

PLEA BARGAINING - CHALLENGES FOR IMPLEMENTATION

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Now a day peoples are unhappy with the judiciary. Delay in justice, rate of convection, overcrowded jails and huge pendency are the main reasons of it. From last two-three decades our judiciary always tries to overcome these problems through ADR. Through Lokadalat, Arbitration, Mediation, Conciliation, Fast track courts, Gram Nayalaya, morning and evening courts continuously working to reduce huge pendency. To reduce pendency in criminal courts and to overcome the problem of overcrowded jails, before a decade we accepted concept of 'plea barging' from American judiciary. Accordingly separate chapter on plea bargaining is inserted in Code of Criminal Procedure, 1973. The concept of 'plea bargaining is very popular and successfully working in American courts, but unfortunately Indian scenario is disappointing for this concept.

From last ten years very few cases are disposed off through plea bargaining. If anybody talking about plea bargaining either peoples quizzically asking that 'what is plea bargaining?' or either to stay stare in wonder. If any advocate suggested accuse to follow the provision of plea bargaining, he directly refuses because at any cost he wants acquittal. And what we say about our society?... which is already illiterate about law. What exactly the concept of plea bargaining? What are the objects behind this legal provision? Why it is implemented very poorly? This article tries to find out answers of all these questions.

Plea bargaining is a basically pre trial negotiation between accused and prosecution. This is nothing but an agreement between the prosecutor and accused in which the accused is agrees to plead guilty to a particular charge in return for some concession from the prosecution. Thus "Plea bargaining" or "mutually satisfactory disposition" in criminal cases in its general sense refers to pre-trial negotiation between the defendant (accused) through his/her counsel and the prosecution (complainant), during which the accused agrees to plead guilty in exchange for certain concessions by the prosecutor.¹ The general meaning of plea bargaining is a contractual agreement between the accused and the prosecution and enforceable when judge

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¹ Law Commission of India, Report No. 142, at 5.

approves it. The shortest possible meaning of plea bargaining is “Plead guilty and ensure lesser sentence.”² It is also called as plea agreement or plea deal or copping a plea. There are three types of plea bargaining i.e. charge bargaining, sentence bargaining and fact bargaining. In charge bargaining defendant pleads guilty to reduce charges. In sentence bargaining defendant pleads guilty to reduce the sentence. In fact bargaining negotiation involves an admission to certain facts in return for an agreement not to introduce certain facts into evidence.³

Plea bargaining is the new concept in Indian criminal justice system. The Chapter XXI-A Plea Bargaining, Sections 265 - A to 265 - L is being incorporated in Code of Criminal Procedure, 1973. This chapter is inserted by The Criminal Amendment Act, 2005 (2 of 2006) brought into force on 5th July 2006.

The practice of plea bargaining was not prevalent in India. The concept of plea bargaining has not been recognized so far by Criminal jurisprudence of India. However plea bargaining is considered to be one of the alternatives to deal with huge arrears of criminal cases.⁴ However to enable a quick disposal of petty offences and to reduce congestion in the Court of Magistrate the special provision is incorporated in Sections 206(1) and 206(3) of the Code of Criminal Procedure, 1973. Also Section 208(1) of Motor vehicle Act, 1988 provides summary procedure. These provisions enable accused to plead guilty for petty offences and to pay small fines and the case is closed. But in this procedure after plead guilty there is no bargaining between prosecution and accused. Even before every trial there is a provision of ‘plead guilty’. But these provisions are totally different from concept of plea bargaining.

To overcome the problem of mounting arrears of criminal cases Law Commission in its 142nd report first time considered the concept of plea bargaining. Subsequently to deal with huge arrears and backlogs of criminal cases again the Law Commission in its 154th and 177th Report recommended a concept of plea bargaining as an alternative method. Thus the Law Commission of India was continuously researching the concept of plea bargaining and recommending introducing it. To improve existing criminal justice system The Criminal Law (Amendment) Bill, 2003

² Shalin, Plea Bargaining: An Indian Approach <<http://legalsutra.org/2027/plea-bargaining-an-indian-approach>(July 4,2014, 10:35PM).

³ DR. JUSTICE ARIJIT PASAYAT, PLEA BARGAINING, NYAYA KIRAN, Vol.-I, Issue-III, Oct-Dec. 2007, 3.

⁴ LAW COMMISSION OF INDIA, REPORT NO. 154, at 52.

introduced the measures in which concept of plea bargaining is an important one. This recommendation of the Law Commission supported by the report of committee on Criminal Justice Reform under the Chairmanship of Dr. (Justice) V.S. Malimath. To tackle the ever growing number of criminal cases Malimath Committee recommended some suggestion. The Committee recommended the system of plea bargaining be introduced in criminal justice system to facilitate the earlier disposal of criminal cases. To strengthen its utility the Committee also pointed out the successful implementation and output of plea bargaining in US Judiciary. Finally in 2005 this concept is inserted in Code of Criminal Procedure, 1973.

Though this is a new concept in Indian Judiciary, this concept is very popular and regularly applicable in American Judiciary. The practice of plea bargaining in America goes back a century or more. One study found it in Alameda County, California, in about 1880s.⁵ In the United States of America for a century, where over 95 percent of criminal cases never go to trial because of the bargaining struck down between the prosecution and the attorney well before the trial commences.⁶ In U.S. this trend of plea bargaining became popular from 19th century and important part is that the rate of conviction is near about 90 per cent, out of which majority of convictions are result of plea bargaining. Another benefit is that accepting this procedure the accused saved his time in trial proceeding as well as money. Thus plea bargaining is an alternative to the existing legal measures for providing cheaper and expeditious trial.

However before amendment in Code of Criminal Procedure, 1973 the practice of plea bargaining was not prevalent in India. In *State of Uttar Pradesh v. Chandrika*⁷ the Supreme Court held that “it is settled law that on the basis of plea bargaining Court cannot dispose of criminal cases”. It is well known fact of the criminal justice that “Justice delayed is justice denied.” And delay in trial violates fundamental right of the accused. Keeping this view ahead in *Hussainara Khatoon v. State of Bihar*⁸ and many other cases Supreme Court held that “the right to life under Article 21 includes right to speedy trial, only through which right to life can be attained.”

⁵ LAW COMMISSION OF INDIA, REPORT NO. 142, at 5.

⁶ PARLIAMENTARY STANDING COMMITTEE ON HOME AFFAIRS, REPORT NO. 111, REPORT ON CRIMINAL LAW (AMENDMENT) BILL, 2003, at 8.

⁷ *State of Uttar Pradesh v. Chandrika*, A.I.R 2000 S.C. 164.

⁸ *Hussainara Kahtoon v. State of Bihar*, A.I.R 1979 S.C.1360.

Thus to ensure a speedy trial, and to provide for right to life enshrined in our fundamental rights, the concept of plea bargaining has been introduced in the Criminal Procedure Code. While commenting on the concept of plea bargaining, the division bench of the Gujarat High Court observed in *State of Gujarat v Natwar Harchanji Thakor*⁹ (2005) Cr. L.J. 2957 that, “the very object of law is to provide easy, cheap and expeditious justice by resolution of disputes, considering the pendency and delay in disposal in the administration of justice, such reforms are inevitable.” Supreme Court had recommended the introduction of plea bargaining in its various decisions also. On the advice of recommendations of the various committees for criminal reform and advice of Supreme Court the legislature has acted and passed the Criminal Amendment Act, 2005 and introduced the much needed concept of plea bargaining.

According to the provisions of chapter XXI-A, the application for plea bargaining should be filed by the accused voluntarily in the Court in which such offence is pending for trial. The complainant and the accused are given time to work out a mutually satisfactory disposition of the case, which may include compensation and other expenses incurred during the case to victim by accused. In the event of a satisfactory disposition of the case being worked out, the court shall dispose off the case by sentencing the accused to one-fourth of the punishment provided or extendable, as the case may be for such offence. The statements or facts stated by an accused in an application of plea bargaining shall not be used for any other purpose other than plea bargaining. The judgment delivered by the Court in case of plea bargaining shall be final and no appeal shall lie in any Court against such judgment.

Some of the salient features of the concept of plea bargaining are it is applicable only to those offences for which punishment of imprisonment is up to a period of 7 years. It does not apply the offence which affects the socio-economic condition of the country or an offence has been committed against women or a child below the age of 14 years. The application for plea bargaining should be filed only by the accused voluntarily. A person accused of an offence may file an application for plea bargaining in the Court in whom such offence is pending for trial. The statement or facts stated by an accused in application of plea bargaining shall not to be used for any other purpose other than the plea bargaining. The judgment delivered by the Court shall be final and no appeal shall

⁹ *State of Gujarat v Natwar Harchanji Thakor*, (2005) Cr.L.J. 2957.

lie in any Court against such judgment. Plea bargaining should not be available to habitual offenders.

The significant features of plea bargaining are that it helps reduction in criminal cases. In petty cases it saves the accused from harassment and unnecessary expenditure and saves a lot of court's time and energy. It will give more time for the courts for disposal of serious cases.¹⁰ The main advantages of plea bargaining are time and money saving process, benefits for accused person, compensation to victims. On the other hand major criticisms made of the concept of plea bargaining are that there is a threat to a fair trial, it is against sentencing policy, if the guilty plea application is rejected then the accused would face great hardship to prove himself innocent. But apart from the weight of pros and cons of plea bargaining, it is better to welcome plea bargaining and move with it.

The uniqueness of this remedy was noticed when for the first time Asia's largest prison complex Tihar Jail saw a reduction of nearly 2,000 inmates in 2007. The Director General (Prison) said that reduction from the 2006 figure of 13,500 inmates to 11,500 in 2007 was a milestone in the history of Tihar Jail. He further said that "Much of this can be attributed to the plea bargaining system introduced by the Delhi Legal Services Authority which has benefited 664 prisoners here."¹¹ Thus this experience proves the usefulness of plea bargaining.

The position of jails in the State of Maharashtra is not good. All jails are fully overcrowded with convicted as well as under trial prisoners. The prisoners are filled two times more than the capacity of jail. In which total number of convicted prisoners is 7,850 i.e. 27%, while total number of under trial prisoners is 21,531 i.e. 73%.¹² The capacity of Yerawada Central jail is only 2449, while 4,071 prisoners are kept there. Out of which only 1040 are convicted prisoners and 3010 are under trial prisoners. In this situation the question remains that why anybody does not want to follow remedies provided by law.

Actually the procedure of plea bargaining is very useful to face the problems like overcrowded jails and delay in trial. Keeping this view the Law Commission were introduced this concept, but after

¹⁰ http://www.lawyersclubindia.com/articles/Indian-Laws-on-Plea-bargaining-4213.asp#.U7bQwfmSy_U (July, 4, 2014, 10:50 PM).

¹¹ GUPTA DEVINA, PLEA BARGAINING – A UNIQUE REMEDY TO REDUCE BLACKLOG IN INDIAN COURTS, *Cri.L.J.*, 2010, at 69.

¹² *Daily Sakal*, Pune Today supplement, news-"Jails in State are housefull", Feb. 4, 2016, at. 1.

nine years we achieved nothing. So there is need to study and find out reasons of this failure. Though this is time and money saving procedure, but accused persons are not interested to accept this procedure. The views and mentality of Indians are very different from developed country. In developed country to save time and money accused choose plea bargaining, while in India accused devote himself entirely to get stamp of "Acquittal" "on his forehead. Sometimes he lost his whole property for paying charges to his defend council; he lost his many years for court case. This is happening because less legal literacy in our society and apathy of implementing machinery. Also advocates are not interested for this practice. Thus the aim of law commission to introduce the chapter of plea bargaining is not fulfilled. The opponents are argued that the socio economic situation of our country is very different than the developed countries and practice of plea bargaining is not suitable to us. On the other hand some experts are expressing their fair about misuse of practice. While some persons asking that what is the benefit of this practice to victim?

But today it's become an important need of criminal justice reform and hence to overcome the problems before judiciary, Indians have to create a mentality to accept the new concepts like plea bargaining. From last two decades we accepted the new tools like Lok Adalat, Arbitration, Mediation, Fast track courts, Gram Nayalaya etc. Then question is remaining that why not to accept plea bargaining? Actually we should take consideration that delay in justice and declining rate of conviction does neither fulfill the object of punishment nor give justice to victim in real mean. Hence it's become a need that corporal justice will be change in economic justice and victim who actually suffers, will get justice as well as compensation also. Then only victim gets a justice in real means. And in that context plea bargaining is an effective and efficient remedy which fulfils the benefit of accused, victim also as well as judiciary also. Plea bargaining is more suitable, flexible and better fitted to the need of society. After proper implementation of plea bargaining, it will fulfill the objects of Law Commission also.

The successful implementation of plea bargaining is possible when we look positively and work not only for personal interest but work for real socio legal justice. Proper implementation of plea bargaining will definitely meet the challenges before Indian judiciary and fulfill the objects of Law Commissions recommendations.

