UGC APPROVED JOURNAL - 47746
© INNOVATIVE RESEARCH THOUGHTS | Refereed | Peer Reviewed | Indexed
ISSN : 2454 – 308X | Volume : 04 , Issue : 01 | January – March 2018

Justice in Plea Bargaining in India : a Review of major drawbacks

Dr . Manish Bhardwaj
Assistant professor in law Vaish college of Law Rohtak

Abstract
A new idea in India, plea bargaining. In today's criminal justice system, most convictions are obtained through plea bargaining. It is the procedure through which the accused and the prosecution in a criminal case work out a mutually acceptable resolution of the case. It generally entails pleading guilty to a lower charge in one or more courts of a multi-count indictment in exchange for a shorter sentence. "As a result, plea-bargaining refers to pre-trial conversations in which the accused agrees to plead guilty in return for a less sentence. India's status is somewhat different. Plea bargaining is a common tactic in the US and Europe to assist speed up the judicial process.

Keywords - Bargaining, Charges, Accused, Criminal Law

Introduction

The emergence of plea bargaining was driven by the authority and interests of individual courtroom players. Prosecutors and judges are the main characters in this novel. Prosecutors used plea bargains to obtain quick and easy victory in the early nineteenth century. Due to the fact that judges dominated sentence authority, plea bargaining power could only expand to those rare cases where prosecutors had the balance of sentencing power.

It is also true that the fear of severe jail sentences may cause the innocent to plead guilty. It may be a logical assessment, given the obvious punishment of going to trial. The prosecution often offers a carrot, a reduced charge, while simultaneously presenting a huge stick. A person facing further charges may face obligatory or even consecutive penalties. So long as the defendant is guilty of anything, he can threaten to present evidence of uncharged behaviour or even crimes for which the defendant was acquitted. There is no other common law country in the world that allows the prosecution to seek a punishment based on a defendant's acquittal or accusations that were never brought.

In reality, a plea bargain permits the parties to resolve the current charge. Defendant offers to plead guilty in exchange for a concession from the prosecutor.

The million-dollar issue is how common is innocent individuals pleading guilty? The few criminologists who have looked at it think the total rate for convicted offenders is between 2% and 8%. The extent of the range indicates data inaccuracy, but let us assume it is even smaller, say 1%. Considering that over 2 million of the 2.2 million Americans in jail are there as a result of plea deals, that leaves an estimated 20,000 people in prison for crimes they pleaded guilty to but did not commit.

However, in India, such data is not accessible and the position is considerably different from the US. The 2005 change to the Code of Criminal Procedure9 has not resulted in many cases, but the attitude of the Indian judiciary is clear. The Indian judiciary did not recognise this

premise until 2005, when it was included into the Cr.P.C. Every time a court objected citing non-recognition of Indian law.

The idea is new and has been misapplied in several circumstances. Unlike US law, the accused must initiate plea-bargaining. Unlike the US, our legislation allows for discussions between the accused and the prosecution or the court. The US allows plea bargaining for all offences, but not in India for socio-economic offences or crimes against women and children. The court must be very cautious when using plea negotiating.

Origin

It was not recognised by Indian Law at first, hence it was not given much weight. 206(1) and 206(3) of the Code of Criminal Procedure and 208(1) of the Motor Vehicles Act, 1988. These laws allow the accused to plead guilty to minor offences and have the case dismissed. Our Law Commission afterwards proposed using plea bargaining in India based on US practise. They also defended their reasoning. In Brady v. United States10 and Santobello v. New York11, the Supreme Court recognised the constitutional legitimacy and the important function of plea bargaining in criminal cases12. The Law Commission of India proposed Plea-bargaining in its 142nd and 154th reports. They noted that this technique may be used to cope with massive backlogs of criminal cases. The Malimath Committee mostly agreed with the Law Commission's opinions and recommendations. A swift trial, they claim, will resolve uncertainty, save litigation costs, and reduce the parties' legal expenses. They said that if the offence is minor and the impact is on the victim rather than society, settlement without trial should be encouraged.

Reasons for introducing this concept in India

1. Speedy disposal of criminal cases i.e. reduction in heavy backlogs.
2. Less time consuming
3. End of uncertainty of a case
4. Saving legal expenses of both the parties i.e. accused and state.
5. Less congestion in jails
6. Under present system, 75% to 90% of the criminal cases results in acquittal, in this situation it is preferable to introduce this concept in India.
7. It is not fair to keep the accused with hard-core criminals because if the accused is innocent then he will accept his guilt and, in this situation, it is not reasonable.

Judicial Trend

Indian courts have examined the concept of Plea bargaining in a number of following cases and did not approve this concept in India on the basis of formal inducement.

In *Murlidhar Meghraj Loya* v. *State of Maharashtra* the Hon'ble Supreme Court for the first time got an opportunity to examine Plea Bargaining. It was that it's the duty of the state to enforce the law and not to barter with the Accused for lesser sentence.

Supreme Court declared that introduction of Plea bargaining is a necessary evil. Therefore, it should not be introduced in Indian Penal System. In *Kasam Bhai Abdul Rehman Bhai Shiekh* v. *State of Gujrat* Supreme Court further viewed that awarding sentence on basis of plea bargaining is illegal and unconstitutional.

Supreme court went a step ahead in case of *Thippaswamy* v. *State of Karnatka*15 and opined that concept of plea bargaining is violative of Article 21 of the Constitution to induce or lead an accused to plead guilty under a promise or assurance that he would be let off lightly. In *State of UP* v. *Chandrika* the court reiterated that conviction on plea of guilty entered by appellant as a result of plea bargaining is contrary to public policy because judge is likely to be deflected from his path of duty to do justice and he might convict an innocent accused of accepting plea of guilty or let off a guilty accused with lighter sentence thus subverting the process of law and frustrating the social objective.

Therefore, it was argued that by plea bargaining court cannot dispose of criminal cases and court has to decide it on merits. Further, the Hon'ble Supreme Court in the case of *Kachhia Patel Shantilal Koderlal* v. *State of Gujarat* and another strongly disapproved the practice of plea bargaining. Interestingly, thereafter the courts started showing positive attitude towards concept of Plea Bargaining as in *State of UP* v. *Nasruddin.*

The salient features of plea-bargaining:

- It only applies to crimes punishable by up to 7 years imprisonment.
- It does not apply to crimes against women or children under the age of 14.
- The accused must willingly file the application.
- An accused must file a plea negotiating application in the court where the case is underway.
- The accused and the prosecution are granted time to resolve the matter to their mutual satisfaction, which may include compensating the victim and other legal expenditures spent during the case's pendency.
- The statement or facts stated by an accused in an application for plea-bargaining shall not be used for any purpose other than plea-bargaining.
- The judgement delivered by the Court in the case of plea-bargaining shall be final and no appeal shall be allowed.

Three essentials work at the time of filing an application of plea-bargaining. The Kinds of Plea Bargaining are as follows:

Charge Bargaining: • A deal or commitment between the prosecution and the defendant to reduce some of the charges in exchange for a guilty plea. Charge bargaining is possible when the accused admits guilt and takes responsibility for his actions, but only with the permission of the prosecution. Or the prosecution could ignore it. The defendant will be charged after charge negotiating.

Sentence Bargaining: A prosecutor's vow to suggest a court-specific or agreed sentence, or to do so directly with the trial judge. As a result, if the accused confesses his guilt, the prosecutor asks a reduced sentence or a favourable punishment instead of the one he was requesting previously to save the court's time.

Plea Bargaining under Criminal Procedure Code

This is governed by the Code of Criminal Procedure section 265A through L. It is a method that guarantees victims obtain appropriate justice in a timely manner without risking hostile witnesses, excessive delays, or unaffordable expenditures. Therefore, Indian Law does not

allow plea bargaining for offences that are punishable by death or life imprisonment, or by imprisonment for a term exceeding seven years.

Applicability: Section 265 A deals with Chapter XXIA. Plea bargaining benefits can be extended in two ways. One is when a police station's Station House Officer sends a report to the Magistrate following an investigation. Or if the Magistrate has found an offence on a complaint made under S.190(a), and has examined the complainant and witnesses under S.200 or 202, and issued process under S.204.

Procedure: According to S. 265 B, the accused initiates the plea negotiation procedure. Only the trial court can hear the application. The application must be in writing and must be accompanied by an affidavit signed by the accused attesting to the application's legitimacy and detailing any prior convictions. Upon receipt of the application, the trial court must notify the prosecution, either the public prosecutor or the complainant under S. 190(a), and the accused of the hearing date. After receiving notice from the Court, the accused is examined in private, without the presence of other parties. It is essential to establish the application's authenticity and authority.

Disposal of Case on the basis of report: After completing the processes under S. 265D, the Court must hear the parties on the quantum of the sentence or the accused's eligibility to release on probation or admonition. The court may either sentence the accused to probation under S. 360 of the Code or the Probation of Offenders Act, 1958, or any other applicable legislative requirement.

Encourage the litigant to use plea bargaining to resolve ongoing matters. Plea-bargaining must be understood to be successful. Since many nations are moving away from the conventional lengthy and time expensive litigation procedure, plea-bargaining may be one of the finest ADR mechanisms to handle the difficulties of outstanding cases disposal.

There are various reasons for case backlog. Even if everything is perfect, there aren't enough ways to test someone. In India, for example, there are not enough courts to handle the cases. Appointments are behind schedule, resulting in prosecutor shortages.

Victim's Benefits a) He can simply obtain compensated.

b) He can avoid a lengthy legal process.

b) Saves time and money

a) In case of Minimum Sentence, he shall get half punishment.

No such penalty is mentioned, thus he gets one-quarter of the sentence.

c) Probation or admonition.

c) He has no appeal against the judgement.

e) The accused's admission can only be utilised for plea negotiations.

f) Less time and money.

Recent Case Laws in India

From 1993 to 1997, a Grade-I RBI employee was accused of syphoning off Rs 1.48 crore from the RBI by creating vouchers under false identities and transferring the money to his personal account. The CBI arrested him in 1997 and freed him on bail in November. The matter was brought before a Special CBI Judge.

The accused indicated that he is 58 years old and sought plea bargaining under the 2005 amendment, which took effect in 2006. The prosecution was ordered to respond. The court denied the application, but it has opened doors and given hope to other defendants.

In other case of *Vijay Moses Das* v. *CBI*26, Uttrakhand High Court (Justice Praffula Pant) in March 2010 allowed the concept of pleabargaining, wherein accused was charged under section 420, 468 and 471 of IPC. In the said case, Accused supplied inferior material to ONGC and that too at a wrong Port, which caused immense losses to ONGC, then investigation was done through CBI by lodging a criminal case against the accused.

Notwithstanding the fact that ONGC (Victim) and CBI (Prosecution) had no objection to the Plea-bargaining Application, the trial court rejected the application on the ground that the Affidavit u/s (265-B) was not filed by the accused and also the compensation was not fixed. The Hon'ble High Court allowed the Misc. Application by directing the trial court to accept the plea-bargaining application.

Major drawbacks of plea-bargaining

One criticism is that plea bargaining will increase the number of innocent people imprisoned and with a criminal record. After being paid off by the actual culprits, police often accuse innocent persons of crimes they did not commit. Plea-bargaining forces these people to admit their guilt for crimes they did not commit. In the current situation, when acquittal rates range from 90% to 95%, it is the poor who will be the victims of this approach, coming forward to confess and being convicted. An Indian police officer suspected of torturing a detainee may be prosecuted solely for other charges under sections 323, 324, or 330 of the Indian Penal Code. The sentences for these offences are within the new law's sentencing guidelines. The new rule may allow these torturers to escape with reduced punishments, despite the fact that their crimes are severe under international law.

We don't have a perfect answer, but we can minimise unduly long sentences, police involvement, and other hazardous issues. To expedite crucial cases, we should allow plea bargains exclusively in situations with short sentences or no criminal record. The savings from less imprisonment might be utilised to hire more judges and courtrooms".

Conclusion

Even the Supreme Court agreed that a year's wait in trial initiation is unacceptable. But what if the wait is three, five, or 10 years or more? As a result of the first criticism from a portion of society including legal specialists and intellectuals, the notion of plea bargaining is now challenged. As a result of a lack of public faith in the criminal justice system, innocent people are being prosecuted, identical crimes are punished differently, and the affluent get off easier27. To meet the large backlog of cases in India and finally with the permission of both sides i.e. accused and prosecution, then what undermines? India cannot thus deviate from this legislation. Indian courts have acknowledged this practise. With it, we expect overloaded criminal courts will soon be relieved and the pace of disposition will increase. There is no data on how many cases plea-bargaining was requested, but even then only 309 cases were disclosed in which it was refused. It highlights the Indian courts' huge backlog and use of plea bargaining.

To summarise, plea bargaining is a contentious notion. Few courts or judges welcome it, and others have abandoned it. For the reasons stated above, India may be forced to embrace this notion. We believe that only time will tell if this notion is beneficial and justified.

References

1. http://www.legalservicesindia.com/article/article/plea-bargaining-present-status-in-india-658-1.html accessed on 27th October,2013
2. George Fisher,*Plea Bargaining's Triumph,The Yale Law Journal, 109, (2000)*
3. *Ibid*
4. 42nd and 154th report of Law Commission
5. SouraSubhaGhosh,Plea Bargaining - An Analysis of the concept, available at http://www.legalserviceindia.com/articles/plea_bar.htm accessed on 27th ctober,2013
6. Jed S. Rakoff,Why Innocent People Plead Guilty, The New York Review of Books, available at http://www.nybooks.com/articles/2014/11/20/why-innocent-people-plead-guilty/ accessed on 12th March,2016
7. Why the Innocent Plead Guilty': An Exchange, available at http://www.nybooks.com/articles/2014/11/20/why-innocent-people-plead- guilty/ accessed on12th March,2016
8. Criminal Law Amendment Act,2005.