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PLEA BARGAIN:AN OVEVIEW*

INTRODUCTION

"The greatest drawback of the administration of justice in India today is because of delay of cases..... The law may or may not be an ass, but in India, it is certainly a snail and our cases proceed at a pace which would be regarded as unduly slow in the community of snails. Justice has to be blind but I see no reason why it should be lame. Here it just hobbles along, barely able to work."
Famous jurist Nani Palkhivala

Plea-bargaining defines Black's Law Dictionary is "the process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to the court approval. It usually involves the defendant's pleading guilty to lesser offence as to only one or some of the courts of a multi-count indictment in return for a lighter sentence than that possible for the graver charge".

Generally, Plea bargain increases efficiency for the courts and reduce expense and time for the defendant. But critics of plea bargain complain that this efficiency comes at the expense of justice.

Origin:
The concept of 'Plea Bargaining' does not found favour of courts in recent past. In fact it was used in the American Judiciary in the 19th century. Though the Bill of Rights makes no mention of the practice when establishing the fair trial principle in the Sixth Amendment, still 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 but finally got an imprisonment of 99 years.
The majorities of the individuals who are accused of a crime give up their constitutional rights and plead guilty. In America, every minute, a criminal case is disposed of by way of a **guilty plea** or **nolo contendere plea**. In a landmark judgment *Bordenkircher v Hayes*[1],the US 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 rejected 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. In tort disputes the courts have employed similar reasoning between private parties also.

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[1] **434 U.S. 357, 98 S. Ct. 663, 54 L. Ed. 2d 604, 1978 U.S.**

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 remainder. The European countries are also slowly legitimizing the concept of plea bargaining, though the Scandinavian countries largely maintain prohibition against the practice.

Position in India

Under Indian Law, initially plea bargaining was not recognized, hence, much importance was not given to it as it was not in Statutes. Reference may, however, be made to Section 206(1) and 206(3) of the Code of Criminal Procedure and Section 208(1) of the Motor Vehicles Act, 1988. These provisions enable the accused to plead guilty for petty offences or less grave offences and to pay small offences whereupon the case is closed.

The application of plea bargaining in India was recommended by the Law Commission following *Brady v. United States*[2] and *Santobello v. New York*[3] where the Supreme Court of USA upheld the constitutional validity and the significant role of the concept of plea bargaining in disposal of criminal cases.

But in *McCarthy v United States*[4] the Supreme Court held that defendants' guilty pleas must be voluntary, and that defendants may only plead guilty if they know the consequences of doing so.

In *MurlidharMeghrajLoya v. State of Maharashtra*[5] and *Kasambhai v. State of Gujarat* the Supreme Court of India examined the concept of plea bargain but did not approve on the basis of formal inducement. Again,the Hon'ble Supreme Court in*Kachhia Patel ShantilalKoderlal v State of Gujrat and Another*[6] strongly disapproved the practice of plea bargain.

Malimath Committee:

Law Commission of India in its 142nd and 154th report suggested the concept of Plea-bargaining in India to deal with huge arrears of criminal cases. To procure speedy trial with benefits such as end of uncertainty, saving of cost of litigation, avoiding prolonged trial and legal expensed of the parties the Malimath Committee substantially agreed with the views and recommendation of the Law Commission. The Commission recommended where the offences are not of a serious character and the effect is mainly on the victim and not on the society, it is desirable to encourage settlement without trial.

Recently in *State of Uttar Pradesh V. Chandrika*[7], the Apex Court held that 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 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 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 265-A TO 265-L have added in the Code of Criminal Procedure so as to provide for raising the plea bargaining in certain types of criminal cases.

It is a devise which ensures that victims receive acceptable justice in reasonable time without risking the prospects of hostile witness, inordinate delay and non- affordable costs. This principle is not applicable for hard crimes or serious crimes, therefore, Indian Law does not

[2] 397 U.S. 742 (1970)In this case, Judge Tuttle established the test of voluntariness for American courts.

[3]**404 U.S. 257, 260, 1971**

[4]394 U.S. 459 (1969)

[5]1976 FAC 38.

[6]1980 CriLJ 553, 554.

[7] 2000 Cr.L.J. 384(386)

provides plea-bargaining for the offences in which (a) offence in punishable with death or imprisonment for life; (b) punishable with imprisonment for a term exceeding 7 years; (c) committed against socio economic conditions of the country; (d) offence committed against women and children below the age of 14 years.

Types of Plea Bargains
There are three basic kinds of plea bargains.

Charge bargaining is an agreement where the defendant pleads guilty to a lesser charge so that greater charges will be dropped.
Sentence bargaining is when the defendant agrees to plead guilty in return for a lighter sentence. Since the judge determines sentencing, not the prosecutor, this type of bargaining may not always be successful. The judge may reject the plea because they disagree with the sentence, the jurisdiction may have punishments that are required by law and cannot be altered by an agreement, or the jurisdiction may have disallowed sentence bargaining altogether.
Fact bargaining is the least common form of plea bargaining. The defendant agrees to stipulate to certain facts in order to prevent other facts from being brought into evidence. Most attorneys don't like fact bargaining and many courts don't allow it.

Is Plea Bargain Final?

A defendant is free to withdraw or take back his plea at any time and elect to go to trial instead, so long as that decision is made **before sentencing**. Once he enters a plea and the court announces his sentence, it's too late for him to withdraw the plea. At this point, his only option is to file an appeal and challenge either the legality of the:

- **Plea**, such as by arguing that he is coerced into pleading guilty or he doesn't understand exactly what it meant to plead to a crime
- **Sentence** because either the judge gave him a sentence that's harsher than the one which he is agreed to in the plea bargain, or because the prosecutor doesn't make the sentencing recommendation he promised to make.

Hence, the judgment delivered by the Court under section 265G shall be final and no appeal shall lie against it except the Special Leave Petition (SLP) to the Supreme Court under Article 136 or a Writ Petition to the High Court under Articles 226 and 227 of the Constitution filed by the accused. This acts as a check on illegal and unethical Bargains.
The provisions authorize the court to give accused the benefit of Probation of Offenders Act where so ever it is possible. Section 12 of the Probation of Offenders Act, 1958 provides that a person found guilty of an offence and dealt with under section 3 or 4 of the said Act, shall not suffer any disqualification attached to the conviction. The Hon'ble High Court in the case of *Sh. Charan Singh v. M.C.D.*[8] has held that no disqualification on account of conviction could be attached to petitioner as he had been released on probation. Thus, the Government employees who are released on probation under the Probation of offenders Act are saved from the disqualification.
In this case, the Hon'ble Delhi High Court has quoted the case of *Trikha Ram v. V. K. Seth and Another*wherein the Hon'ble Supreme Court held that the benefit of Section 12 of The Probation of Offenders ACT, 1958 can be extended to the service of the offender.

Reasons to Introduce in India
The main reasons to introduce Plea Bargain in India are-

[8]Writ Petition (Civil) No. 18725/2005 decided on 05/10/2006.

1. Speedy disposal of criminal cases i.e. reduction in heavy backlogs.
2. Less time consuming.
3. End of uncertainty of a case.
4. Saving legal expenses of both the parties i.e. accused and state.
5. Less congestion in jails.
6. 75% to 90% of the criminal cases results in acquittal, hence it is preferable.

Benefits:

A) Victim:

a) Can easily get the compensation.
b) Can save himself from long drawn Judicial Process.
c) Less time and money consuming.

B) Accused:

a) In case of Minimum Punishment, he will get half punishment.
b) If no such punishment is provided, then he will get one fourth of the punishment provided.
c) May release on probation or admonition.
d) May get the gain of period already undergone in custody under section 428 of Cr.P.C.
e) No appeal lies against the judgment in favour of him.
f) Admission of accused cannot be used for any other purposes except for Plea-bargaining.
g) Less time and money consuming.

Moreover, Courts treat plea bargains as contracts between prosecutors and defendants. If a defendant breaks a plea bargain, the prosecutor is no longer bound by his or her side of the deal. If a prosecutor reneges on plea bargains, defendants may seek relief from the judge. The judge might let them withdraw their guilty pleas, may force the prosecutor to follow the plea bargain, or may apply some other remedy.

Relevant Provision & Procedure for Plea Bargain

- **Section 265-A** says 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 socioeconomic 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 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.

Analysis:

Plea Bargain has remained a disputed concept.While some authorities stress that introduction of plea- bargaining in India is exceptionally good as it will reduce heavy backlog prevalent in Indian Judiciary as well as reduce congestion in jails and other reasons whereas some authorities denied about it on the basis that the socio- economic conditions existed in US and India are very different. Law Commission in its report recommended it with the justification and reasons for accepting it.

On the other hand, Opponent of this concept thinks that:
1. It may show too much softness towards defendants.
2. The process is unfair with the innocent and it seems like legalizing a crime to an extent. We have already provisions i.e. executive pardon, under Probation of Offenders Act, 1958.
3. According to one study of the US, one-third of the people who plead guilty would be acquitted if they went to trial.

Drawbacks:
i) Involvement of the police in plea-bargaining process would tempt coercion on innocent people.
ii) If once guilty application of the accused is rejected then he would face great hardship to prove himself innocent.
iii) Court is impartially challenged due to its involvement in plea-bargaining process.
iv) Involvement of the victim may lead to corruption.

Firstly, some argue that plea-bargaining will dramatically increase the number of cases where innocent persons find themselves imprisoned and with criminal records. Sometimes police make poor innocent people, accused of crimes that they never committed, after being paid off by the actual perpetrators. With the concept of plea-bargaining, these persons will be getting pushed to accept their guilt which they had never committed. In the prevalent situation, where the acquittal rate may be as high as 90% to 95% and it is the poor who will be the victims of this concept and come forward to make confessions and suffer the consequent conviction.

In the name to get speedy justice this measure certainly lead to miscarriages of justice. It is also true that no programme of rehabilitation can be effective for the mind of prisoner who has assumed himself as prisoner and convinced in his own mind that he is in prison because he has become the victim of a senseless, undirected, and corrupt system of justice. Certainly, it undermines the very concept of criminal justice system.

Secondly, it will have striking effects in cases involving state officers, accused of human rights abuse. In case of Custodial torture, this is yet to be made a crime. An Indian police officer accused of torturing a person in his custody may instead only be tried for other offences, such as those punishable under sections 323, 324 or 330 of the Indian Penal Code. The punishments for these offences are within the limit prescribed for punishment under the new law on plea-bargaining. This means that the new law may allow these torturers to escape with lighter penalties, even after knowing the fact that their offences fall into the gravest categories under international law.

Conclusion
The litigant should be encouraged to avail the remedy of plea-bargaining to settle the pending cases. For the successful implementation of plea-bargaining, its application should be necessarily understandable. With the changing world scenario where all the countries are shifting to Alternative Dispute Resolution (ADR) mechanism from the traditional litigation process which is very lengthy and time consuming, the plea-bargaining may be one of the best recourse as an ADR mechanism to meet the challenges of disposal of pending cases. In India, there are not enough courts to deal with the number of cases pending and also shortages of public prosecutors due to backlog in appointments.
While commenting on this aspect, the division bench of the Gujarat High Court observed in *State of Gujarat v NatwarHarchanjiThakor*[9] that, the very object of law is to provide easy, cheap and expeditious justice by resolution of disputes, including the trial of criminal cases and considering the present realistic profile of the pendency and delay in disposal in the

[9] (2005) Cr. L.J. 2957

administration of law and justice, fundamental reforms are inevitable. There should not be anything static. Hence in the realm of judicial reforms, Plea Bargain undoubtedly a great measure and certainly adds a new dimension.

Still to say, Plea bargaining has remained, a disputed concept. Where few people welcome it, others abandon it. Though plea bargaining speeds up caseload disposition, it quiet does in a constitutional manner. As India have no other preferable choice, of course India have to adopt this technique. Only time will be the best judge whether the introduction and prevalence of this new concept is justified or not.