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Understanding the Contours of Plea Bargaining under Criminal Justice System in India

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I. INTRODUCTION

The letter of the law is one thing but its implementation and success cannot be adjudged from the theory, howsoever effortlessly and beautifully etched. Novation is not new to the subject of criminal jurisprudence where wise men of law continue to invent systems so that the criminal justice system continues to answer for any delays or cracks in the system, ultimate aim being that it does not collapse all together. One such novation was attempted by the Supreme Court of the United States of America as a mandate to support fair trial. The concept was adopted and evolved in the case of Bradey v. United States[1]. Plea barraging refers to pre-trial negotiations between the defendant (conducted by his counsel) and the prosecution, during which the defendant agrees to plead guilty in exchange for certain concessions by the prosecutor. It usually involves the defendant's pleading guilty to lesser offence as to only one or some of the courts ofa multi-count indictment in return for a lighter sentence than that possible for the graver charge.It is in the nature of a pre-trial settlement or plea negotiation, essentially derived from the principal of **Nalo Contendere** which literary means 'I do not wish to contend'. It is an alternative to long process of trial. The U.S. Supreme Court has approved the practice of plea bargaining when properly conducted and controlled.

II. PLEA BARGAINING IN INDIA

The concept of plea barging in India is very different from that followed in the US. In India the concept was advocated by various law commission reports[1]but was highly objected to by the academia and the judiciary because of the moral considerations around this notion of bargaining in criminal trials. Chapter XXIA containing sections 265A to 265L was inserted by the Criminal Law Amendment Act 2005 with the purpose of presenting an alternative method to deal with huge arrears of criminal cases so as to reduce the delay in the disposal of criminal trials so as to alleviate the suffering of under-trial prisoners. However, this system has been deeply criticized as being unfair and an alternate way of legalization of crime to some extent and leading to increase in number of innocent convicts in prison. The plea bargaining law that came into forcein 2006 allows a first-time offender to negotiate a compensation package with the victim. Once
the court accepts the settlement, it can set the accused free on probation or prescribe a reduced sentence, depending on the offence.

III. ROLE OF PLEA BARGAINING IN CRIMINAL PROCESS IN INDIA

To gain a better understanding of the role of plea bargaining in the Indian Criminal process two essentials need to be considered : first the procedure provided by the criminal procedure codeand next the nature of plea bargaining and the number of cases in which this method is resorted to including the response of the judiciary to this and most effectively seeing its possible misuse and the need if any for guidelines to contain the rigor of the system to the standards which criminal jurisprudence would allow and accept.

i. Application of the Chapter Plea Bargaining

The provisions of Plea Bargaining are not applicable in the following cases:-

- The offence in which the maximum sentence is above 7 years.
- The offence which has been committed against a woman or a child below 14 years ofage.
- Where the accused has been previously convicted for the same offence
- Offence which affects the socio-economic condition of the country (Central Government has determined them via notification viz.

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Dowry Prohibition Act, 1961, The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Offences listed in sections 23 to 28 of the Juvenile Justice (Care and Protection of Children) Act, 2000, The Protection of Women from Domestic Violence Act, 2005 to name a few)

ii. Procedure of Plea Bargaining

- Application to be made by the accused with the brief details of his case supported by an affidavit declaring that :
- He is presenting the application voluntarily and
- He understands the nature of sentence and
- He has also to declare that he is not a previous convict for the same offence
- On receipt of application and affidavit from the accused, the trial court shall issue the notice to public prosecutor or the complainant, as the case may be, and to the accused to appear on the date fixed for the case.
- The court shall examine the accused in camera and satisfy himself that the accused has given his application voluntarily and he is eligible for presenting such application and if the court feels otherwise it shall be rejected and the case shall be sent back for regular trial on finding the application to be voluntary, it shall give time to both parties to work out a mutually satisfactory disposition for which guidelines laid down in Sec 265C to be followed.
- On satisfactory disposition of the case, the court shall prepare a report of such disposition.
- The victim shall be given compensation determined under Sec 265D.
- The accused may be released on probation of good conduct or after admonition or may be sentenced to half of the minimum punishment prescribed by law or one-fourth of the maximum punishment.
- Judgement shall be given in open court and be signed by the presiding officer of the court.
- Judgement delivered shall be final and no appeal shall lie against it, but may be challenged under Article 136, 226,227 of the Constitution.
- Not applicable to Juvenile Justice (Care and Protection of Children) Act 2000.

IV. DISPOSAL OF CASES BY PLEA BARGAININGAND PROBLEMS FACED

i. The Clear Picture

The Law Commission and the legislature has given a continued support to plea bargaining as a measure and redress to reduce delay in the disposal of criminal trials and appeals as also to alleviate the suffering of under trial prisoners, as well, their dependents and keeping in mind the real purpose of victimology.[32] An assessment of the judgments by Supreme Courts sure brings outthe clear picture as to the difficulties concerned with implementation of such a system and whichhas been greatly feared as illegal. This fear stems from the factual potential of this system being abused, involvement of police in plea bargaining tempts coercion on innocent people, it is condemned as a purchased pleas of guilt.

In Murlidhar Meghraj Loya v. State of Maharashtra[4], the Supreme Court disapproved the practice and stated that in India, 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. In this case, the Supreme Court observed that a streamlined procedure should be devised if the state was to administer justice by having recourse to plea bargaining.

In Kasambhai Abdul Rehman Bhai Sheikh v. State of Gujarat[5] the Apex court again denounced this practice holding it unconstitutional, illegal and it would tend to encourage corruption, collusion and pollute the pure fount of justice."

In Ganesh Jasraj v. State of Gujarat & Anr[6] [3]court raised an issue that would come up with admission of guilt made by the accused as a result of " plea bargaining", the evaluation of the evidence by the court is likely to become a little superficial and at loss of credibility

ii. The Clearer Picture : National Crime Record Bureau

An appraisal of the statistics of National Crime Record Bureau shows that cases disposed of by plea bargaining are only handful. In the year 2018 no case was disposed of by plea bargaining in the category of cases against senior citizens and atrocities against SC/ST in Punjab and Chandigarh.

In Antar And Anr vs High Court of Punjab & Haryana , February 2020 a case was filed to Issue a writ in the nature of Mandamus, directing the respondents to Sensitize/Educate the Litigants/encourage them to take recourse to the

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newly inserted provisions in the Criminal Procedure Code, 1973 under Chapter XXI-A Sections 265-A to 265-L providing for Plea Bargaining. This clearly shows how much this provision has really been left out altogether in practicing law. The Punjab &Haryana High court held that it is for judicial academy to provide training for the same and also even in absence of such training since the law was passed in 2006, the Court cannot presume that advocates are not well aware of it.

Some of the concerns associated with plea bargaining are:

- Abuse of process of Plea Bargaining In most of the subordinate courts in India, the use of plea bargaining system to reduce thebacklog is not satisfactory one.
- The 2015 statistics of the National Crime Records Bureau shows that over 4000 cases of murder, robbery and crimes against women were disposed of by courts last year after plea bargaining pacts between parties in violation of the provisions of Criminal Procedure Code. According to the NCRB, courts disposed of 27 cases of murder, 55 of attempt to murder, 40 of rape and 27 of robbery by plea bargaining. In addition, plea bargaining wasused to dispose of 3,584 cases of crimes against women. These included about 2,200 cases of cruelty by husband and his relatives and 1,045 of assault with intent to outrage the modesty of women.
- In 2017 31 rape cases and 30 cases under Protection of Children from sexual offences Act (POCSO) 2012 were disposed by the courts by plea bargaining, which is clearly against the mandate of law.[7] This shows a clear abuse of this process of plea bargaining since it is applicable only for offences which attract punishment for seven years or less.
- Lack of awareness regarding plea bargaining

In 2016, only eight economic offences (Criminal breach of trust, forgery, cheating, counterfeiting) in all metropolitan areas were disposed of by plea bargaining while total cases sent for the trial were 99905. The possible reason could be lack of awareness regarding plea bargaining.[8] In 2018 the number is only fifteen.[94]

- Reluctance of advocates to advise their client for opting plea bargaining.
- Reluctance of prosecution and judicial officers to encourage the accused persons for plea bargaining.
- Coercive and corrupt practices during the Investigation process by the police officers. In spite of the provision that the statements of the accused cannot be used for any other purpose the system allows coercion by the State Government or the police officers over the accused to a certain degree.
- The justification for plea bargaining is the high rate of acquittal in criminal cases.However it lures the poor, illiterate and innocent accused to choose it because of its nature and therefore pressurize him to cut short his other Constitutional remedies.
- By sidestepping formal court proceedings and due process, plea bargaining allows unconstitutional practices to go unchecked. Offenders are disposed of undeterred, untreated and with minimal regard for public safety.
- Magistrate may be biased against the accused as in the event of the application being rejected they may well oversee the trial knowing that the accused was previously prepared to plead guilty. This is unfair to the accused and by knowing this accused may not go for plea bargaining.

V. MERITS OF PLEA BARGAINING

1. It is beneficial to cut short the length of the trial because it is a pre-trial settlement. It has tremendous effect in saving time of court in dealing with less serious offences. Once application of plea bargaining is accepted it automatically shortens the length of the case and courts can focus energy and time on more serious offences that might have greater impact on society.
2. It reduces the work load of the prosecutors enabling them to prepare for gravest case by leaving the effortless and petty offences to settle through plea bargaining.
3. If plea bargaining is followed, it will help in culminating the problem of under trial prisoners.
4. Significant feature of method of plea bargaining is that it helps the Courts and State to manage the case loads
5. Plea bargaining is the primary apparatus through which judges, prosecutors, and defense attorneys cooperate and work together toward their individual and collective goals. The primary benefit of plea bargaining for both the prosecution and the defense is that there is no risk of complete loss at trial.

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VI. DEMERITS OF PLEA BARGAINING

1. Plea bargaining does play a subtle role in shortening the amount of time and resources associated with that case but it has been widely criticized as predetermined legislative fixation of minimum sentences and by subtly subverting the mandate of the law. It looks like a shortcut justice.
2. It is not sound that negotiations should take place of adversary system in criminal process. Such a practice shakes the basic building block of criminal jurisprudence.
3. The disappearance of trials threatens criminal defendants' ability to get fair and accurate resolutions to the criminal charges against them
4. There is no provision of appeals in case coercion is resorted to by prosecution
5. Innocence of accused is one of the major pillars of criminal jurisprudence; which becomes totally irrelevant in case of plea bargaining. That is a major blow to the criminal process altogether.
6. It is considered to encourage corruption, collusion and pollute the system of justice all together because the accused is allowed to bargain for lesser punishment. It allows offenders to receive lenient punishment. This undermines deterrent effect of punishments.
7. This further exposes public at large to such criminals who roam freely or serve very little sentence.
8. Coercive and corrupt practices during the Investigation process by the police officers. In spite of the provision that the statements of the accused cannot be used for any other purpose the system allows coercion by the State Government or the police officers over the accused to a certain degree.
9. The justification for plea bargaining is the high rate of acquittal in criminal cases. However it lures the poor, illiterate and innocent accused to choose it because of its nature and therefore pressurize him to cut short his other Constitutional remedies.
10. Relating to sentencing policy the concept of plea bargaining undermines the public confidence in the criminal administration system and as a result it will lead to conviction of innocent. Inconsistent penalties for similar crimes and lighter penalties for the rich will affect the interest of the society in giving appropriate punishment for crimes.
11. By sidestepping formal court proceedings and due process, plea bargaining allows unconstitutional practices to go unchecked. Offenders are disposed of undeterred, untreated and with minimal regard for public safety.
12. Magistrate may be biased against the accused as in the event of the application being rejected they may well oversee the trial knowing that the accused was previously prepared to plead guilty. This is unfair to the accused and by knowing this accused may not go for plea bargaining.

VII. CONCLUSION

Plea bargaining is a disputed concept. Some favour it while the others abandon it. The concept was introduced to tackle overcrowding of prisoners and abnormal delays in trials. The prosecutoris relieved of the long process of proof, technicalities and long arguments, the court sights relief that its ordeal, surrounded by a crowd of papers and persons, is avoided by one case less and the accused is happy that he is free early in the day to pursue his old profession. If the concept of plea bargaining is allowed to function it should allowed with judicial scrutiny. This is because as plea bargaining becomes more pervasive in the criminal justice system, public will lose faith in that system because it allows criminals to receive bargains.