pISSN: 2454-7107, eISSN: 2455-4189

Indian Journal of Law and Human Behavior
Volume 5 Number 2 (Special Issue), May - August 2019
DOI: http://dx.doi.org/10.21088/ijlhb.2454.7107.5219.21

Original Article

Plea Bargaining: A Silver Lining in the Indian Legal System

Vijay Laxmi[1], Shipra Gupta[2]

Author Affiliation

[1]Assistant Professor [2]Associate Professor, Department of Law, Maharishi Markandeshwar (Deemed to be University), Mullana, Ambala, Haryana Haryana 133207, India.

Corresponding Author

Shipra Gupta, Associate Professor, Department of Law, Maharishi Markandeshwar (Deemed to be University), Mullana, Ambala, Haryana Haryana 133207, India.

E-mail: dr_shipralegal@mmumullana.org

Abstract

The process of plea bargain is a method of mutually satisfactory disposition of a criminal case by the approval of the court. It results in a plea agreement between the prosecutor and accused whereby the accused agrees to plead guilty without a trial, and in return, the prosecutor agrees to make favourable sentence recommendations to the court. Plea bargaining in this context is considered the accused's reward for confessing. It can be advantageous for both prosecutors and accused persons. A plea bargain saves valuable court time for high-priority cases. The present paper is an attempt to discuss the emergence of plea bargaining in Indian criminal justice system, its background, types, objectives and justifications for its introduction in India. This paper also throws light on the approach taken by Indian judiciary in this regard.

Keywords: Plea bargain; Criminal Justice; Mutually Satisfactory Disposition; Trial; Guilty.

How to cite this article:

Vijay Laxmi, Shipra Gupta. Plea Bargaining: A Silver Lining in the Indian Legal System. Indian J Law Hum Behav. 2019;5(2): 245–248.

Introduction

Indian Judiciary is facing major problem of delay in the dispensation of justice due to heavy pendency of the cases. Thus, delay and heavy workloads in courts have resulted in the informal system of pre-trial bargaining and settlement. The system is commonly known as "Plea Bargaining". The idea of plea bargaining or mutually satisfactory disposition is to avoid expenses, unpredictable trials and the potential for harassment in all the small and medium crimes. A suspect may be advised to admit the crime for a specified punishment rather than await trial with the possibility of either acquittal or a more serious punishment. Plea bargaining is more suitable, flexible and better fitted to the needs of the society.

Philosophy of Plea Bargaining

Plea bargain is new to Indian criminal justice system. It is primarily based upon successful experimentations in USA on the principle of plea of "Nolo Contendere" i.e. I do not wish to contend. According to Black's law dictionary, 8th edn, 1190 (2004):

"Plea-bargaining is the process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the accused's pleading guilty in return for a lighter sentence than that possible for the graver charge."

Therefore, it can be said that plea-bargaining refers to pre-trial negotiations between the accused

through his/her counsel and the prosecution during which the accused agrees to plead guilty in exchange for lesser punishment.

Historical Background of Plea-Bargaining

Our various Dharamshastras and Smritis propounded plea-Bargaining as a means of self purification by reducing or removing the effects of sin of committing offence. Confession and repentance was important measure for self-purification. Forgiveness on repentance, similar to the principal of Plea-Bargaining is embedded in our castes, tradition, religion, and civilisation from ages. In nutshell the Shastras and Smritis prescribed that irrespective of punishment by the king, an individual who wanted to purify himself had to get himself purged of the sin of committing offence by resorting to the austerities (probation/admonition) or to repentance for wrong doing. It is the sum and substance of philosophy of punishment in cases to be resolved through plea- bargaining. These provisions enable the accused to plead guilty for petty offences and to pay small fines whereupon the case is closed.

CRPC, 1973 and Plea-bargaining

The concept of plea bargaining was introduced in Indian criminal justice system upon the recommendations of the 154th report of Law Commission of India and of Malimath Committee on criminal justice reforms of 2003. The Code of Criminal Procedure, 1973 has been amended by criminal law amendment act, 2005. Chapter XXIA, consisting of 12 Sections (Sec 265-A to 265L) introduced the concept of Plea Bargaining.

Plea Bargaining would not apply to serious offences and is applicable in respect of those offences for which punishment is up to a period of 7 years. Three more categories of offences have also been excluded from its purview are:-

1. The offences affecting socio-economy of this country.
2. The offences committed against women.
3. The offences committed against children below the age of 14.

Despite such vast exclusion areas of these are many offences for which the accused will be entitled to avail themselves of the advantages of plea bargain. Not only will it expedite the disposal of cases, it may also result in adequate compensation for the victim of crime, since he along with prosecutor will be in a position to bargain with the accused. No appeal shall lie to any court against that order. It is a device which ensures that victims receive acceptable justice in reasonable time without risking the prospects of hostile witness, inordinate delay and non- affordable costs. The abstract of Chapter XXI-A *Sections 265-A to 265-L of Cr PC* prescribe certain procedure to be complied with to make it a valid plea bargaining.

- *Section 265-A* provides that plea bargaining is applicable for any offence in which maximum punishment prescribed is up to seven years.
- *Section 265-B* provides the procedure to be followed. Accused have to file an application thereby giving brief description of the case and shall be accompanied by his affidavit stating therein that he has voluntarily decided to plea bargain after understanding the nature and extent of the punishment provided under the law for the offence. Then notice will be issued by the court to the public prosecutor, investigating officer of the case and the complainant/victim of the case. After all the parties put an appearance, the court shall examine the accused in Camera to satisfy itself that the accused has filed the application voluntarily.
- *Section 265-C* provides the procedure to be followed by the court in working out a mutually satisfactory disposition.
- *Section 265-D* provides that report shall be prepared by the court about arriving of mutually satisfactory disposition or failure of the same. In case, no such disposition is worked out, then the Court shall record observation in this regard and proceed further in accordance with the provisions of this Code from the stage the application under section 265-B (1).
- *Section 265-E* provides the procedure to be followed by the court in disposing of the cases when a mutually satisfactory disposition is worked out. The Court shall hear the parties on the quantum of punishment or whether accused can be given the benefit of the probation of good conduct or after admonition.
- *Section 265-F* provides the pronouncement of judgment in terms of such mutually satisfactory disposition.
- *Section 265-G* provides that no appeal shall

lie against such judgment.

- *Section 265-H* provides that while dealing application under the Act, the court shall have all the powers vested in respect of bail, trial of offences and other matters relating to the disposal of a case under the Criminal Procedure Code.
- *Section 265-I* makes Section 428 applicable to the sentence awarded on plea bargaining i.e. sentence already undergone by the accused is to be set off against the punishment awarded.
- *Section 265-J* provides that the provisions of the chapter shall have effect in spite of anything inconsistent 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* provides that the facts pleaded in the application or statements made by the accused for plea bargaining shall not be used for any other purpose except for the purpose of the chapter.
- *Section 265-L* provides that this chapter is not applicable to juvenile or child as defined in Section 2(k) of Juvenile.

Approach of Indian Judiciary

- The plea bargaining has become an integral part of criminal jurisprudence in India. The Indian judiciary initially had adopted a very strict approach towards plea bargaining. It was held that a crime is a wrong against the society at large and is punishable by the state, therefore, even if a compromise took place between the accused and the victim even then accused should not absolve from criminal liability. This approach has been reflected by the Supreme Court in a series of cases.
- *"Madan Lal Ram Chandra Daga vs. State of Maharashtra (AIR 1968 SC 1267)* wherein Supreme court observed that " it is very wrong for courts to enter into a bargain with the accused by which money is recovered for the complainant through their agency. Offences should be tried and punished according to the guilt of the accused."
- Again in the case of *"Murlidhar Meghraj Loya etc Vs State of Maharashtra (AIR1976 SC 1929) and "Kesambhai Ardul Rehman Bhai Sheikh vs. state of Gujarat and ANR (AIR 1980 SC 854)* hon'ble Apex court examined the concept of plea bargaining and observed that "Plea-bargaining is against public policy and it has a tendency to pollute the pure fount of Justice because an innocent accused might be induced to plead guilty and suffer a light and in-consequential punishment, rather than face criminal trial. The judge also might be likely to be defected from the path of duty to do justice. This practise encourages corruption and collusion thereby contributing to lowering the standards of justice.

"Basheshar Nath vs. Commissioner of Income Tax (AIR 1959 SC 149) the Supreme Court observed that "plea bargaining amounts to waiver of constitutional right to have a trial implicit in article 21, which is not permitted under Indian law. In "*State of Uttar Pradesh vs. Chandrika (AIR 1999 SC 164)* the Apex court observed that "on the basis of Plea Bargaining court cannot dispose of the criminal case. 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 that, mere acceptance or admission of guilt should not be a ground for reduction of sentence, nor can the accused bargain with the court."

In Spite of resistance by the Indian judiciary, the central government accepted the concept of plea bargaining and finally it is gaining recognition.

Objects of Plea Bargaining

It aims at lessening the pending legal proceedings.

- To downturn the number of under trial prisoners.
- To recompense and redress the victim of crimes by the accused.
- To cut delay in the disposal of criminal cases.

Conclusion

A Criminal Justice System, which is crippling under its own weight, experimentation is the only hope through which the confidence of the masses can be restored in the system. Plea bargaining should be viewed as one such experiment designed to reduced pendency of under trial cases. The result of the experiment would depend on the honesty and integrity of the justice administration

system in implementing the policy. In India there is a huge pendency of cases and this method can be an effective device to combat such enormity of pending litigation. At this stage, it would be premature to declare the success of the new concept of plea bargaining. The impact of plea bargaining on justice delivery system should be watched and analysed carefully from time to time. It should be discarded if it pollutes the soul of criminal jurisprudence. It should be welcomed if it helps the cause of justice in the society. Till then, it would be more appropriate to see plea bargaining as a positive and constructive step in the direction of expediting trials of criminal cases of medium severity. To Conclude, plea bargaining undoubtedly, has become a critique in the minds of jurists. But it is a hope for the Indian criminal justice administration just like a silver lining behind every dark cloud that represents hope for sunshine. Even though being unconstitutional this method speeds up caseload disposition, and this is a beginning of a new era in India to which horizon is the limit of practice but we have to hope for the best and positive results on the society.

References

1. Black's Law Dictionary, 8th edn.
2. 154th report of Law Commission of India and of Malimath Committee on criminal justice reforms of 2003.
3. The Code of Criminal Procedure, 1973.
4. Criminal Law Amendment Act, 2005.
5. Madan Lal Ram Chandra Daga Vs State of Maharashtra (AIR 1968 SC 1267).
6. Murlidhar Meghraj Loya etc. Vs State of Maharashtra (AIR1976 SC 1929).
7. Kesambhai Ardul Rehman Bhai Sheikh Vs state of Gujarat and ANR (AIR 1980 SC 854).
8. Basheshar Nath Vs Commissioner of Income Tax (AIR 1959 SC 149).
9. State of Uttar Pradesh Vs Chandrika (AIR 1999 SC 164).