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PLEA BARGAINING MECHANISM IN INDIA: A STUDY IN COMPARATIVE AND ANALYTICAL CONTEXT

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***Abstract*-- One of the most appalling problems of Indian judiciary is the pendency of cases which account for around three cores. The legislature came with a revolutionary tool of plea bargaining to address the pendency of cases. The plea bargaining has been one of the latest innovations to the criminal law which come into force in 2006 by the Criminal Law Amendment Act, 2005.**
A plea bargain is an agreement in criminal law proceedings, whereby the prosecutor provides a concession to the defendant in exchange for a plea of guilt or no contenders. This may mean that the defendant will plead guilty to a less serious charge or to one of the several charges, in return for the dismissal of other charges; or it may mean that the defendant will plead guilty to the original criminal charge in return for a more lenient sentence. In the current research paper, the researchers want to highlight different types of plea bargaining, its legal application in India and different cases that happened in India along with a brief comparison between Indian Model of Plea Bargaining with American Model.
Keywords: Plea bargaining, Criminal Law Amendment Act, 2005, Prosecutor, Mutually satisfactory disposition, American model.

INTRODUCTION

"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

The famous saying Justice delayed is justice denied holds utmost importance while discussing the concept of Plea bargaining. Plea bargaining is a pre-trial negotiation between the accused and the prosecution where the accused agrees to plead guilty in exchange for certain concessions by the prosecution. It is a bargain wherein a defendant pleads responsible to a lesser fee and the prosecutors in go backdrop more serious charges. It is not available for all types of crime e.g.; someone can not declare plea bargaining after committing heinous crimes or for the crimes that are punishable with demise or life imprisonment. Those in support of plea bargaining claims that it speeds court proceedings and guarantees a conviction whereas opponents believe that it prevents justice from being served.

PLEA BARGAINING IN INDIA

A new Chapter that is Chapter XXI on Plea Bargaining has been introduced 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. Basically the concept of plea Bargaining has its origination in America and 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.

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 of Socio-economic nature 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.

Plea Bargaining is not an indigenous concept of Indian legal system. It is a part of the recent development of Indian Criminal Justice System (ICJS). It was inculcated in Indian Criminal Justice System after considering the burden of long-standing cases on the Judiciary.

The 154th Report of the Law Commission was first to recommend the 'plea bargaining' in Indian Criminal Justice System. It defined Plea Bargaining as an alternative method which should be introduced to deal with huge arrears of criminal cases in Indian courts.

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Cases in which plea bargaining was declared unconstitutional and unfit for Indian Judicial System

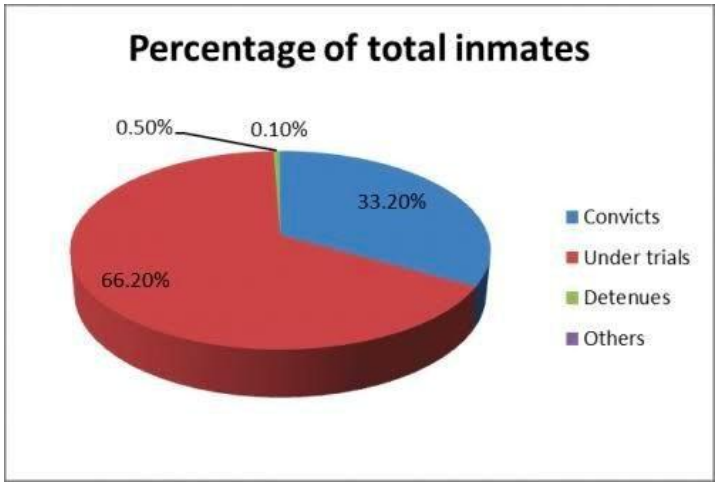
In *Madanlal Ramachander Daga* v. *State of Maharashtra*, the Supreme Court observed the practice of plea bargaining to be wrong in the eyes of law. It further noted that the Court must conduct a trial of the accused and decide the case on the basis of its merits and the evidences so produced on record. The Court is free to give a lesser sentence than the maximum prescribed sentence to the accused if it feels it to be in the interest of justice. But, the Court should not enter into any kind of a bargain with the accused as plea bargaining is not valid in the eyes of law.

In *Kasambhai* v. *State of Gujarat*, the Supreme Court held the practice of plea bargaining to be against public policy.

In *Kachhia Patel Shantilal Koderlal* v. *State of Gujarat & Anr*, the Supreme Court called plea bargaining to be a highly reprehensible practice which can never be allowed in the Indian legal system. The Court further observed in that case that the practice of plea bargaining would lead to more corruption and may also encourage collusions. If plea bargaining will be allowed in India then the system of administration of justice may get polluted.

In *Uttar Pradesh* v. *Chandrika*, the Supreme Court called plea bargaining to be unconstitutional. It reiterated that if the Court deems it fit to give a lesser sentence to the accused than the maximum prescribed statement on the basis of the facts and the merits of the case, the Court can do so. But entering into plea bargaining, especially to dispose of criminal cases is not valid in the eyes of law.

Reasons for introducing this concept in India



(Source – Projectguru)

i Speedy disposal of criminal cases i.e. reduction in heavy backlogs.
ii Time saving
iii No uncertainty of a case
iv Benefits to both parties (accused and state) as they save legal expenses
v Less congestion in jails
vi Under present system, 75% to 90% of the criminal cases results in acquittal, in this situation it is preferable to introduce this concept in India.
vii It is very unfair with accused as he has to go through mental torture as well when kept with hardcore criminals because if the accused is innocent then he will accept his guilt and in this situation, it is not reasonable.

Benefits in respect of Victim

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i Compensation can be easily received
ii He can save himself from long drawn Judicial Process.
iii Time and money saving

Benefits in respect of Accused:

i In case of Minimum Punishment, he will get half punishment.
ii If no such punishment is provided, then he will get one fourth of the punishment provided.
iii He may release on probation or admonition.
iv He may get the gain of period already undergone in custody under section 428 of Cr.P.C
v No appeal lies against the judgment in favour of him.
vi Admission of accused cannot be used for any other purposes except for Plea-bargaining.
vii Less time and money consuming.

Procedure to be followed in plea bargaining cases

STEP 1: Application for Plea Bargaining
STEP 2: Procedure on filing of the application
STEP 3: To provide time for mutually satisfactory settlement.
STEP 4: Procedure for working out mutually satisfactory disposition
STEP 5: Representation by a Pleader/Advocate
STEP 6: Duty of the Court
STEP 7: Report of mutually satisfactory disposition
STEP 8: Award of compensation and hearing the parties on the quantum of punishment
STEP 9 : Mode of disposal of the case
STEP 10: Pronouncement and finality of the Judgment
STEP 11: Setting off undergone period
STEP 12: Stated facts cannot be used

PRINCIPLE ACTORS IN PLEA BARGAINING

a. Prosecutors.

Prosecutors are influenced by a number of factors when making plea deals. As previously stated, one key incentive is the apparent necessity to obtain a large number of guilty pleas in order to keep the number of criminal cases under control. Prosecutors may make more concessions in complex cases where trials are likely to take a long time than in more typical prosecutions because of this administrative concern.

Furthermore, prosecutors virtually invariably agree that the strength or weakness of the state's evidence is a major negotiating point. They give more concessions to defendants who appear to have a good chance of acquittal than to defendants who don't appear to have a good chance of acquittal, based on the principle that "half a loaf is better than none." In some cases, prosecutors may mislead defendants into guilty pleas by concealing case flaws that would make a conviction difficult at trial. The practice of ‘‘bargaining hardest when the case is weakest’’ may suggest that ‘‘the greatest pressures to plead guilty are brought to bear on defendants who may be innocent’’

Frequently, the issue compromised through plea bargaining is not whether the prosecutor has charged ‘‘the right person.’’ Rather, the parties compromise a legal issue (such as the admissibility of evidence) or a mixed issue of fact and law (such as intention, causation, insanity, or self-defense).

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Prosecutors plainly are influenced by the equities of individual cases (the seriousness of the defendant's alleged crime, the defendant's prior criminal record, and so on). At times, prosecutors are influenced as well by their personal views of the law the defendant is accused of violating. Moreover, although the victim of the crime has been called the forgotten person in plea bargaining, many prosecutors give substantial weight to the desires of victims.

Prosecutors enter plea bargains in most of the roles listed above because they appear to be more beneficial to the state than the alternative of a trial. Prosecutors, on the other hand, can bargain for more personal reasons. A prosecutor can avoid most of the difficult work of preparing cases for trial and trying them by negotiating a plea deal. Prosecutors can also employ plea bargains to achieve ostensibly high conviction rates. Plea bargaining practices may also be influenced by the desire to be liked and have comfortable connections with coworkers. Similarly, a desire for professional promotion, whether within or outside of a prosecutor's office, may exist. Although most prosecutors probably do not deliberately sacrifice the public interest to their personal goals, the bargaining process is beset by conflicts of interest, and prosecutors may rationalise decisions that serve primarily their own interests.

The amount to which prosecutors "overcharge" in order to obtain guilty pleas is a recurring issue. Do they charge more serious crimes or a higher number of offences than the circumstances of their cases seem to warrant in order to get defendants to plead guilty to the "correct" charges? Although intentionally presenting false charges in order to obtain plea negotiation leverage is extremely rare, prosecutors may interpret the existing evidence and file charges at the greatest degree that the evidence will allow due to the possibility of plea bargaining and other strategic reasons. Only when defendants insist on standing trial do prosecutors file charges that they plan to pursue to conviction.

b. Defence Attorneys

Bargaining with unrepresented defendants was historically widespread, but it is now uncommon save in traffic and other minor offences. In most cases, defence counsel tries to improve their clients' interests through plea bargaining, much like prosecutors try to advance the public interest.

They usually suggest plea bargaining to a client when the concessions that have been given appear to outweigh the client's chances of acquittal.

However, there are significant conflicts of interest once again. Private defence attorneys are frequently paid in advance, and their fees are unaffected by the pleas that their clients take. After collecting the fee, an attorney's personal interest may be in resolving a client's case as quickly as possible—that is, by submitting a guilty plea. Even the most scrupulous attorneys may realise that this economic issue has influenced their decisions to some extent. Furthermore, not all defence attorneys are ethical. "Cop-out lawyers," who plead almost all of their clients guilty, occasionally represent huge groups of defendants for a minimal cost. Some of these lawyers have been accused of deceiving their clients in order to persuade them to enter guilty pleas.

Appointed attorneys may face a conflict of interest in the same way. The tiny price that an appointed attorney is expected to earn for representing an indigent defendant may appear insufficient pay for a trial, but it may appear far less inadequate as a fee for negotiating a guilty plea.

Unlike private lawyers and other appointed attorneys, public defenders are salaried attorneys whose pay is fixed regardless of how long their cases take. Nonetheless, public defenders are frequently overburdened, and some defenders appear to regard plea bargaining as crucial for good case management in all but the most unusual situations.

In theory, the decision to enter a plea of guilty is the defendant's rather than the attorney's. Nevertheless, many defense attorneys speak of ''client control'' as an important part of the plea negotiation process. When clients are reluctant to follow their advice, these attorneys may use various forms of persuasion,

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including threats to discontinue their representation, in an effort to lead the clients to what the attorneys regard as the appropriate course of conduct.

The serious problem of providing effective representation in the plea bargaining process often has been neglected. Observers simply assume that defense attorneys will perform the protective role the criminal justice system assigns to them and will advise guilty pleas only when these pleas are likely to advance their clients' interests. This view of the defense attorney's role is often more romanticized than real.

c. Trial Judges

Although prosecutors and defense attorneys are the principal actors in the plea bargaining process, judicial participation in this process is far from rare. This participation may take various forms. In some courts, trial judges conduct in-chambers conferences and offer to impose specified sentences when defendants plead guilty. In others, judges offer suggestions to prosecutors and defense attorneys, describe how they have treated certain cases in the past, or indicate a probable range of sentences.

Judges who do not participate in any form of explicit bargaining may engage in implicit bargaining by treating a defendant's guilty plea as a reason for substantially reducing the penalty imposed. Judges may also further the goals of plea bargaining by deferring routinely to prosecutorial plea bargaining decisions. Primarily on the theory that judicial plea bargaining is more coercive that prosecutorial bargaining, some authorities have argued that judges should be prohibited from engaging in this practice. This position has been adopted in rules and appellate decisions in a number of jurisdictions, including the federal courts.

TYPES OF PLEA BARGAINING

There are three main types of Plea Bargaining:

i Charge Bargaining;
ii Sentence Bargaining; and
iii Fact Bargaining.

Each type involves implied sentence reductions, but differs in the ways of achieving those reductions.

i Charge Bargaining - It is common in criminal cases. It is a bargain in which a defendant pleads guilty to reduced charges. It occurs when defendant pleads guilty to necessarily included offences. The greater charge of the defendant is dismissed in return of pleading guilty to a lesser charge.
ii Sentence Bargain - Motive of this is to get lesser sentence. It involves assurance of lighter or alternative sentences in return for a defendant's pleading guilty. In United States, it can only be granted if they are approved by the trial judge. It sometimes occurs in high profile cases, where the prosecutor does not want to reduce the charges against the defendant, usually for fear of how the newspapers will react. A sentence bargain may allow the prosecutor to obtain a conviction to the most serious charge, while assuring the defendant of an acceptable sentence.
iii Fact Bargain - It is the least used negotiation. Defendant agrees to stipulate certain facts in return he prevents other facts to enter as evidence. It involves an admission to certain facts ("stipulating" to the truth and existence of provable facts, thereby eliminating the need for the prosecutor to have to prove them) in return for an agreement not to introduce certain other facts

Significance of plea bargaining : Selected judgments

The High Court of Gujarat in the case of *State of Gujarat v. Natwar HarchanjiThakor* observed that one of the main objects of law is to provide easy, cheap and expeditious justice to the people. It further observed that there is a need for fundamental reform in the criminal justice system so as to ensure speedy delivery of justice in criminal cases which have become difficult due to the increasing backlog of cases

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in the Courts of Law in India. Plea bargaining was termed to a proper method of redressal of disputes that would result in a new realm of judicial reforms in the Indian criminal justice system.

In *Ranbir Singh v. State*, the accused had pleaded guilty before the Trial Court and had entered into plea bargaining with the prosecutor and the victim. The accused was charged for causing death by negligent driving. However, even after entering into a mutually acceptable decision between the accused and the prosecutor along with the victim, the Trial Court awarded the maximum punishment to the accused. On a further appeal to the High Court of Delhi, the High Court observed that the accused was a poor man yet he had agreed to pay a suitable amount of compensation to the victim's family which was mutually accepted by the accused and the victim. Accordingly, the Court reduced the punishment of the accused to 1/4th of the maximum punishment of Section 304A of the Indian Penal Code as per Section 265-E of the Code of Criminal Procedure.

In *Joseph P.J. v. State of Kerala* it was held that the procedure for plea bargaining as prescribed under Sections 265-A to 265-L of the Code of Criminal Procedure are mandatory in nature and must be followed by all the Courts while dealing with an application for plea bargaining. The Court further in this case held that in any circumstances if the Court does not examine the accused in front of the camera in the absence of the complainant as mandated in Section 265-B clause 4, then such an act or omission on the part of the Court shall result into grave illegality and such an order or judgment passed by the Court must be quashed.

In the case of *Shri Vinod Kumar Agarwal v. Central Bureau of Investigation*, the High Court of Allahabad made a few important observations regarding the scheme of plea bargaining. Firstly, it observed that an application for plea bargaining cannot be entertained by any Court before the police file a report under Section 173 of the Criminal Procedure Code suggesting that an applicant is accused of certain offences. Secondly, the addition of charges is a part of a trial and hence the Court has to take into consideration an application of plea bargaining in the light of the original and additional charges. Further, a Court has a right to reject an application of plea bargaining when a charge for an offence is added during the trial, the maximum punishment for which is a death penalty or life imprisonment.

COMPARATIVE ANALYSIS OF INDIAN MODEL OF PLEA BARGAINING & AMERICAN MODEL

As can be seen from the examples given above, the Indian approach of plea bargaining is insufficient to handle the problem of outstanding cases. The Indian judiciary has yet to accept plea bargaining as a standard method of delivering justice. The issue with the Indian model is that the provisions appear to be introductory in character, as though the legislature wanted to put it to the test before introducing the comprehensive version. The Indian model has a number of riders that reflect the legislature's cautious attitude and have rendered plea bargaining an entirely failing notion in the Indian legal arena. An attempt has been made to compare and contrast the Indian and American models of Plea bargaining to identify as to where in the Indian model problem lies which has rendered it ineffective in achieving the goals for which it was discovered. The Indian model is conceptually significantly different from that of the United States. Plea Bargaining's application in India is limited, and it has yet to be embraced by the general public as a fundamental element of the Indian judicial system.

Basic comparison between the two models enumerated below:

In India plea is available for the offences with provision of up to 7 years imprisonment. American model does not restrict the plea to specific offences but is available to any crime even to homicide.

• The plea in India is not available where victim is a women or child below the age of 14 years. The American model does not put such riders in the way of plea bargaining.

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- The other riders put in the Indian model are that the plea is not available to juvenile, habitual offenders and the offenders of socio economic offences. The American model entertains all the cases without putting any such riders present in the Indian model.
- In the procedural comparison between the two models the Indian model directs the accused to apply for the plea unlike in the American model where the prosecutor and the accused make the application after the negotiations between them are over.
- In Indian model of plea bargaining it is implicit from the provisions that the victim has a power to veto the bargain reached unlike the American model where the victims have the limited ability to influence the terms of the plea bargains.

The comparison between the two models have revealed the exhaustive nature of the American model of the plea bargaining. The Indian model though is inclusive in nature and only specific cases can opt for it. Despite the fact that plea bargaining was implemented in India to solve the problem of case pendency, it has not adequately or efficiently addressed the problem for which it was introduced during the last 10 years. The cause for this could be found in the comparison with the American model mentioned before. The fact that there are less cases accessible for plea bargaining in a country where there are only three crores cases pending reflects the phenomenon's inefficiency. The American model of plea bargaining is not without flaws, but it is a workable approach, as evidenced by the fact that about 90% of cases in America are resolved by plea bargaining. By utilising plea bargaining, the judge is relieved of some of its responsibilities.

The American model has proved to be far more successful one than the Indian model. India is new in the arena of plea bargaining and needs a lot of overhauling to become successful in bringing down the pendency of the cases.

CONCLUDING OBSERVATIONS

A close analysis of the plea bargaining in India exposes the pros and cons of the model applicable here. The benefits of the Indian model include the active participation of the judiciary, as opposed to the passive role of the judiciary in the United States. The victim in the Indian form of plea bargaining has the power to veto the agreement, but the victim in the United States has limited influence over the terms of the agreement. Despite having a few advantages over the American model of plea bargaining, which is regarded the world's pioneer and most successful, the Indian approach has a slew of flaws. The Indian model's flaws have proven to be a stumbling barrier in achieving the desired goal. The article aims to highlight that the plea bargain in India could improve and bring down the monstrous level of pendency of cases.

The poor state of plea bargaining can be gauged by the small number of cases on the subject and the judges' opinions on the subject. To make plea bargaining as successful as it is in the West, a two-fold modification should be implemented. Primarily, the law need adjustments to meet Indian needs, but on a scale comparable to other countries that have succeeded in this sector.

Second, the judiciary and the legal profession should support the law relating to plea bargaining; otherwise, a specific statute will not become a widespread remedy. Plea bargaining law should be given serious consideration and practised on a regular basis. To address the terrible status of the courts in terms of case pending, plea bargaining appears to be the only near-term remedy that can successfully address the problem if it is given serious consideration.

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