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An Overview of Concept of Plea Bargaining under the Indian legal system

Dr. Uma Shanker Sharma*

Assiciate Professor, Apex School of Law, Apex University, Jaipur-303002 (Rajasthan)

Abstract - The pending cases problem, which accounts for almost three crore cases, is one of the most horrific aspects of the Indian justice system.. Legislators introduced plea bargaining as a new way to reduce the number of cases that are pending. One of the most recent modifications to the criminal code, the Criminal Law Amendment Act, 2005, took effect in 2006 and made plea bargaining possible. About 10 years have passed since the notion was first recognised in Indian criminal law. The goal of this article is to evaluate the concept's success in India, taking into consideration the statutes and court rulings about it. Because of its pioneer role in plea bargaining, this essay is going to take a closer look at it. Additionally, the paper will compare both American as well as Indian versions of plea bargaining in order to highlight the advantages and disadvantages of each method. An overview of the American style of plea bargaining, which has shown to be a highly effective strategy, will be provided in this article. According to the introduction, the article's main purpose is to examine the Indian model of plea bargaining in light of the highly effective American approach. Plea bargaining in Indian courts might benefit greatly from the work done here, which could be put to good use.

Keywords - Indian model of plea bargaining, American model of plea bargaining, Pendency of cases, Common law.

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1. INTRODUCTION

Case pending times in Indian courts are at an all-time high, according to the most recent data. Reports indicate that more than three million cases are now pending in court. Many of these cases have been dragging on for almost a decade. When asked about India's woeful backlog of cases, Chief Justice DipakMisra expressed his dismay at the state of affairs and promised that the backlog will be cleared in around five years. Because of this, the backlog of cases pending in India is a major source of worry. The adage "Justice delayed is justice denied" seems to ring true in a number of high-profile criminal cases in India in recent months: A few examples of cases that have taken so long to resolve are the 1997 fire at the Uphaar Cinema, where the decision was reached after 18 years and the main accused walked free, the 1984 Bhopal gas tragedy, where the case dragged on for several years before the main culprit was ever arrested, and the 1984 anti-Sikh riot case, where the accused are still at large and victims are still waiting for justice. [1]

As a result, our country's legislature devised a strategy to deal with the backlog of cases. Despite its age in the world legal system, the practise of plea bargaining was relatively new to Indian courts when it was introduced in 2006. Plea bargaining provisions were added to the criminal procedure law by the 2005 Amendment Act, which revised the criminal procedure code and included a new chapter XXI A. It's been ten years since India's criminal procedural code adopted the ground-breaking practise of plea bargaining. It was decided to conduct this study to see how far the plea bargaining idea has progressed since it was introduced in India. Simple doctrinal research methods have been used, and the focus of the work will be on the case laws, publications, and legislation that have been presented about Indian plea bargaining. Additionally, if necessary, the study will offer some ideas on how plea bargaining might be made more effective. The history of plea bargaining as a worldwide idea will be briefly discussed in the essay, and then the model of plea bargaining appropriate in India will be assessed by peering into the pros and downsides of plea bargaining in India. [2]

1.1 Plea bargaining: meaning

Negotiated settlements between the prosecutor and defence (and at times, the court) that result in a criminal case being resolved. In exchange for a more compassionate sentence than the defendant would get if found guilty at trial, the defendant typically pleads guilty to a lesser offence or to fewer counts than those initially brought against him. The prosecution gets a conviction on the record, the offender gets a less sentence than he may have gotten at trial, and the judge gets to move on to

other cases and disputes to resolve. This is considered as a win-win situation for everyone involved.

You don't have to go to trial if you use Plea Bargaining. In the event that Plea Bargaining is successful, a plea deal is reached between the defendant and the prosecution. If the defendant accepts this deal, the prosecution offers to drop some charges or suggest a less harsh sentence to the court in exchange for the defendant's guilty plea. It is explicitly permitted under the legislation and court procedures to use plea bargaining.

An accused person can bargain with the prosecution for a lesser punishment through a procedure known as plea bargaining. Placing it another way, plea bargaining is an agreement (contract) reached between an accused and a prosecutor on how to resolve a criminal charge against that accused. Instead of going through with a full trial, the accused who has been charged with a serious and severe crime will negotiate with the authorities for a lesser punishment. [3]

1.2 Historical background of plea bargaining

The growth of plea bargaining is widely thought to have begun in the 19th century, but it really predates confession law by hundreds of years and may have existed for more than eight centuries. After the Civil War, the United States saw a significant increase in plea bargaining cases at the appellate level. Several courts rejected these deals based on precedent banning the providing of incentives in exchange for admissions of guilt and allowed the defendants to retract their remarks. In spite of these early American appellate rulings, plea bargaining was nonetheless prevalent in American courts. Due to overcriminalization, the establishment of plea bargaining in mainstream criminal process was forced by the corruption that kept plea bargaining alive in the late 19th century. It grew from 50% to 72% between 1908 and 1916 in the number of federal convictions resulting from pleas of guilty. Plea bargaining rates climbed dramatically in the early twentieth century, but appellate courts were remained reluctant to uphold such arrangements when appealed. [4]

Unnecessary delays were caused by an adversarial system that is difficult to understand because of its complexity. Plea bargaining is a result of the judicial system's inefficiency and the length of time it takes to resolve criminal cases. As a result of the lengthy delay in the trial, the defendants were able to breathe a big sigh of relief, as well as the court system, which was able to get rid of criminal cases more swiftly thanks to the plea bargains.

As many as 95% of all criminal cases in the United States are resolved by negotiated plea agreements, which are sometimes known as plea deals or bargained sentences. Plea bargains are used in the prosecution of nearly all criminal cases in England and Wales. Cases that do not get to trial are the vast majority in British crown courts (14.3%). [5]

2. PLEA BARGAINING IN INDIA

i. Brief historical background

As of 2005, plea bargaining was included to the Indian criminal code. Chapter XXI A, dealing with the plea bargaining process, has just been introduced to the code of conduct. Section 265 A to 265 L comprises the most fundamental provisions, ranging from the application for plea negotiating to the bargains the condemned may obtain. [6]

In its 142nd, 154th, and 177th reports, the Law Commission of India proposed for the adoption of 'Plea Bargaining'. It was proposed that the new XXIA be added to the CPC in the Law Commission's 154th Report. The Law Commission's 142nd Report, which outlined the basis for the concept, its successful implementation in the United States, and the way in which it should be enacted into law, was alluded to in the aforementioned report. As a test measure, the Report proposed that the idea be applied to offences that carry a sentence of less than seven years in jail and/or a fine, such as those under Section 320. Another suggestion made was to include the nature and intensity of the offences, as well as potential penalty, in plea-bargaining negotiations. Criminals charged with crimes against women or children should not be eligible for this service since they are deemed chronic offenders as well as those accused of serious socio-economic infractions. When it came time for the Law Commission to issue its 177th report, it maintained support for the 154th report. According to Justice (Dr) Malimath's Committee on Reform of the Criminal Justice System 2000 Report, the United States' experience with plea bargaining is proof that it is a method for disposing of stockpiled cases and speeding up the administration of criminal justice. [7]

ii. Procedure related to plea bargaining in brief

- **As per Section 265-A,** Plea bargaining is possible to anybody charged with a crime other than those punished by death or imprisonment for life or a sentence exceeding seven years. Under Code section 265 A (2), the Central Government can be notified of criminal activity that occurs within its jurisdiction. So 1042 (II) dated July 11, 2006, was issued by the Central Government to list the offences that have a negative impact on society and the economy.
- **Section 265-B,** contemplates that the accused file a plea bargaining application that includes a brief description of the case in question, as well as the alleged offence, and is accompanied by an affidavit swearing

to the fact that the accused has preferred the plea bargaining option after learning the nature and severity of the punishment provided by law for his alleged offence. The court will then send a notice to the prosecutor, the investigator, the victim, and the accused for the date set for the hearing.. As soon as all parties have appeared, the court will conduct an in camera examination of each defendant to ensure that the application was submitted willingly by that defendant alone, without the presence of any other parties.

- **Section 265-C** In order to reach a mutually acceptable agreement, the court must follow a prescribed method. When a case is started as a result of a police complaint, the court will provide notice to the public prosecutor, the investigating officer, the victim, and the accused, inviting them to attend a meeting in order to reach an agreement on the case's resolution. In a complaint case, the Court must notify both the accused and the alleged victim.
- **Section 265-D** focuses on the production of the court's report on whether or not a mutually agreeable resolution has been reached or failed. It is the duty of the Court to prepare a report of the case's resolution under section 265-C, signed by the presiding officer of the Courts and all other participants in the meeting. However, if no resolution has been reached, the Court shall note this observation and continue in accordance with the requirements of this Code from the point at which the application under subsection (1) of section 265-B has been filed in such a situation.
- **Section 265-E** When a satisfactory resolution of the case has been reached, this procedure outlines how the case should be handled. After completing proceedings under S. 265 D, the Court must hear from the parties regarding the amount of punishment or the defendant's eligibility for release on probation of good conduct or after admonition after a report signed by the presiding officer of the Court and the parties in the meeting. The 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 it can punish the accused, imposing the sentence. It is possible for a court to pass a sentence of one-fourth of the punishment provided for an offence while punishing an accused. If the law does not provide for this minimal sentence, the court may instead choose to impose the full penalty. In addition, if a report prepared under S 265 D, report on mutually satisfactory disposition, contains a provision for granting compensation to the victim, the Court must also issue directions to pay such compensation to the victim. [8]
- **Section 265-F** concerns itself with the pronouncing of judgement in terms of such a mutually satisfying disposition.
- **Section 265-G** declares that there will be no opportunity for an appeal against such a verdict.
- **Section 265-H** discusses the court's ability to negotiate a plea agreement. Under Chapter XXI-A of the Criminal Procedure Code, a court may use all of the authorities conferred in it with regard to bail, the trial of offences, and other matters relevant to the disposition of a case before such court.
- **Section 265-I** makes it possible for Section 428 to be applied to the sentence that was reached through plea negotiations.
- **Section 265-J** incorporates the "non obstante clause," which states that the chapter's rules apply despite any conflicting language found elsewhere in the Code and that nothing in those other sections shall be construed to limit the scope of the chapter's rulemaking authority.
- **Section 265-K** stipulates that the statements or facts disclosed in an application for plea bargaining must not be used for any other reason than the purpose of the chapter.
- **Section 265-L** Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 defines a juvenile or child as described in Section 2(k) as a juvenile or child.

2.1 Types of Plea Bargaining

i. Charge bargaining

Charge Bargaining is a commitment by the prosecution to lower or dismiss some of the charges levied against the defendant in return for a guilty plea. This may be broken down into two categories: many charges and unique charges. For pleading guilty to a lesser offence, the other charges are withdrawn. A significant charge is dropped in return for a guilty plea to a less serious charge in a particular case.

ii. Fact bargaining

In the process of fact bargaining, the prosecution may agree not to challenge an accused person's account of the facts or may agree not to divulge aggravating factual circumstances to the court. Both of these concessions are made in front of the judge. In exchange for a guilty plea, there is an agreement in place for the presenting of certain information selectively.

iii. Specific fact bargaining

The nolo contendere pleas are used in this form of negotiation, when the defendant accepts a punishment but does not admit guilt. Another type of plea in this category is the Alford plea, in which the defendant accepts the sentence but insists on his innocence still.

iv. Sentence bargaining

An agreement to propose just a specified sentence or no recommendation at all in exchange for admitting guilt is referred to as "Sentence Bargaining" by prosecutors. Trial judges usually choose to impose sentences that are not harsher than those sought by prosecutors or to provide defendants the option of withdrawing their guilty pleas if they are involved in sentence negotiating scenarios. [9]

3. FEATURES OF THE MODEL OF PLEA BARGAINING IN INDIA

The following are some of the most notable characteristics of the Indian Model of Plea Bargaining:

- The accused party is the only person who is permitted to take the initiative to move the legal machinery for negotiated pleas, and they are only allowed to do so for offences for which the potential sentence does not exceed seven years.
- In the court where the case is now proceeding, an application for plea bargaining must be submitted. This is where the Indian system differentiates from the American system, in which the application is made by the public prosecutor and the accused after discussions between them have ended.
- As soon as a court receives an application for dismissal, it has to conduct an in-camera examination of the defendant, and if it finds that he or she has filed the application on their own volition, the parties involved in the case are given time to work out a mutually acceptable resolution of the case, which may include compensating a victim or covering other expenses incurred during the case.
- An important role is played by the judge, not only as an observer but as an active participant. It is the court's job to make sure that the accused has given his or her complete and voluntary agreement to the entire procedure. An agreement to resolve a dispute satisfactorily must be reached before a court may rule on it, and the parties involved must be heard on the subject of penalty amount before a decision can be made. It then needs to decide on the punishment, which might range from one-fourth to one-half of the authorised penalty for the offence.
- In addition, the legislation mandates that the verdict be read out in open court. A language in favour of the accused has been introduced saying that the statement or facts given by an accused in an application for plea bargaining shall not be used for any other reason.
- In the event that the parties agree to enter into a plea bargain, the judgement that is handed down by the court shall be final, and no appeal shall lie in any court against the verdict.

The circumspect attitude that the Act takes toward plea bargaining has become clear after reading the parts referred to above that deal with those negotiations. The model of plea bargaining in India has a number of riders attached to it, which has made it exclusively available to the criminals committing the crime that is punishable with imprisonment not exceeding seven years and provided that the accused is not a juvenile and the crime committed by him is not of a socio economic nature. Although the idea has been successful in the west, it has been a complete and total failure to win over the audiences in India, as may be deduced from the reaction of the judges, which will be detailed below. [10]

4. ARGUMENTS AGAINST PLEA BARGAINING IN INDIA

i. Voluntarily adopted Mechanism

It is a voluntary method that is only taken into consideration if the accused chooses it voluntarily, according to the law rule dealing with plea bargaining. However, the law is mute on the issue of whether or not a settlement is antithetical to the judicial system's purpose.

ii. Involvement of Police

The police's involvement in plea negotiating is also a source of contention. Custodial policing in India is well-known for its horrific abuse of power. It is more likely that the notion of Plea Bargaining will make things worse.

iii. Corruption

Another aspect that is underappreciated in the plea negotiating process is the role played by the victims. Corruption would result if the victim played this role, which would be counterproductive to the goal of such an action's implementation.

iv. Independent judicial authority

Under the terms of Plea Bargaining, there is no independent court body that may review plea-bargaining petitions. Critics point out that this is a major flaw in the product.

As a result of the court's in-camera questioning of the accused, the public may develop a jaded view of the plea negotiating process. The court's refusal to

keep an order denying an application secret might further generate biases in favour of the accused.

v. Not the final solution

Due to overpopulation in jails, high acquittal rates, and the abuse of convicts awaiting trial, plea-bargaining was instituted in response to these factors and others. But the major reason for all of these reasons is that the trial process has been pushed back. Trial delays in India can be attributed to a variety of factors, including judicial and investigative agency operations, the personal interests of attorneys, and other societal issues. As a result, the urgent need is not for a substitute for trial, but rather for a systemic reform that takes into account the system's structure, composition, and working culture. All of these approaches would help to expedite the trial process.[11]

5. CONCLUSIONS

A comprehensive examination of the process of plea bargaining in India reveals the benefits and drawbacks of the model that is applicable here. In contrast to the United States, where the role of the judiciary is merely passive, the role of the judiciary in India is an active one, which is one of the advantages of the Indian model. In the Indian model of plea bargaining, the victim has the right to veto the deal, whereas in the United States, the victim has very little ability to influence the terms of the deal that is being offered to them. There are a lot of problems with the Indian model of plea bargaining, despite the fact that it has a few advantages over the American model of plea bargaining, which is widely regarded as the model that pioneered the concept and has had the most success anywhere in the world. The inadequacies of the Indian model have been the obstacle in the way of its achieving the outcome that has been targeted. The purpose of this article is to provide the legal community with some food for thought in the hopes of enhancing the system of plea bargaining in India and thereby reducing the staggering number of pending cases.

REFERENCES

1. 2002 IVAD Delhi 979, 98 (2002) DLT 175, 2002 (63) DRJ 461
2. 1John H. Langbein (1979): Understanding the Short History of Plea Bargaining, Faculty Scholarship Series, Paper 544. http://digitalcommons. law.yale.edu/fsspapers/54
3. AabhasKshetrapal (2013): A DEVIATION FROM THE FORMER ADVERSARIAL TRIAL:
4. THE CONCEPT OF PLEA BARGAINING AND ITS CONTEMPORARY RELEVANCE, BBA.LLB(Hons) Project, National Law University,Jodhpur, http://ssrn.com/abstract=2329501
5. Albert Alschuler (1979): Plea Bargaining and Its History , 79 Columbia Law Review 1
6. K. V. K. Santhy (2013): Plea Bargaining in US and Indian Criminal Law Confessi
7. onsforConcessions,http://www.commonlii.org/in/journals/NALSARLawRw/2013/7.pdf
8. K. T. Thomas (2011): Plea Bargain- a fillip to Criminal Courts, available on www.google.com
9. S. Rai (2007): Law relating to Plea bargaining, 47 Orient Publishing Company, New Delhi, Allahabad
10. NeerajArora, Plea Bargaining – A New Development in Criminal Justice System. http://www.legallyindia.com/plea-bargaining-a-new-development-in-the-criminal-justice-system (2010)
11. Shree Ram"s The Law, Vol. II, Issue X October 2014, A monthly Journal cum Magazine on Law and Judiciary

Corresponding Author

Dr. Uma Shanker Sharma*

Assiciate Professor, Apex School of Law, Apex University, Jaipur-303002 (Rajasthan)