the scheme.
- The Competent Authority may award a jail term not exceeding one half of the maximum provided by the relevant provision where the Competent Authority is not called upon to exercise the powers to release on probation under the Probation of Offenders Act, 1958 or under s.360 of the Code of Criminal Procedure, 1973 in accordance with the guidelines.
- In the first instance, as an experiment measure, the scheme may be made applicable only to offences which are liable for punishment with imprisonment of less than seven years or fine if both the Central and the State Government so revolves by the notification issued by such government and published in Government Gazette.
- The scheme may be made applicable to offences liable to be punished with imprisonment for seven years and more after properly evaluating and assessing the results of the application of the scheme to offences liable to be punished with imprisonment for less than seven years.

154th Report

In its 154th report, Law Commission has given the following recommendations in para 9 of the report:[6]

- The process of plea bargaining shall be set in motion after issue of process and when the accused appears, either on written application by the accused to the court or suo moto by the court to ascertain the willingness of the accused. On ascertainment of the willingness of the accused, the court shall require him to make an application accordingly.
- On the date so fixed for the hearing the court shall ascertain from the accused whether he made the application voluntarily without any inducement or pressure from any quarters, particularly from public prosecutor or police. The court shall ensure that neither the public prosecutor nor police is present at the time of making the preliminary examination of the accused.
- Once the court is satisfied about the voluntary nature of the application, the court shall fix a date for hearing the public prosecutor and the aggrieved party and the accused applicant for final hearing and passing of final order. If the court finds that the application has been made under duress or pressure, or that the applicant after realizing the consequences is not prepared to proceed with the application, the court may reject the application.
- Such an application may be rejected either at the initial stage or after hearing the public prosecutor and the aggrieved party. If the court finds that, having regard to the gravity of the offence or any of the circumstances, which may be brought to its notice by the public prosecutor or aggrieved party, the case not a fit one for exercise of its powers on plea bargaining the court may reject the application supported by the reasons therefore.
- The order passed by the court on the application of the accused-applicant shall be confidential and will be given only to the accused if he so desires. The making of such application by the accused shall not create any prejudice against the accused at the ensuring trial.
- We are of the view that such a plea bargaining can be availed by the accused in the categories of offences mentioned above before the court at any stage after the charge-sheet is filed by the investigating agency in

[6] *154th Report*, Law Commission of India, The Code of Criminal Procedure,1973 154.52-54 (1996).

Indexed with IIJIF
Impact Factor : 1.021
ISSN: 2456 - 608X
International Journal of Legal Research and Studies
An UGC Approved Online Law Journal

police cases and in respect of private complaints at any stage after the cognizance is taken. An order passed by the court on such a plea shall be final and no appeal shall be against such an order passed by the court accepting the plea.

- In cases where the provisions of Probation of Offenders Act, 1958 or s.360 of Cr.P.C are applicable to an accused applicant, he would be entitled to make an application that he is desirous of pleading guilty along with a prayer for availing for the benefit under the legislative provisions referred in above. In such cases, court after hearing the public prosecutor and the aggrieved party, may pass an appropriate order conferring the benefit of those legislative provisions. The court may be empowered to dispense with necessity of getting a report from the probation officer in appropriate cases. The provision regarding confidentiality of the making of application and the consequences of rejection outlined in paragraph 9.5 will be applicable if court rejects the application.
- If an accused enters a plea of guilty in respect of an offence for which minimum sentence is provided for, the court may, instead of rejecting the application in limine, after hearing the public prosecutor and the aggrieved party, accept the plea of guilty and pass an order of conviction and sentence to the tune of one-half of the minimum sentence provided.
- The court shall on such a plea of guilty being taken, explain to the accused that it may record a conviction for such an offence and it may after hearing the accused proceed to hear the public prosecutor or the aggrieved person as the case may be:
  - Impose a suspended sentence and release him on probation;
  - Order him to pay compensation to the aggrieved party; or
  - Impose a sentence, which commensurate with the plea bargaining; or
  - Convict him for an offence of lesser gravity than that for which the accused has been charged if permissible in the facts and circumstances of the case.

PROVISIONS UNDER THE CODE OF CRIMINAL PROCEDURE, 1973

- As Per Section 265-A, the plea bargaining shall be available to the accused who is charged of any offence *other than offences punishable with death* or *imprisonment* or *for life* or *of an imprisonment for a term exceeding to seven years*.
- Section 265 A (2) of the Code gives power to notify the offences to the Central Government. The Central Government issued Notification No. SO1042 (II) dated 11-7/2006 specifying the offences affecting the socio-economic condition of the country.
- Section 265-B contemplates an application for plea bargaining to be filed by the accused which shall contain a brief details about the case relating to which such application is filed, including the offences to which the case relates and shall be accompanies by an affidavit sworn by the accused stating therein that he has voluntarily preferred the application, the plea bargaining the nature and extent of the punishment provided under the law for the offence, the plea bargaining in his case that he has not previously been convicted by a court in a case in which he had been charged with the same offence. The court will thereafter issue notice to the public prosecutor concerned, investigating officer of the case, the victim of the case and the accused for the date fixed for the plea bargaining. When the parties appear, the court shall examine the accused in-camera wherein the other parties in the case shall not be present, with the motive to satisfy itself that the accused has filed the application voluntarily.
- Section 265-C prescribes the procedure to be followed by the court in working out a mutually satisfactory disposition. In a case instituted on a police report, the court shall issue notice to the public prosecutor concerned, investigating officer of the case, and the victim of the case and the accused to participate in the meeting to work out a satisfactory disposition of the case. In a complaint case, the Court shall issue notice to the accused and the victim of the case.
- Section 265-D deals with the preparation of the report by the court as to the arrival of a mutually satisfactory disposition or failure of the same. If in a meeting under section 265-C, a satisfactory disposition

Indexed with IIJIF
Impact Factor : 1.021
ISSN: 2456 - 608X
International Journal of Legal Research and Studies
An UGC Approved Online Law Journal

of the case has been worked out, the Court shall prepare a report of such disposition which shall be signed by the presiding office of the Courts and all other persons who participated in the meeting. However, if no such disposition has been worked out, the Court shall record such observation and proceed further in accordance with the provisions of this Code from the stage the application under sub-section (1) of section 265-B has been filed in such case.

- Section 265-E prescribes the procedure to be followed in disposing of the cases when a satisfactory disposition of the case is worked out. After completion of proceedings under S. 265 D, by preparing a report signed by the presiding officer of the Court and parities in the meeting, the Court has to hear the parties on the quantum of the punishment or accused entitlement of release on probation of good conduct or after admonition. Court can either release the accused on probation under the provisions of S. 360 of the Code or under the Probation of Offenders Act, 1958 or under any other legal provisions in force, or punish the accused, passing the sentence. While punishing the accused, the Court, as its discretion, can pass sentence of minimum punishment, if the law provides such minimum punishment for the offences committed by the accused or if such minimum punishment is not provided, can pass a sentence of one fourth of the punishment provided for such offence. " Section 265-F deals with the pronouncement of judgment in terms of mutually satisfactory disposition.
- Section 265-G says that no appeal shall be against such judgment.
- Section 265-H deals with the powers of the court in plea bargaining. A court for the purposes of discharging its functions under Chapter XXI-A, shall have all the powers vested in respect of trial of offences and other matters relating to the disposal of a case in such Court under the Criminal Procedure Code.
- Section 265-I specifies that Section 428 is applicable to the sentence awarded on plea bargaining.
- Section 265-J talks about the provisions of the chapter which shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of the Code and nothing in such other provisions shall be construed to contain the meaning of any provision of chapter XXI-A.
- Section 265-K specifies that the statements or facts stated by the accused in an application for plea bargaining shall not be used for any other purpose except for the purpose as mentioned in the chapter.
- Section 265-L makes chapter not applicable in case of any juvenile or child as defined in Section 2(k) of Juvenile Justice (Care and Protection of Children) Act, 2000.

For a valid disposal on plea bargaining it is important to follow the aforesaid procedure contemplated in Chapter XXI-A. Even though 'plea bargaining' is available after the introduction of the said amendment is available, in cases of offences which are not punishable either with death or with imprisonment for life or with imprisonment for a term exceeding seven years, the chapter contemplates a mutually satisfactory disposal of the case which may also include the giving of compensation to victim and other expenses and same cannot be done without including the victim in the process of arriving at such settlement.

JUDICIAL INTERPRETATION

- In *State of Uttar Pradesh Versus Chandrika*[7]*, Supreme Court held that "*The concept of 'plea bargaining' is not recognised and is against public policy under our criminal justice system. Section 320 Criminal Procedure Code provides for compounding of certain offences with the permission of the Court and certain others even without permission of the Court. Except the above, the concept of negotiated settlement in criminal cases is not permissible. This method of short-circuiting the hearing and deciding the criminal appeals or cases involving serious offences requires no encouragement. Neither the State nor the public prosecutor nor even the Judge can bargain that evidence would not be led or appreciated in consideration of getting flee bite sentence by pleading guilty."
- In *Madanlal Ram Chandra Daga etc. v. State of Maharashtra*[8], wherein this Court held :- "In our opinion, it is very wrong for a court to enter into a bargain of this character. Offences should be tried and

[7] 1999(8) SCC 638
[8] 1968(3) SCR 34 Page No. 39

Indexed with IIJIF
Impact Factor : 1.021
ISSN: 2456 - 608X
International Journal of Legal Research and Studies
An UGC Approved Online Law Journal

punished according to the guilt of the accused. If the Court thinks that leniency can be shown on the facts of the case it may impose a lighter sentence. But the court should never be party to a bargain by which money is recovered for the complainant through their agency. We do not approve of the action adopted by the High Court..."

- Again the question of plea bargain was considered by this Court in *Murlidhar Meghraj Loya v. State of Maharashtra*[9], and disapproved by following succinct observation :- "To begin with, we are free to confess to a hunch that the appellants had hastened with their pleas of guilty hopefully, induced by an informal, tripartite understanding of light sentence in lieu of nolo contendere stance. Many economic offenders resort to practices the Americans 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 bargin being a plea of guilt coupled with a promise of 'no jail'. These advance arrangements please everyone except the distant victim, the silent society. The prosecutor is relieved of the long process of proof, legal technicalities and long arguments, punctuated by revisional excursions to higher courts, the court sighs relief that its ordeal, surrounded by a crowd of papers and persons, is avoided by one case less and the accused is happy that even if legalistic battles might have held out some astrological hope of abstract acquittal in the expensive hierarchy of the justice-system he is free early in the day to pursue his old profession. It is idle to speculate on the virtue of negotiated settlements of criminal cases, as obtains in the United States but in our jurisdiction especially in the area of dangerous economic crimes and food offences this practice intrudes on society's interests by opposing society's decision expressed through predetermined legislative fixation of minimum sentences and by subtly subverting the mandate of the law. The jurists across the Atlantic partly condemn the bad odour of purchased pleas of guilt and partly justify it philosophically as a sentence concession to a defendant who has by his plea 'aided in ensuring the prompt and certain application of correctional measures to him':

In civil cases we find compromises actually encouraged as a more satisfactory method of settling disputes between individuals than an actual trial. However, if the dispute..... finds itself in the field of criminal law, "Law Enforcement" repudiates the idea of compromise as immoral, or at best a necessary evil. The "State" can never compromise. It must "enforce the law". Therefore upon methods of compromise are impossible[10].

Hence, it is settled law that on the basis of plea bargaining Court cannot dispose of the criminal cases. The Court has to decide it on merits. If accused confesses his guilt, appropriate sentence is required to be imposed. Further, the approach of the Court in appeal or revisions should be to find out whether the accused is guilty or not on the basis of evidence on record. If he is guilty, appropriate sentence is required to be imposed or maintained. If the appellant or his counsel submits that he is not challenging the order of conviction, as there is sufficient evidence to connect the accused with the crime, then also the Court's conscious must be satisfied before passing final order that the said concession is based on the evidence on record. In such cases, sentence commensurating with the crime committed by the accused is required to be imposed. Mere acceptance or admission of the guilt should not be a ground of reduction of sentence. Nor can the accused bargain with the Court that as he is pleading guilty sentence be reduced.

BENEFITS IN RESPECT OF VICTIM

- Quick Justice for Victim
- He can easily get the compensation, which he may get on the discretion of Judge/Magistrate.
- He can save himself from long drawn Judicial Process.
- It is less time and money consuming.
- End of Uncertainty

[9] 1976(3) SCC 684 Para 13
[10] Arnold : Law Enforcement - An a attempt at Social Dissection, 42 Yale, L.J.I. 19 (1932)

Indexed with IIJIF
Impact Factor : 1.021
ISSN: 2456 - 608X
International Journal of Legal Research and Studies
An UGC Approved Online Law Journal

BENEFITS IN RESPECT OF ACCUSED

- Provision of lesser Punishment.
- If no minimum punishment is provided, then he will get one fourth of the punishment provided.
- He may be released on probation or admonition, which may not affect his career.
- He may get the gain of period already undergone in custody under section 428 of Cr.P.C
- No appeal lies against the judgment in favour of him.
- Complete Protection available for admission of accused cannot be used for any other purposes except for Plea-bargaining.
- Less time and money consuming.
- End of Uncertainty.

CONCLUSION

This article concludes that victim participation in plea bargains would advance various interests of the victim and of society without any significant detrimental impact to the interests of prosecutors and accused. Considering the interests to be served, the victim's participation right is best defined as a right to be heard by the trial judge before the plea bargain is accepted. The trial judge is one of the participants in the plea bargain whose approval is necessary for the plea bargain to be finalized. Exposing the trial judge to the victim's views is an effective approach because trial judges currently have sufficient discretion in accepting plea bargains to take the victim's information into account and reject the plea bargain if the bargain is overly lenient to the defendant. Another participant whose approval is necessary is the prosecutor, but the trial judge is a better target for the victim's statement than the prosecutor for several reasons.

The victim's right to participate in plea bargains, however, should be limited in two ways. First, this participation right is only a right to be heard by the trial court; the victim would have no right to appeal and challenge the trial court's decision on acceptance of the plea bargain. Second, the right would also be limited in that if the trial judge denied the victim the right to be heard, no cause of action would be generated for the victim. Instead, the victim would have the option of filing a complaint against the judge with the appropriate judicial review commission. Within these limits, victims would have a right to participate but would not be able to control the plea bargain; nor would the existence of this right generate additional litigation to burden the system.

There are some suggestions for rights to be given to the victims which are as under:

- The victim has a right to participate at the plea bargain hearing by expressing his or her views on the plea bargain to the trial court before the bargain is accepted. The victim may make his or her statement either orally by appearing at the plea bargain hearing, or in writing by filing a sworn statement with the court.
- The prosecutor must notify the victim at least ten days before the plea bargain hearing of the following: the proposed terms of the plea bargain, the schedule and place of the plea bargain hearing, and the existence of the victim's right to participate at the hearing, either by making an appearance at the hearing or by filing a sworn statement.
- If the victim is denied the right to be heard on the plea bargain, the victim has no cause of action but may report the judge to the appropriate judicial commission.
- The victim would have no right to appeal the trial judge's acceptance or rejection of the plea bargain.

A right to participate as defined and limited in these terms is an efficient method of allowing victims a voice in plea bargains without undue stress on the other participants, in the plea bargain or on the judicial system.