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The Role of Plea Barganing in the Criminal Justice System in India

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Abstract: *The Criminal Procedure Code, 1973 gives the administrative structure to regulating Plea dealing in India. The Indian Criminal Justice framework has been troubled by tremendous pendency of criminal cases and the rising populace of under preliminaries in Indian prisons. The lethargic, awkward and costly preliminary method normally prompts an over-the-top deferral in discarding the criminal cases. To confront the previously mentioned difficulties the criminal system code was changed in 2005 to inculcate Plea-Bargaining as an effective Alternative Dispute Resolution method in India. This research paper will aim to explain the evolution and legislative framework of Plea Bargaining in India and the way it is being administered in the criminal courts. The paper will also discuss the merits and drawbacks of this mechanism meant to dispose of a criminal case without a trial. This paper will also aim to analyze the current status and future of plea bargaining with some recommendations.. This concept of plea bargaining in India was of recent origin and it was introduced in the year 2005 to protect the rights of the accused. This concept was introduced to reduce the number of criminal cases where trialdoes not commence for three or five years. The research paper concludes that the amendment has been implemented in an extremely conscious manner and it is time to explore the wide impossibilities that plea bargaining has to offer.*

Keywords: Plea Bargaining, Judiciary, India, Criminal Cases, Appeals, Adjournments, Prosecution, Defense, Implementation, Amendments, Cheap and Affordable, Opportunities, Bargaining, Crime, Resolutions.

I. INTRODUCTION

In the most traditional and general sense "Plea bargaining" may be defined as an agreement in a criminal case between the prosecution and the defense by which the accused changes his plea from not guilty to guilty in return for an offer by the prosecution or when the judge has informally let it be known that he will minimize the sentence if the accused pleads guilty. It is an instrument of criminal procedure which reduces enforcement costs (for both parties) and allows the prosecutor to concentrate on more meritorious cases. Plea bargaining allows the accused to bargain with the court on the sentence that will be awarded. A key aspect is that the facts stated in an application for plea bargaining are not meant to be used for any other purposes. It is generally seen in these days that most of the criminal defendants are offered plea bargain because of the fact that it gives an opportunity to the criminal to reduce his/her punishment by honestly accepting his own guilt. The practice of what has come to be known as 'plea bargaining' has been the subject of considerable debate over the last few decades. In Canada, the discussion has centered on the exact nature of the practice and on the term by which it should be known. In 1975, the Law Reform Commission of Canada defined 'plea bargaining' as 'any agreement by the accused to plead guilty in return for the promise of some benefit'. But over the years, considerable objections grew against designating the practice in any way that implied that justice could be purchased at the bargaining table. Consequently, there was a movement away from the use of the term 'plea bargaining' and toward more neutral expressions such as 'plea discussions', 'resolution discussions', 'plea negotiations' and 'plea agreements. The use of such expressions marked an evolution in the practice itself, since they implicitly acknowledged it to be much wider ranging than simple bargaining and to involve the consideration of issues beyond merely that of an accused pleading guilty in exchange for a reduced penalty. Delay in providing law to the citizens has become a

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hindrance in crime prevention. What is seen today is that the crime rate increases at a greater rate than the punishment of those offenders. So, the requirement of today is that there needs to be some mechanism which can bring equilibrium between the commitment of crime as well as punishment of those offenders. Plea Bargaining is one of the methods which can be used to reduce the burden of the courts. The move has been announced by the government as part of a process to reform the country's archaic criminal code with many of its laws dating back to colonial times.

The government believes that plea bargaining will affect more than 50,000 prisoners who are currently in jail. Lawyers say "it as a progressive piece of legislation and will lead to speedy disposal of a lot of cases and ease pressure on trial courts," At the moment, India has 10 judges for every million people because of which the average length of a trial is about 15 years. However, the move will only be applied to crimes which attract a maximum sentence of seven years and does not cover more serious felonies such as murder or crimes against women and children. "It is a good beginning but, in the future, it should be extended to cover those crimes as well." From time immemorial, one of the primary functions of the state has been to maintain law and order and ensure that justice prevails. This has been a function that remained unchanged even when the state was evolving from a police state to a welfare state. The citizens pay taxes every year to the state and the officials for the smooth functioning of all the three organs of the state. Prolonged pre trials and back log in cases resulting in undue delay in justice will affect the credibility and reliability of the judiciary which is the corner stone of a legal system. With the introduction of Sections 265 A - 256 L to the Code of Criminal Procedure,1973 by the Criminal Law (Amendment) Act of 2005, the legislature has officially induced plea bargaining into the Indian Legal system to curb the problem of back logging of cases in the Indian Courts and to alleviate the suffering of under trial prisoners. The induction of plea bargaining will be beneficial in contributing to reforming our criminal justice system. Plea Bargaining is a process where the accused is asked to plead guilty in exchange of the judge acting lenient while awarding punishment or considering the seriousness of the offence. It is derived from the Latin phrase 'Nolo Contendere' which means 'I do not wish to contend' i.e., a plea of 'No contest'. Plea Bargaining is a situation where the accused admits that the charges leveled against him are true and that he will not contend a query to the Court to decide over his guilt. However, the Law Commission's efforts promoted the insertion of the provisions concerning Plea Bargaining via its 142nd, 154th, and 177th reports. A new chapter on 'Plea Bargaining' was introduced into the Criminal Procedure Code based on the recommendations of the Law Commission for certain offences.

II. METHODS

This Research paper is purely based on secondary sources. This is done in order to comprehend the idea of Plea Bargaining in the Criminal Justice and implementation of it. The research makes use of secondary sources of data, including journals, newspaper, websites, and so forth.

III. DISCUSSION

Plea Bargaining in Indian Legal System:

A new chapter that is Chapter XXI A on Plea Bargaining has been introduced in theCriminal Procedure Code. It was introduced through the Criminal Law(Amendment) Act, 2005, which was passed by the Parliament in its wintersession. It became effective from 5th July 2006. Originally Plea Bargaining is anAmerican concept its origin can be traced back in America during the 19th Century.Over the years Plea bargaining has emerged as a prominent feature of the AmericanJudicial System.In India Plea Bargaining has certainly changed the face of the Indian CriminalJustice System. Plea Bargaining is applicable in respect of those offences for whichpunishment is up to a period of 7 years. Moreover, it does not apply to cases wherethe offence committed is a Socio-Economic offence or where the offence iscommitted against a woman or a child below the age of 14 years. Also, once thecourt passes an order in the case of Plea Bargaining no appeal shall lie to any courtagainst that order.In India, there exist various situations where a criminal case may end without a fulltrial and one of such is that of plea bargaining. However, Indian judiciary has timeand again denied acceptability of this concept on Indian soil until it received legalapproval in 2006.

The Constitutional Validity of Plea Bargaining Before the Enactment of theCriminal Law Amendment Act, 2005:

Under the watchful eye of the Criminal Law (Amendment) Act of 2005, plea bargaining didn't exist in India. Plea bargaining was not perceived as a legitimate practice by the Courts in India. The Courts of Law in India consistently

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announced the practice of plea bargaining to be illegal and unsuitable in Indian law. The Courts for the most part didn't permit plea bargaining in India because wrongdoing is wrong against the state and not an individual. Assuming a deal is struck between the charged and the State, the blamed as a rule may not be rebuffed. This would diminish the discouragement in the general public and would impact the whole arrangement of the organization of equity. The Courts carefully held the view that plea bargaining was not a perceived idea in the Criminal Jurisprudence of India. Probably the most established case where the subject of the validity of plea bargaining came before the Supreme Court of India was on account of MadanlalRamachanderDaga Vs. State of Maharashtra. For this situation, the Supreme Court observed the practice of plea bargaining to not be right according to law. It further noticed that the Court should lead a preliminary of the denounced and choose the case based on its benefits and the pieces of evidence so delivered on record. The Court is allowed to give a lesser sentence than the greatest endorsed sentence to the charged on the off chance that it believes it to be in light of a legitimate concern for equity. Yet, the Court ought not to go into any sort of a deal with the blamed as plea bargaining isn't valid according to law. In KasambhaiVs. State of Gujarat, the Supreme Court held the practice of plea bargaining to be against public policy. In Kachhia Patel ShantilalKoderlalVs. State of Gujarat &Anr., the Supreme Court called plea bargaining to be an exceptionally inexcusable practice which can never be permitted in the Indian general set of laws. The Court additionally observed all things considered that the practice of plea bargaining would prompt more debasement and may likewisesupport agreements. In the event that plea bargaining will be permitted in India, thearrangement of organization of equity may get dirtied.In Uttar Pradesh Vs. Chandrika, the Supreme Court called plea bargaining to beillegal. It emphasized that if the Court considers it fit to give a lesser sentence to thecharged than the greatest endorsed statement based on the facts and the benefitsof the case, the Court can do as such. Be that as it may, going into plea bargaining,particularly to arrange off criminal cases isn't valid according to law.In ThippaswamyVs. State of Karnataka, the Court observed that the practice ofplea bargaining whereby the blamed would be approached to admit the commissionof a specific offense would violate his crucial right of Right to life (Article 21) that hasbeen cherished upon him by the virtue of the Constitution of India.

Recommendations of Law Commission of India:

The subject of the 142nd Report of the Law Commission of India (1991) and thesubsequent conclusions and recommendations were motivated by the abnormaldelays in the disposal of criminal trials and appeals. The Commission noted that becauseno improvement had been made in the situation and there was little scope forstreamlining the system, the problem was a grave one and clamored for urgentattention.The Commission conducted a survey to ascertain whether the legalcommunity was in support of plea-bargaining and also to gather opinions on theapplicability of the practice if the earlier response was in the affirmative. Of thosesurveyed, a high percentage was in favor of the introduction of the scheme;additionally, most were in favor of introducing the concept only to specified offences.The report concluded that an improved version of the scheme suitable to the lawand legal ethos of India should be considered with seriousness and with a sense ofurgency.The report also attempted to address some reservations that were expressed asregards the introduction of plea-bargaining.The Commission was of the opinion that because the contention fails todistinguish between literacy and common sense, it does not hold ground. Further,the proposed scheme accounts for this objection by providing for judicial officers tobe plea judges, who would explain to the accused persons, the consequences ofpleading guilty under the scheme In its 154th Report, the Law Commission (1996) reiterated the need for remedial legislative measures to reduce the delays in the disposal of criminal trials and appeals and also to alleviate the suffering of under trial prisoners. The 177th Report of the Law Commission, 2001 also sought to incorporate the concept of plea- bargaining. The Committee thus affirmed the recommendations of the Law Commission of India in its 142nd Report and 154th. The 154th Report of the Law Commission points out that an order accepting the plea passed by the competent authority on such a plea shall be final and no appeal shall lie against the same. As regards the procedure to be followed in cases where a minimum sentence is provided for the offence, the competent authority may, after following the aforementioned procedure, accept the plea of guilty and record an order of conviction and impose a sentence to the tune of half of the minimum term of jail provided by the statute for the offence concerned. A statutory provision empowering the competent authority would have to be made so that the provision prescribing the minimum sentence is not violated.

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Judicial Pronouncements on Plea Bargaining:

The accused then moved an application before the court on August 18 stating that he was 58 years old and would seek plea bargaining. The court directed the prosecution to file its reply. The judgment delivered in a case of plea bargaining is final and no appeals are allowed against such verdicts. The accused may also be released on probation if he is a first-time offender. The CBI, while opposing the application, said, "The accused is facing serious charges and plea bargaining should not be allowed in such cases.'' It continued, "Corruption is a serious disease like cancer. It is so severe that it maligns the quality of the country, leading to disastrous consequences. Plea bargaining may please everyone except the distant victims and the silent society.'' Based on these submissions, the court rejected Bandekar's application. Although Bandekar's plea was not accepted, the case is an indicator to an emerging legal trend. According to experts, plea bargaining could reduce the heavy backlog of cases in Indian courts. As it requires the accused to confess to a crime and does away with a lengthy trial, the time currently spent by courts on dealing with lakhs of cases could be reduced drastically.

Plea Bargaining: A Silver Lining:

This quote of Lincoln is enough to show the reason behind introduction of plea bargaining, because court trial is tough like walking on burning woods. There is no minimum time prescribed for disposition of case, it may be two or three or five or ten years, nothing can be said. The accused faces mental torture of hard going trial and spent his life for legal expenses because lawyer charges very sky kissing fee from their client. These pain and torture are not part of punishment to which an accused have to bear. In the year 2001 very disastrous data came, more than 1, 00,000 inmates housed in jail beyond their capacity out of which 70.5 percent are under trial. Plea Bargaining helps in reduction of congestion in jails. In the U.S.A 70–75 percent of convictions ends with plea bargaining and in India 80–90 percent of criminal cases results in acquittal. Main benefit is there are more chances that the guilty plea will be accepted by the court, the court wouldn't be sceptic to reject the plea on menial issues and that is far more profitable for the accused. Finally, it also benefits the public prosecutors by reducing their workload and obviously relieves the court off the growing number of cases. The 142nd Law commission report states that the burden pf trial and prosecution led the complaint to step backward from the process of Criminal Justice delivery system which if black stain on our judicial system. The courts are place where rich plays with justice, plaintiff from poor economic background can't think of justice because rich people make the trial long and hard in which it become very hard for poor to stand and fight for justice. In this kind of justice delivery system Plea bargaining is a ray of light in the deep darkness. In the data of high no. of acquittal in criminal cases Plea bargaining is proved as sunshine of justice rather than a candle for justice. Plea bargaining is a win-win situation for both the parties rather than win-loss because in trial either criminal got acquitted or complainant succeed in conviction of accused.

IV. FINDINGS

In the current plea-bargaining measure, there is no arrangement which allows judges to dismiss a settlement came to by the gatherings. Be that as it may, some healthy degree of watchfulness ought to be accessible with the adjudicator to forestall prosecutorial intimidation and any chance of defilement. Something else, the outcome is a disparity in the bargaining force of the arraignment and the safeguard. An overwhelming indicting side can certainly persuade a blameless respondent to plead liable with the guarantee of decrease of sentence in return. Likewise, illicit plea bargaining may occur between genuine offenders and honest accused, with the previous utilizing degenerate officials to get away from the criminal justice framework. This awkwardness could likewise work the other way if the litigant is wealthy or all around associated. It will be unreasonable to the casualties in such cases, as the discipline might be excessively soft for the respondents. Thus, for some situation, the danger of awkwardness of force will consistently remain when the appointed authorities have no optional forces accessible in plea bargaining.

V. CONCLUSION

To conclude, Plea Bargaining is undoubtedly, a disputed concept few people have welcomed it while others have abandoned it. It is true that Plea bargaining speeds up caseload disposition, but it does that in an unconstitutional manner. But perhaps we have no other choice but to adopt this technique. The criminal court is too overburdened to allow each and every case to go on trial. Only time will tell if the introduction of this concept is justified or not. The

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Chapter on Plea Bargaining incorporated in the Cr. P.C. after the Criminal Law (Amendment) Act 2005 is at divergence with suggestions made by the Law Commission of India in its Reports. The Law Commission had advocated for concessional treatment for those who on their own choose to plead guilty without any bargaining. The scheme envisaged the constitution of a Competent Authority - a Metropolitan Magistrate or a Magistrate of the First Class specially designated as a Plea Judge by the High Court in case of offences punishable with imprisonment for less than seven years. In case of other offences, the Law Commission had proposed appointment of two retired judges of the High Court to decide on whether or not to accord concessional treatment to an accused making an application for the same. Theoretically, therefore, there is no room for bargaining or underhand dealings with the prosecution or the judge trying the case. The scheme recommended was, therefore, only a formalization of the practice of showing some leniency in punishment to those who plead guilty, rather than plea bargaining in its conventional sense.

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