

The Concept of Plea Bargaining under Indian Legal System: An Overview

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Abstract: Plea Bargaining has changed the image of the Indian Legal System. Plea bargaining is an agreement between the accused and the prosecution, which resolves a criminal case, and the accused pleads guilty in exchange for a lesser charge or punishment. With the help of the plea bargaining, a criminal case can be concluded without a trial. Considering the recommendation of 154th report of the law Commission, the concept of plea bargaining was introduced into the Indian Legal system. A new chapter, Chapter XXIA was introduced on Plea Bargaining in the Criminal Procedure Code, through the Criminal law (Amendment) Act, 2005. Since then the concept of plea bargaining has engrossed vast public debate. Though the people, judiciary, and jurists were all reluctant to implement this plea bargaining, it is true that this concept speeds up the pending disposals of criminal cases. We need to implement this concept and leave the success rate on time alone, which will show the results in the coming days.

Keywords: Plea Bargaining, Legal System, Criminal Cases, Agreement, Accused, Prosecution, Exchange.

Introduction

There is a famous adage that “Justice delayed is justice denied”. This statement gets more significance when we talk about the concept of Plea bargaining. Though the huge number of cases pending in the Indian courts is quite shocking, but the people have started accepting it as normal procedure. Most of the criminal cases go unseen because of the lack of evidence, non-cooperation of the witnesses, over-concern of accused, etc. Considering the burden of long-standing cases on the judiciary, this concept was introduced in India. The concept of plea bargaining gets relevance, as the term itself proposes that it is just an agreement between the accused and the prosecution.

In India, the concept of Plea Bargaining was announced in the Criminal Procedure Code through Chapter XXIA by Criminal Law (Amendment) Act in the year 2006, and Section 265A to 265L were brought up. Before this amendment, the Indian judicial system opposed the concept and hence, did not recognize the concept of plea bargaining. The concept was repeatedly declared by the apex court as against the public policy. However, with the changing arena of criminal laws, the Indian judicial system was constrained to recognize the concept of plea bargaining after considering the report of 154th Law Commission. The committee recommended the introduction of plea bargaining after taking into consideration the views of legal luminaries, judges, lawyers, bar associations, experts etc.

Meaning and Definition of Plea Bargaining

Plea bargaining is a pre-trial negotiation between the accused and the prosecutor, wherein the accused bargains to plead guilty in exchange for a lesser punishment or charge.

Plea Bargaining is the method of negotiating an agreement between the prosecution and the defence, wherein the defendant pleads guilty to a lesser offence or one or more offences charged in return for a lesser sentence or dismissal of other charges.¹

Plea Bargaining is the negotiation of an agreement between a prosecutor and a defendant whereby the defendant is permitted to plead guilty to a reduced charge.²

Section 265B of Criminal Procedure Code deals with the Plea Bargaining and provides that a person accused of an offence may file an application for Plea Bargaining in the Court in which such offence is pending for trial. This provision is not available for every crime. A person cannot claim Plea Bargaining for committing brutal offences or offences which are punishable with death or life imprisonment.

History of Plea Bargaining

As there was no legal representation in Jury system, the need for plea bargaining was not felt. Later, in 1960 legal representation was allowed and it was felt that Plea Bargaining is necessary. We can find the traces of the origin of the

¹ <https://livelaw.in> last visited on 12.04.2023.

² <https://merriam-webster.com> last visited on 11.04.2023.

concept of Plea Bargaining in American legal History. The concept has been used since 19th century. Usually the Judges used the Plea Bargaining to encourage confessions from accused.³

Object of Plea Bargaining

The legislature has introduced the concept of plea bargaining with the object of reducing stress of the pending criminal cases in the courts and, thereby to bring down the number of under-trial prisoners in the jails. The victims of the crimes can be indemnified by the accused through paying compensation and provide speedy remedy in the criminal cases. Plea bargaining is introduced with an object of safeguarding the interest of victim, his relatives and the society at large, so severe offences and offences against the vulnerable class like women and children, are kept beyond the reach of plea bargaining.

Kinds of Plea Bargaining

There are three kinds Plea Bargaining, namely:

1. Charge Bargaining
2. Sentence Bargaining
3. Fact Bargaining

In **Charge Bargaining** the defendant agrees to plead guilty to a lesser charge in return of dismissing of greater charges. This is not usually used by the courts, as it goes against the policy of the Criminal Judicial System.

In **Sentence Bargaining** the defendant agrees to the charges stated and instead gets a lighter sentence. In this, the intention of the defendant is to get lesser sentence. Usually, such bargaining can be seen where the charges are less severe and is accepted as the common form of plea bargaining.

In **Fact Bargaining** the defendant decides to specify certain facts and instead prevents some other facts from being included as evidence.⁴

Plea Bargaining under Indian Legal System

Criminal Procedure Code deals with the concept of Plea Bargaining in Chapter XXIA under Sections 265A to 265L. Plea Bargaining can be claimed in the following cases:

1. If the maximum punishment for an offence is imprisonment for 7 years;
2. If the offence does not affect the socio economic condition of the country;
3. If the offence is not committed against woman or a child below 14.⁵

Section 265-A deals with the circumstances when the concept of plea bargaining is applicable. Plea Bargaining is accessible to the accused, who is charged with an offence, other than offences punishable with death or imprisonment for life or imprisonment for a term exceeding seven years. If the offences affect the socio-economic conditions of the country, then the plea cannot be availed. Further, the Central Government has issued notification, thereby specifying the offences which affect the socio-economic condition of the country.

Section 265-B deals with the application for Plea Bargaining. Following is the procedure that is to be adopted:

- a) A person who is accused of an offence may file the application of plea bargaining in pending trials.
- b) The application should contain brief details of the case, offences which the case is related to and it should, also, include affidavit sworn by the accused.
- c) Thereafter the court issues notice to the public prosecutor, investigating officer of the case, the victim, and the accused, of the date that is fixed for the plea.

d) During the appearance of the parties before the court, the court examines the accused in-camera, where the other parties should not be present, with the purpose for the court to satisfy that accused has filed the application voluntarily.

Section 265-C deals with the procedure to be followed by the court in mutually acceptable temperament. If the case is filed on the basis of police report, notice is served to the public prosecutor, investigating officer, the victim, and the accused to be present in the meeting to come to a mutually acceptable disposition.

Section 265-D deals with the preparation of the report of mutually acceptable temperament and its submission.

Section 265-E deals with the procedure followed in disposing of the case when an acceptable disposition of the case is worked out. After preparing a report signed by the presiding officer, in compliance with Section 265D, the court should hear the parties on the quantum of punishment or release of accused on probation of good conduct under Section 360 of the Code or under the provisions of Probation of Offenders Act, 1958.

Section 265-F speaks about the proclamation of the judgment in accordance with the terms of mutually acceptable disposition.

³ <https://blog.ipleaders.in> last visited on 10.04. 2023.

⁴ <https://tripakshalitigation.com> last visited on 09.03.2023.

⁵ <https://blog.ipleaders.in> last visited on 10.04.2023.

Section 265-G provides for the finality of the judgment. Since the judgment has been arrived at the instance of the agreement between the parties, no appeal lies against such judgment, except Special Leave Petition or Writ Petition under Article 226 or 227.

Section 265-H states the power of the court in the plea. The court has similar powers in respect of bail, trial of the offences, and other judicial matters regarding the disposal of the case as in other criminal cases.

Section 265-I provides that the period of detention already undergone by the accused should be set-off against the sentence of imprisonment that is imposed under this chapter.

Section 265-K provides that the facts or statements specified by the accused in an application under section 265-B for plea bargaining, should not be used for any other purpose except the purpose mentioned in this chapter.

Section 265-L states that this chapter is not applicable in case of juvenile or child as defined in the Section 2(k) of Juvenile Justice (Care and Protection of Children) Act 2000.⁶

Impact of Plea Bargaining in India

The concept of plea bargaining has been accepted worldwide. It is a practice effectively used in various countries, including United States, United Kingdom, Canada and many others. A huge number of cases in the United States are settled by plea bargaining rather than by a jury trial. The U.S. Supreme Court has approved this practice and is of the opinion that the plea bargaining is more effective when adopted with free consent and under proper judicial scrutiny.⁷

In India, the concept of plea bargaining is not so considered as warranted. Though plea bargaining can play an important role in disposal of criminal cases, it is not chosen in majority of cases, since the parties treat it as misuse of justice or unwarranted towards the victim against whom the crime has been committed. In India the plea bargaining is a practice that not even the courts consider as effective and significant in criminal justice system. In India the Supreme Court itself is against the implementation of plea bargaining. However, with the purpose of an early and effective departing of criminal justice, the legislature considered it to be feasible to include the provisions relating to plea bargaining in Criminal Procedure Code. But it is not treated as an effective tool for clearance of pending criminal cases in the courts.

There are definite risks connected with the plea bargaining. In this practice, innocent people may be subjected to punishment in respect of those offences that they have not committed and further, they will have a criminal record that will follow them for the rest of their life, which is considered to be insulting and down casting the image of those people in the society. In vast majority of cases it is the accused who is benefitted more from the plea bargaining because he gets a lighter sentence in turn for pleading guilty for a less severe offence, while the victim is placed at an inferior position. Hence, the plea bargaining is often not encouraged in criminal justice system.

Though the Criminal Procedure Code has provisions relating to Plea Bargaining, but it is not effectively brought into practice. Plea bargaining cannot be used in respect of heinous offences, that are punishable with life imprisonment or death. The plea bargaining can neither be adopted in the offences that affect the socio-economic condition of the country nor in the offences that are committed against a woman or child.

Important Cases Relating to Plea Bargaining

The Indian Supreme Court has criticized this concept of Plea Bargaining in Muralidhar Meghraj Loya vs. State of Maharashtra⁸ and said that it trespasses upon the society's interests of rendering justice.

In Kasambhai vs. State of Gujarat⁹ the Supreme Court said that plea bargaining is illegal, unconstitutional, and against the public policy. The Court opined that if the practice of plea bargaining is allowed, it would incline to encourage corruption, complicity and pollute the whole criminal justice system.

In Thippeswamy vs. State of Karnataka¹⁰ the Court held that allowing accused to plea guilty under a promise is violative of right to personal liberty guaranteed under Article 21 of the Constitution.

In State of Uttar Pradesh vs. Chandrika¹¹ the Supreme Court has held that practice of plea bargaining is illegal and unconstitutional. The Court, also, expressed that the criminal cases should be decided on the merits and not on the basis of confession by the accused of his guilt or plea bargaining. If the accused has confessed his culpability he must be punished with appropriate sentence, instead of bargaining for a lesser punishment or charge.¹²

Though the courts have been reluctant to implement the concept of plea bargaining in India, it has now been included in the law and is given recognition for its effective usage.

⁶ <https://Blog.ipleaders.in> last visited on 12.04.2023 and Criminal Procedure Code, Bare Act

⁷ <https://Exlife688840978.wordpress.com> last visited on 12.04.2023.

⁸ AIR(1976) SC 1929.

⁹ (1980) AIR 854.

¹⁰ (1983)1SCC 194.

¹¹ (2000) Cr.L.J. 384 (386).

¹² <https://blog.ipleaders.in> last visited on 12.04.2023 and All India Reporter

Conclusion

Plea bargaining is undoubtedly, a disputed concept. Few countries have accepted it, few have rejected and few have a neutral stand towards it. It is true that the plea bargaining speeds up disposal of cases and brings down heavy pendency, but it does that in an unconstitutional manner. But the need of the hour says that there is no other option than to accept it.

The Plea Bargaining is considered to be an alternative method of resolving huge backlog of criminal cases. Though the plea bargaining is beneficial to both, the accused and the victim, proper safeguards are required to be taken to avoid abuse of legal process. It is a realistic idea to surmount over- crowded criminal cases and jails in India. This will, also, effectively contribute in the speedy disposal of criminal cases and bring down the pendency number of cases. If properly utilized the concept of plea bargaining can prove to be a potential way to improve litigation efficiency and rationalize judicial resources, infrastructure and expenses, thereby contributing in uplifting national economy.

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