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Plea bargaining and it's working under Indian scenario

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Abstract

The Code of Criminal Procedure commonly known as Criminal Procedure Code (CrPC) is that the main legislation that defines the procedure for legal mechanism in India to be followed by concerned agencies. It was enacted in 1973 and came into force on 1 April 1974 it provides a uniform set of criminal courts throughout the country which followed the uniform procedural rules that are defined under the Code. It provides the tools for the procedure to be followed by the investigating agencies for investigation in offence, collection of evidence, determination of guilt or innocence of the accused person and the determination of punishment of the guilty and production of the accused before court. Code of criminal procedure defined standard procedure to be followed. Whole code is divided under XXXVII Chapters and 484 sections. Section 265A to 265L, Chapter XXIA of the Criminal Procedure Code defines the concept of Plea Bargaining. It was inserted into the Criminal Law (Amendment) Act, 2005 taking into account the changing scenario and need of providing speedy justice to the victim^[1].

Keywords: Indian Criminal Justice System, plea bargaining, criminal cases, Draft Criminal Law

Introduction

It was felt that in criminal courts, criminal cases fail because of the hostile statements of the witness. That leads to waste of time of the court and discredits the trust of peoples with in judiciary. Taking into consideration the whole and to mitigate the bad evil of witness turning hostile a new concept of Plea Bargaining has been introduced, which will provide prosecution and defendants to have some negotiations on their case on certain limited offences The 154th Report of the Law Commission was first to recommend the 'plea bargaining' should be added in Indian Criminal Justice System.

The Draft Criminal Law (Amendment) Bill, 2003 was introduced in the parliament and finally it became an enforceable Indian law from enforceable from July 5, 2006. Plea bargaining as an alternative method which should be introduced to deal with huge arrears of criminal cases in Indian courts. Such concept has been described under Section 265A to 265L, Chapter XXIA of the Criminal Procedure Code. This is complete procedure to be followed by the concerned parties under the supervision and knowledge of the judiciary. This provides faith in the judicial system to resolve their dispute within the court in short time period as criminal trials takes long that to be disposed of. Plea bargaining means pre-trial negotiations between defendant and prosecution during which the accused agrees to plead guilty in lieu of certain concessions by the prosecutor on grounds of charge, punishment. This concept is implemented in some small offences only, not in major offences such as murder, culpable homicide etc. basic purpose of insertion of concept of Plea bargaining to save time and money, provide speedy justice the victim and under-trial accused and raise more faith and credibility in criminal judicial system. On the other hand it helps in courts, in reduction of back logging, reduce work pressure, and save time of judges and public prosecutors which can be utilized in handling major and other criminal cases.

Scope of implementation of Plea bargaining

Concept of plea bargaining is not implemented on all criminal cases. This concept is implemented on criminal matters not on civil matters. This covered all cases filed on FIR, private complaints where sentence is not rigorous and harsh. Limited offences are covered under this concept. Section-265A defines application of the chapter. This section define the implementation area of the act, it cover offences committed against the humans except against women and child below the age of 14 years, offences effected the socio economic conditions of the country. These issues are exempted because these are delicate section of the society.

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Section-265A. Application of the Chapter

1. This Chapter shall apply in respect of an accused against whom.
 - a) The report has been forwarded by the officer in charge of the police station under section 173 alleging therein that an offence appears to have been committed by him other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force; or
 - b) A Magistrate has taken cognizance of an offence on complaint, other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years, has been provided under the law for the time being in force, and after examining complainant and witnesses under section 200, issued the process under section 204, but does not apply where such offence affects the socio- economic condition of the country or has been committed against a woman, or a child below the age of fourteen years.
2. For the purposes of sub- section (1), the Central Government shall, by notification, determine the offences under the law for the time being in force which shall be the offences affecting the socio- economic condition of the country^[2].

Section 265A- Define 3 categories in which these provisions are implemented

- a) offence punished with less than 7 years of punishment
- b) offence not affects the socio- economic condition of the country
- c) Has not been committed against a woman, or a child below the age of fourteen years.

If any of the offence fall under any one of these categories, then the concept of plea bargaining will not applicable^[3].

Types of Plea Bargaining:-Plea Bargaining is generally of three types namely

1. **Sentence bargaining:** Main objective of sentence bargaining is to lesser the sentence. In this category, the culprit agrees to plead guilty to the stated charge and in lieu of that he bargains for a lesser sentence.
2. **Charge bargaining:** Main objective of charge bargaining is to lesser the severe charge. Here the defendant agrees to plead guilty to a lesser charge in lieu of saviors from severe charges.
3. **Fact bargaining:** The main purpose for fact bargaining is to hide the severe facts of committing an offence and disclose lighter facts which disclose lighter commission of the offence.

Advantages of plea bargaining

Plea bargains allow prosecution to avoid trials, because they are long term time consuming proceeding, delayed due to numerous known and unknown reasons, and put financial burden but carry with no guarantee of success in case. Through the logical use of plea bargaining, prosecutors can ensure some penalty for offenders who might be acquitted on future dates. Although it is neither permissible nor allowed in all cases but allowed in some reasonable cases and can bring speedy justice to the needy victim and penalty for the respondent. It lessons burden on prosecution for procuring evidence or other difficulties, saving their time and resources for cases that demand more attention^[4]. The advantages of the Plea Bargaining are defined in detail as under:-

1. **Fast disposal of cases:** Most of the cases are decided by the mutual understanding of the parties this will reduce the workload and save the time and energy of the court.
2. **Less serious offenses on record:** It is helpful in dispose-off less serious offences and reduce burden of court.
3. **No work backlog:** As small cases are disposed of with plea bargaining, rest are major offences. It helps in completion of court case process on time and reduce unnecessary workload in courts.
4. **Less burden on judges:** It is also helpful for judicial offices to focus on other matters and provide speedy justice to the needy once.
5. **Easily for economically poor sections:** Plea bargaining helps to poor and economically under privileged people, as it saves money and time both.
6. **More trust/ credibility on judiciary / judicial system:** Urgent disposal of matters put more trust on judiciary and raise confidence on judicial administration.
7. **Prosecutors:** Plea bargains allow prosecutors to avoid unnecessary trials, which can be avoided because they are time-consuming, labor-intensive, and costly but carry no guarantee of success.
8. **Defense:** It is helpful for first time offender s to get more chance to improve them and protect themselves from the stigma of offenders or criminals.
9. **Satisfaction of public:** Justice Delay is justice denied, proverb will create feeling of dissatisfaction amount public. Speedy disposal of cases would satisfy the individual for providing justice to parties/victim.
10. **No crowd in jails and less financial burden on government to maintain jails and criminals:** Lower the cases, lower the crowd in jails. It put lesser burden on finance of the government and need of more staff for supervision of the offenders and to maintain the decorum of jails.
11. **Less burden on police/defense personals:** It is also helpful for police administration, such as they can do their job for fixed time period and more vigilantly.
12. **Beneficial for public prosecutors:** It also reduce work load of public prosecutors and they can focus on important cases in court. They have to work on serious offences and less work pressure to dispose of cases.

Disadvantages of plea bargaining

1. **Voluntarily act of parties and no court interference:** Concept of Plea bargaining is solely depend on the discretion or free will of the accused and victim. Court play role just as to supervise the matter. In these cases court cannot voluntarily handle the matter such as in case of first time offender, court cannot took his lenient view towards offender. Court has to work on the report submitted by the concerned parties only.
2. **Corruption:** Sometimes this me come with corruptions. Victim may claim huge amount of huge compensation on bargains. Victim considered it as chance of money earning. This may become a bad example for future cases because the concept is totally based on the mutual terms and conditions of the parties not on the decision of the court.
3. **Independence of judiciary:** Court cannot work according to his own discretion, they have to follow the report submitted by both the parties. The parties are free to bargain on punishment and it is separate from court discretion. It is often misused by the influential people to

pressurize the poor strata and which raise a question on proving justice to the parties.

4. **Less faith on judiciary:** As plea bargaining solely depend upon parties discretion, this lessen the trust of people on judiciary and it involves undue-influence of the powered group of the society.
5. **Influenced people may take undue advantages of poor people's:** Sometimes powerful parties suppress the victim and his family by use of money and power, which cause injustice to the poor victims.
6. **No final solution:** Plea bargaining is not the solution of the case it is just to bargain upon sentence of the accused. It is used as weapon to earn money in lieu of lesser sentence.
7. **Rise in number of false cases:** This concept will rise in increase in number of false cases. As certain group of public will use as earning money from the opposite parties by falsely implicating them in fake cases.
8. **Raise confidence of criminals:** This will also raise confidence among criminals to commit more crime and get eviction on the sake of money and they will get involved in major crimes too.
9. **Misuse of laws:** By the more use of concept of plea bargaining, law becomes puppet in the hands of certain group of individuals. They will manipulate the law as they wants and even some lawyers also indulge in this mall practices.
10. **Miss-use of law by peoples to exploit / ears undue favor, money etc.:** Certain fake victims use this method to earn money by lodging fake cases against persons and they took money in lieu of plea bargaining. This will increase number of cases and cause unnecessary burden upon court and shatter the trust of the peoples from justice and judicial working. Which will lower down the reputation of the judicial persons as well.
11. **Miss-use against co-prosecutors:** They can bargain away routine cases or those characterized by weak evidence or other difficulties, saving their time and resources for cases that demand more attention.
12. **Rationale of judicial system/penal system would affect badly:** Rationale behind judiciary is to provide justice to parties would get effected by the undue advantages of the money and lesser credibility of the judicial system.
13. **Misuse by public prosecutors/private lawyers:** Most of the public prosecutors and private advocates will prefer cases to be decided by the parties themselves.

Practical implementation of the concept in Indian courts

Concept of plea bargaining is not implemented in court as implemented in other countries. Under plea bargaining offences punished with lighter punishment are covers which are normally of compoundable offences in which parties prefer to c made compromise with the victim rather than clamming plea barging. Because Concept of Plea bargaining put the criminal under punishment for lesser sentence, rather than release the offender from offence. Under compromise accused may release from jail without going jail for lesser punishment put his life from the bad shadow of criminal case. In *Kasambhai vs. State of Gujarat* ^[5] Justice PN Bhagwati observed that some evidence was led on behalf of the prosecution, plea-bargaining took place between the prosecution, the accused and the Magistrate. The accused pleaded guilty which plea was accepted by the Magistrate. The accused were accordingly convicted and sentenced to

undergo imprisonment after prevention of Food Adulteration Act 1954, Sections 7 and 16, Plea-bargaining was allowed was not genuine, as food adulteration is a serious offence and allowed the Order of Conviction and sentence till the rising of the Court and to pay a small fine.

Kasambhai Abdulrehtmanbhai Sheikh vs. State of Gujarat ^[6] Honble court observed that convictions based on the basis of plea of guilt cannot be sustained. It is opposite to the public policy and morality. Such a procedure is unreasonable, unfair and unjust and would be volatile legal norms. *Thippaswamy vs. State of Karnataka* ^[7] inducing an accused to plead guilty for lesser punishment is violate of his fundamental right. He having right to claim his defense and proceed with that ^[8]. *State of Uttar Pradesh v Chanderlok* (2000) ^[9] it held that a court cannot dispose of the criminal cases on the sole basis of plea bargaining. On accused confession case should be decided on merits and appropriate sentence should be passed. *the State of Gujarat vs. Natwar Harchandji Thakor* ^[10] to ensure a great awareness on the part of the Courts to examine the case of each accused on the facts of each case, more closely, so as to determine the most appropriate sentence.

Criticisms of Plea Bargaining

Concept of Plea bargaining has become a disputed concept because there are many different views regarding its implementation. Some authorities stress that introduction of plea- bargaining in India is exceptionally good as it will reduce heavy backlog prevalent in Indian Judiciary as well as reduce crowd in jails and financial burden upon government agencies. Whereas the concept of plea bargaining has been criticized number of times by saying that negotiations in the criminal cases is not permissible. No doubt it is cheapest and speedy process of dispose of criminal cases but this will leads to a custom of malpractice among criminals and false victims. Such as in case of facts bargaining, victim will hide the serious facts and disclose to higher or less sever facts which is totally playing fraud with the court for example in case of major accident case, victim after exercising bargaining disclose in court that this was just a minor slip of vehicle but case was registered on his First information report in which he clearly disclose the facts and on charge framing stage he is stating different facts. This will raise the doubtfulness on the part of the investigating agency and judicial procedure. Apart from this investigating agencies will not do their job with proper dedication because there is not credibility on the statement of the victim and investigation of the investigation officer. Concept of plea bargaining should be implemented with care and caution.

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