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PROS AND CONS OF PLEA BARGAINING : A STUDY IN INDIAN CONTEXT

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ABSTRACT

Plea Bargaining as a process was submitted in Indian criminal justice system by the Criminal Laws (Amendment) Act 2005 . Plea Bargaining is a method of Negotations between prosecution and the accused or his advocate emerging is a accused pleading guilty for a promise to reduce the charge , to abandon some of charge or getting a lesser punishment. The focus of this paper is on the relevancy of Plea Bargaining in Indian criminal Law as well as judicial perspective regarding this concept and variety of of forms of Plea Bargaining . Undoubtly, Plea bargaining is, a disputed concept .Few people have greeted it but others have abondoned it. Plea Bargaining makes helps to slash the burden on trial courts , preserve money , and avoid the extended judicial proceedings. The notable shortcoming which involve in plea bargaining is that it is utilized contrary to penniless and naived persons. This paper examine about the pros and cons of plea bargaining and should be made to understandable to defendents in their language . But as pointed out in this paper this concept is either new to some countries or has latent loopholes which need to be rectified .Firstly a well maintained arrangement is urgency of the hour in which naived and penniless persons do not become prey .

KEYWORDS :Plea Bargaining, Amendment, Pros , Cons ,Indian.

I. INTRODUCTION

As a member of civilized society we have much more expectations of right decisions from courts, and when they do not fulfill our justice needs, then, we all become highly disappointed. No doubt disappointment leads us or attract us towards Plea bargaining . Plea bargaining is an arrangement used in criminal cases to avoid a protract trial.

Here, the prosecutor and the defendant work together to agree with each other, instead of taking the litigation to a jury. Prosecutors will sometimes concede to pare charges, propose lower sentence lengths, or make some alternative agreement in exchange for the plea. Right to expeditious trial has been acknowledged as a basic right under Article 21 of the Constitution[1].

The process of Plea bargaining has its roots in USA but presently has attained international attention and popularity. It has proliferated its base from USA to most of the world and everydominant country has welcomed this concept exclusively or in parts.

Till the year 2005,Our Indian judiciary did not welcome the plea bargain and fully criticized this process via judgments. With the passage of time legislature felt that the law of the nation should develop, India, again through amendment in its Criminal Procedure Code, incorporated the process of plea bargaining.

"Nolo Contendere" – is a Latin interpretation for "no contest.[2]" In United States in a criminal process, an offender may arrive a 'plea of nolo contendere', which would imply that he does not accept or refuse the charges but agrees to accept punishment.

2. DEFINITIONS:

There is no universally applicable definition of plea bargaining. Plea bargaining requires an active negotiation process whereby a culprit is conceded to confess his guilt in court (if he so desires) in exchange of a slighter punishment that would have been issued for such an offence. In legal phrasing, a plea-bargaining is directly an answer to a assertion made by someone in a civil or criminal process under common law adopting the adversary system.[3]

According to Merriam Webster dictionary: Plea bargaining is the negotiation of an agreement between a prosecutor and a defendant whereby the defendant is permitted to plead guilty to a reduced charge or sentence[4] .

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1. HussainaraKhatoon v. State of Bihar, AIR 1979 SC 1360.

2.https://www.academia.edu/12824566/PLEA_OF_NOLO_CONTENDERE_IN_CRIMINAL_JUSTICE

3. Surender Kumar, Kulwant Singh *"Concept of Plea Bargaining and Criminal Law in India: An Analysis"*Vol – I,

Issue – IV VOR (October 2013).

4. Merriam Webster dictionary, https://www.merriam-webster.com/dictionary/plea%20bargaining .

According to Black's Law Dictionary[5] **:**"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 defendant's pleading guilty to a lesser offense or to only one or some of the counts of a multi-count **indictment** in return for a lighter sentence than that possible for the graver charge."

3. TYPES OF PLEA BARGAINING :

There are trio forms of plea bargaining are following such as:

Charge Bargaining: Bargaining for dropping some charges in a case of multiple; Usually, in plea of guilty, prosecutor will remove the bigger charge is called charge bargaining.

Sentence Bargaining: Where the accused has no choice of admitting guilt and setting for lesser punishment is called sentence bargaining.

Fact bargaining : Bargaining which involves an admittance to certain facts in return for a negotiation not to present certain other facts is declared as fact bargaining.

Plea bargaining has become a hot and current topic in debates whether it is good for the society or not. To get a good idea on this concept in Indian context, let us take a look at its Pros and Cons of Plea bargaining

4. PLEA BARGAINING : PROS

There are various merits of plea bargaining process are given below[6] :

a. Eradicate uncertainty from the legal process.

Defendants who resorting the plea bargain eradicate the uncertainty from legal process. It is also help to minimise the highest sentence that could be levied if they were found at fault by a judge . Plea bargaining would provide a quick ,efficient method of handling the burdened of

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5. https://criminallaw.uslegal.com/plea-bargaining/

6. https://vittana.org/11-advantages-and-disadvantages-of-plea-bargaining

cases in court and speed up the legal process.

b. Provide certainty for a conviction.

During trial every person not convict in the eye of court before conviction on the ground of evidence. But by conceding to a plea bargain, it constitutes a certainty for a conviction.

c. Minimise over crowd in local jails.

Many who are awaiting trial and under trial are kept in jails at the local level. These jails are overcrowded. With a plea bargain moving cases through the criminal court system faster, and if reestablishment and improvement of convict start early and he can initiate a renewed life without loss of time.

d. Case is Over.

You accept a plea agreement and after that appear before the court to plead, your case is finally over. If you have stayed in jail because you were not able to bond out, you may be released .

e. Save the expenses and time.

Defendants who hire a private lawyer with paying much more fees because private lawyer represent them through the entire trial. Accepting a plea agreement can help a criminal defendant dispose of the case more fastly to save the time and expense of a trial.

f. Prevents a case from getting worse.

Some crimes, which may have been committed, and any evidence are not going to be founded. That's why a charged soul takes a plea bargain, he will not have to proceed through trial.

g. Rescue from maximum sentence.

One of the biggest point that why innumerable human beings prefer plea bargaining is the fact that they rescue from maximum punishment for their felonies.

h. It lets the justice system breathe.

If all criminal cases should make it into a legal proceedings by jury, then our justice systems would not be able to sustain themselves. Courts will possibly be backed up by months or till years.

5. PLEA BARGAINING : CONS

There are various merits of plea bargaining process are given below[7] :

a. Authorizes submission of the accused with unfair pressure.

In a plea bargaining deal, the prosecution can present the accused with unfair pressure. And, there is still a chance of it being coerced.

b. Lead to poor case preparation and investigations.

In the eyes of judges and attorneys that plea bargaining has led to advocates not taking the time to properly prepare their cases and poor police investigations. They believe that, rather than following justice, the parties would depend on making a deal, and their legal consequences will become less important.

c. It might charge innocent people guilty.

Even if you are innocent, but agreed to plead the guilt , you still have to pay a fine or be imprisoned for a crime that you did not commit .

d. Unconstitutional.

It is contended that plea bargaining is unconstitutional, as it takes away the defense's

constitutional privilege to a trial by jury. If the defendant is compelled or coerced into such an negotiation, then this deal is unconstitutional.

e. It can make the justice system suffer.

Since both the defense and prosecution parties depend on their power to negotiate an agreement, instead of winning a trial, the justice system might suffer.

7. Supranote 6

f. Lead to weak investigatory process.

In many jurisdictions ,in mostly cases go to a plea bargaining instead of a trial, this concept leads to weak investigation practices. Rather of seeking to secure justice, the ambition is to make an agreement, and that an agreement, really is not justice.

g. It still spawn a criminal record for the naive .

Through plea bargaining , innocent person save himself from greater loss. But that compromise indicates they will have a criminal record. Even if a plea bargaining isn't admitted, then the legal expenditures that may be higher than the price of what a bargain offers.

h. Not important for Judges to accept a plea bargain negotiation.

A judge can declare that agreement is void when the both parties may concede to a plea bargaining .Usually,a judge is not necessary to follow a plea bargaining. A judge always want that a case to go to trial if they feel like a plea bargaining is being offered in bad faith.

i. Remove the chance of an appeal.

If a defendant did not won the case ,then on the base of various grounds upon which an appeal may be filed. But Plea bargains remove the chance of appeal.

6. PLEA BARGAINIING IN INDIA

Plea Bargaining was inserted in the Criminal Procedure Code via Chapter 21 A by Criminal Law (Amendment) Act i.e. Act 2 of 2006 incorporating Section 265 A to 265 L.

In Section 265 A of the Code. Plea bargaining is not appropriate to that crimes for which punishment is life imprisonment or death penalty. Its only suitable to that crimes for which punishment is less than 7 years.

Further offences affecting socio-economic circumstances of the nation or executed against women or child under 14 years have been ruled out from the scope of Plea Bargaining.

Plea bargaining different from 'guilty plea' as the facts admitted by the accused during a plea bargain cannot be utilized against him anywhere in a lawful proceeding under Section 265 K of the Crpc.

The accused may get less punishment, be released on probation or admonition under Section 265E of the Code.

No appeal lies against such judgment except Special permission to Appeal under Article 136 and Writ Petitions under Article 226 & 227 of the Constitution of India under Section 265G of the Crpc. Meagerly time and wealth are consumed ending uncertainties involved in a criminal case. The victim may also get aided by plea bargaining for the same may provide rapid justice for victim and indemnity. However, the Indian judicial system saw a change in the recognition of the process of plea bargaining **after 154th Law Commission Report[8],** which advocated the introduction of the plea bargaining. The committee took sights from judges, lawyers, bar associations etc. The perception of the plea bargaining has made a extreme impact over the years and has become an crucial part of criminal jurisprudence in India.

Before the Amendment Act, the Indian judicial system did not recognize the process of plea bargaining and thus defied it. Pre-amendment, the Supreme court again declared that the concept was contrary to the public policy.

7. JUDICIAL VIEW ON PLEA BARGAINING

In U.S.A ,as the process of plea bargaining was gaining popularity ,and voices from different corners were coming for the inserting of the process of plea bargaining in India. But India, being a unique Nation due to its socio economic conditions repeatedly rejected this concept of plea bargaining. The Indian judiciary was no different and took a very stringent view against Plea Bargaining. The debate around plea bargaining mainly revolved around the question of morality and the Apex court held the view that it amounted to immoral compromise in criminal cases . The concept of bargaining was earliest thought out by the Hon'ble Court in this case **MadanlalRamachanderDaga v. State of Maharashtra[9]** where a very strict view was taken and it was held that:

8. 154th Indian Law Commission Report, Vol-I, p. 51-54.

"In our viewpoint, it is very unsound for a Court to enter into a bargain of this nature. Offences should be proved and sentenced according to the guilt of the culprit . If the Court considers that leniency can be revealed on the facts of the case it may order a milder sentence. But the Court should never be a party to negotiation by which money is recovered for the complainant via agency. We do not advocate of the action chosen by the High Court".

The Apex court in this case **Thippaswamy v. State of Karnataka,**[10] held that imposition of punishment in revision or appeal after the accused had plea bargained for a slighter punishment or mere fine in the trial court as unconstitutional being violative of Article 21 of the Indian Constitution.

Justice P.N. Bhagwati in **Kasambai Abdul RahmanbhaiSeikh v. State of Gujarat**[11]**,** declared plea bargaining as unconstitutional. In this case, judgment of the High Court was set aside by Supreme Court and the pleading of guilty was ignored. Culprit's conviction was set aside and the litigation was sent back to the Magistrate for trial in conformity with law. It was held that such a process would be contradictory, biased and unjustified amounting to contravention of Article 21 as interpreted in **Maneka Gandhi's case.**[12] It would have the impact of violating the genuine origin of justice, because it might encourage an innocent offender to plead guilty to undergo a lighter and an inconsequential punishment rather than go through a lengthy and backbreaking criminal trial which, having regard to our unmanageable and disappointing system of administration of justice, is not only long drawn out and devastating in terms of time and wealth, but also unclear and unpredictable in its result and judge also might be prone to be deflected from the track of duty to do justice and he might either imprison an innocent offender by admitting the plea of guilty or let off the guilty offender with a lighter sentence.

9. AIR 1968 SC 1267.

10. AIR 1983 SC 747.

11. AIR 1980 SC 854.

The Supreme Court again **in Kachhia Patel ShantilalKoderlal v. State of Gujarat and another**[13] held that the practice of plea bargaiing is unconstitutional, illegal and would likely to spur exploitation, deceit and contaminate the genuine fount of justice.The Apex court in the case **State of Uttar Pradesh v. Chandrika,**[14] held that it is not permissible to dispose of the case on the ground of plea bargaining and observed "It is decided law that one base of plea bargaining Court may not dispose of the criminal suits. The Court has to conclude it on pros. If accused confesses his guilt, relevant punishment is required to be ordered… Mere confession or admission of the guilt must not be a basis for rebate of sentence."

Major change in judicial thought process took place after the concept of plea bargaining was official added in the Criminal Procedure code . While recognising the process of plea bargaining, the Gujarat High Court noticed in the **State of Gujarat v. NatwarHarchanji Thakor**[15]**,** that the actual object of the law is to contribute easy, economical and swift justice by settlement of disputes, including the hearing of criminal suits and viewing the current pragmatic profile of the pendency and defer in the management of law and justice, fundamental reforms are unavoidable. There should not be anything stagnant. It can thus be said that it is actually a means of redressaland it shall adjoin a current dimension in the sphere of judicial reforms **.**

What occur if Somebody Devastates a Plea Deal?

A plea bargain is deal between the offender and the prosecutor; if either party fails to exist up to its outcome of the agreement, the most reasonable remedy is to go to court to enforce the negotiation. Generally, a offender is asked to do something in return for a minorer charge. If an offender unsucessful to execute his or her goal of the bargain, then a prosecutor can take back the proposal.

12.Maneka Gandhi v. Union of India, AIR 1978 SC 597.

13. (1980) 3 SCC 120.

14. AIR 2000 SC 164

15. (2005)Cr LJ.2957.

8. CONCLUSION:

Plea bargaining has been popularized as a key to the menance of overpopulated cell , overburdened courts and unexpected delays. It cannot be refuted that the process may result in expeditious conclusion of cases; because deferred trials are dubious in bountiful ways, So Plea bargaining has presently iron out this problem . After the favourable outcome of plea bargaining in the USA, many countries sought this process in their criminal justice system . Though it has turned out as a superb process to fly up the Justice system . Exploitation, vested interest of police, prosecution, defendants etc perform a crucial part in plea bargaining. Likewise United States, there is no room ceded for any uncertainty that Plea bargaining will attain the constant outcome of success in India as thoroughly. Aditionally more, the practice inserted by the Criminal Law (Amendment) Act, 2005, is extremely insufficent because many factors vital to the functioning of such a process in India have not been taken into attention.Thevital reasons that are given for the addition of plea-bargaining include the dreadful overcrowding of prisons, big rates of acquittal, persecution undergone by convicts anticipating trial, etc. can all be followed back to one vital factor, and that is deferment in the hearing process . In India, the logic behind delay in trials can be discovered to the process of the investigative agencies as well as the judiciary. Thus renewal of the existing justice system may be a greater reasonable approach rather than strengthening the current arrangement .