

## Criminal Justice and Plea Bargaining



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### ABSTRACT

*Plea bargain basically is a tool between prosecutor and the accused in which there may be an explicit or implicit permission to be lenient in sentence or to go for less serious charge. Considerable objections have been raised against the nomenclature 'Plea Bargain' on the ground that it implies that justice could be purchased at the bargaining table. In order to avoid the criticism, there has been a move to use relatively more neutral expressions such as 'Plea Discussions', 'Plea Negotiation', 'Plea Agreements' and 'Mutually Satisfactory Disposition', a term used in Chapter XXI-A of the code. To call it by whatever name, it cannot be denied that the scheme involves a process whereby prosecution, victim and an informed accused openly discuss a criminal case for its mutually agreeable disposition which may result in reasonable advancement of administration of justice.*

**Keywords:** Administration of justice, Criminal Justice System, Plea Agreements, Plea Discussions, Plea Bargaining.

### Introduction:-

The Term of Expression 'Plea Bargaining' as such has not been defined in Chapter XXI-A of the code. In criminal cases, it refers to pre-trial negotiations between accused and prosecution during which the accused may agree to plead guilty in exchange for certain concession by prosecutor. In Black's Law Dictionary (Eight Edition), the expression 'Plea Bargaining' has been defined as 'a negotiated agreement between a prosecutor and a criminal defendant (accused) whereby the defendant pleads guilty to a lesser offence or to one of multiple charges in exchange for some concession by the prosecutor, usually, a more lenient sentence or a dismissal of the other charges' According to Wikipedia Encyclopedia 'Plea Bargaining' is an agreement in which a defendant (accused) pleads serious charge. In precise terms, it is a process through which an accused pleads guilty to a criminal charge with the expectation of receiving some lenient consideration from the State.

### A Type of Plea Bargaining:-

The Plea Bargaining may include fact bargain, charge bargain, but in general it is of two types:

1) Charge Bargaining; and

2) Sentence Bargain.

1) Charge Bargain:-

Plea Bargain in which a prosecutor agree to drop charge on some of the counts or reduce the charge to a less serious offence by the accused is commonly referred to as charge Bargain. It may include:

- i. The reduction of charge to a lesser or included offence;
- ii. The withdrawal or stay of other charge;
- iii. An agreement by the prosecutor not to proceed on a charge;
- iv. An agreement to reduce multiple charge to one all inclusive charge.

For example, an accused charged with drunk driving and driving with license suspended, may be offered the opportunity to plead guilty to just the drunk driving charge.

2) Sentence Bargain:-

A sentence bargain occurs when an accused is told in advance what will be his reduced sentence if he pleads guilty. Sentence bargain may allow the prosecutor to obtain a conviction to the most serious charge, while assuring the accused of an acceptable sentence. Sentence bargain may

include the following:

- a) A recommendation by a prosecutor for a certain range of sentence or for a specific sentence
- b) A joint recommendation by a prosecutor and defense counsel for a range of sentence or for a specific sentence;
- c) An agreement by a prosecutor not to oppose a sentence recommendation by defense counsel.
- d) An agreement by a prosecutor not to seek additional/optional sanctions. Such as prohibition and forfeiture orders;
- e) An agreement by a prosecutor not to seek more severe punishment.

Why Plea Bargain?

The scheme of plea bargain is not a matter of choice rather it is a situation out of compulsion. With the sharp increase in the institution of criminal cases almost all the criminal jurisdictions over the world find it difficult to cope up with the arrears of cases.

#### **Avoids Uncertainty of Trial:-**

In most cases, the plea bargain is to avoid uncertainty of trial and the risk of undesirable result to other side. Obviously, the scheme provides both, prosecution and defense, with some control over the outcome of the cases. The accused is left to choose between certainty of accepting sentence for a less serious charge or the uncertainty of trial in which he might be found not guilty, but which also carries the risk of being found guilty of the original more serious charge.

#### **Expedition:-**

As criminal courts become more and more crowded, there is an increased pressure to resolve the cases as quickly as possible. Regular trials can take months years or even decades. Resolution of a case through plea bargain can be arranged in a couple of days thus, reduction the time consumed in resolution of case. It affords total guarantee for expeditious disposal of a case.

#### **Advantage:-**

Incentives to Accused- Plea bargain may have following specific incentives for an accused:

#### **i) Less time:**

The first and foremost incentive is that the accused is not required to wait for long.

#### **ii) Less expenses:**

Fairly obvious benefit that accused can reap from plea bargaining is that they can save a lot of money on account of counsel's fee.

#### **iii) Less efforts:**

It is always taken more time and efforts to bring a case to trial than to negotiate and handle a plea bargain, thus it requires less efforts.

#### **iv) Less sentence:**

Receiving a lighter sentence for less severe charge than might result in taking the case to trial and losing it is also an obvious advantage.

#### **v) Less tarnished record:**

Pleading guilty in exchange for a reduction in the number of charges or the seriousness of the offences will definitely reflect in a better manner on an accused record than the conviction that might result following trial for all charges.

#### **Incentives for Judge:-**

Crowded calendars and loaded dockets have made the job of Judges quite cumbersome. Time so saved can definitely be utilized for imparting qualitative justice in more serious cases. This can ultimately enhance the prestige of the judiciary as well as the faith of common man in the efficacy of the system.

#### **Incentives for Prosecutors:-**

Like a judge, prosecutor with the clogged calendar and long cause list always finds it difficult to prepare each case ideally for being presented before the Court. This may not be humanly possible as well as plea bargaining, being much quicker and requiring less time, tends to lighten the burden of the prosecutor, affording him an opportunity to do justice to more serious cases by preparing them in an effective manner.

#### **Benefits to the victim/witnesses:-**

The sufferance of Victim/Witnesses in the present set up and well known to each and every functionary of Criminal Justice system. Victim and witnesses feel marginalized and forgotten some-

thing which cannot be disputed. Plea provides a victim the central role. Apart that plea bargain may help those witnesses who find it inconvenient and embarrassing to depose before a court and earn some sort of ill-will of the other party.

#### **Benefits to the Criminal Justice System:-**

Criminal Justice System may also have certain distinct advantages. As far as India is Concerned, so far we do not have any empirical study to examine about the total expenditure involved in running the criminal justice system but then as per a new report the cost incurred by the State Exchequer in processing a criminal case relating to deflection of Rs. 19000/- which remained pending for about 33 years, was found to be around one crore rupees. (Refer-142nd Report of the Law Commission of India, Ch. II Para 2.10)

#### **Criticism:-**

The practice of plea bargaining is criticized mainly on the following:

- (i) It undermines Constitutional and Procedural guarantee for the accused.
- (ii) Effaces criminal law of its deterrence and effect.
- (iii) Facilitates manipulation of the system.
- (iv) Hurts the innocent and may induce him to plead guilty.
- (v) Unreasonable classification regarding sentencing for those pleading guilty and not pleading guilty.

The first and foremost attack on the scheme of plea bargaining is made on the ground that the practice subverts many of the basic values of jurisprudence relating to criminal justice like-

- Presumption of innocence;
- Right against self incrimination;
- Right to fair and free public hearing.

It is argued that the scheme is antithesis of Constitutional guarantee of free and fair trial because it allows circumvention of rigorous standards of due process and proof imposed during criminal trials.

Another potent criticism is that the practice al-

lows the offenders to receive lenient which in turn undermines the deterrent effect of criminal sanctions and perpetuates the image that offenders can evade the law with light sentence provided they are willing to bargain. The undeserved leniency regarding sentence may indirectly encourage them to indulge in criminal activities.

The Supreme Court of India has examined the concept of plea-bargaining in the case of *Kasambhai v. State of Gujarat* and *Murlidhar Meghraj Loyat v. State of Maharashtra*<sup>1</sup>. In *Kasambhai's case*<sup>2</sup>, the Supreme Court resisted a plea of guilt based on plea-bargaining, as it would be opposed to public policy, if an accused were to be convicted by inducing him to plead guilty.

In the case of *Murlidhar Meghraj Loyat v. State of Maharashtra*<sup>3</sup>, the Supreme Court observed as under: "In civil cases we find compromises actually encouraged as a more satisfactory method of settling disputes between individuals than an actual trial.

The Supreme Court has also time and again blasted the concept of plea-bargaining saying that negotiation in criminal cases is not permissible. In *State of Uttar Pradesh V. Chandrika*<sup>4</sup>, The Apex Court held that it is settled law that on the basis of plea-bargaining court cannot dispose of the criminal cases. 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 in the same case that, mere acceptance or admission of the guilt should not be a ground for reduction of sentence. Nor can the accused bargain with the court that as he is pleading guilty the sentence be reduced.

In other significant case of *Vijay Moses Das Vs. CBI*<sup>5</sup>, *Uttarakhand High Court* (Justice Praffula Pant) in March 2010 allowed the concept of plea bargaining, wherein accused was charged under section 420, 468 and 471 of IPC. In the said case, Accused supplied substandard material to ONGC and that too at a wrong Port, which caused immense losses to ONGC, who

got the investigation done through CBI by lodging a criminal case against the accused. Despite 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 that the compensation was not fixed.

**Conclusion:-**

The aforesaid criticism against the concept of plea bargaining is not well based. The concept of fair trial and the principal relation to presumption about innocence of the accused may not be violated because in regular trials also the plea of guilt is recorded and convictions are recorded on the basis of such plea. The procedure stipulated in Chapter XXI-A of the code takes care of any extraneous pressure by providing that voluntaries of the accused to enter into plea bargain should be examined by the judge by examining him in camera. It is well known that pres-

ently 70% to 80% cases result into acquittal. Such acquittals indeed may not have any deterrent effect, but when a person pleads guilty then not only some sort of remorse is there on his part but also to some extent he has to suffer for his act or conduct. Therefore, it cannot be said that the scheme of plea bargaining dilutes the theory of deterrence or principal of proportionality of sentence. Again, as pointed out by the Law Commission of India, even illiterate persons with their commonsense are capable of realizing the consequences of making recourse to the scheme of plea bargaining. Therefore, it cannot be said that innocent persons will be tempted to plead guilty in plea bargaining.

The Law Commission has been of the view that on weighing the pros and cons of the matter, the schemes is found to be quite useful for the criminal justice system of our country. The overall supervision by the Judge can take care of any misuse of the process and its proneness to alleged interpolations.

**REFERENCE**

- 1) AIR 1976 SC 1929
- 2) 1976 Cri LJ 1527
- 3) Ibid
- 4) 2000 Cr.L.J. 384(386)
- 5) Criminal Misc. Application 1037/2006