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Concept of Plea-Bargaining

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ABSTRACT

"Peace cannot be kept by force; it can only be achieved by understanding."

-Albert Einstein

The basic objective of the legal system is to maintain the peace and order in the society and to fulfill the idea of justice as mentioned in the Preamble of our Indian Constitution. In the case of the violation of the rights of the person. Offences can be of civil as well as criminal nature. In the civil cases the dispute can be settled by various modes by following the outside the settlement procedure. In criminal cases also there are cases which are minor and are of compoundable nature. But because of the trial processes these cases remain pending in the courts thereby leading to the huge pendency of the cases. The accused in such types of cases are sometimes the first time offenders and due to the trial process they are being kept with the hardened criminals which can affect them. So, in order to reduce the pendency of such cases, the concept of Plea-Bargaining has been introduced. It is a process which tries to reduce the burden of the courts. It is method of pre-trial/negotiation between the accused and the victim. This paper has tried to laid the emphasis upon the use of plea-bargaining as one of the modes of Alternative Dispute Resolution for serving the two purposes i.e. one for disposing off the criminal cases of petty nature and secondly as a ray of hope for under trials.

Keywords: *Dispute, Speedy Disposal, Alternative, Settlement, Burden*

I. INTRODUCTION

Alternative dispute resolution is considered as mode for the purpose of reducing the burden of the court. In order to achieve the objective which is being mentioned in the Preamble of the Indian Constitution that is Justice. Alternative Dispute Resolution consists of various kinds of the modes through which the disputes are resolved in a manner outside the court. ADR tries to provide speedy justice and inexpensive remedy through the various modes of the ADR like mediation arbitration conciliation negotiation and Lok-Adalat. They try to resolve the disputes

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which are of civil nature but if we look towards the plethora of the cases pending in the courts 60% amongst them are of criminal nature. Recently a new term known as Plea-Bargaining or Pre- trial has been introduced through Criminal Law (Amendment) 2005 Act which is also based upon the report of the law commission of India .

II. MEANING OF PLEA BARGAINING

Plea Bargaining, in law, the practice of negotiating an agreement between the prosecution and the defense whereby the defendant pleads guilty to a lesser offense or (in the case of multiple offenses) to one or more of the offenses charged in exchange for more lenient sentencing, recommendations, a specific sentence, or a dismissal of other charges.Supporters of plea bargaining claim that it speeds court proceedings and guarantees a conviction, whereas opponents believe that it prevents justice from being served. The great majority of criminal cases in the United States involve some form of plea bargaining[2].

The basic purpose behind plea bargaining is to completely end the trial process .It is considered to be one of the most important and significant development in the criminal justice system .The law allows the concept of plea bargaining which is also known as pre-trial negotiation between the accused and the prosecution.

III. HISTORY OF PLEA BARGAINING

Since 19th century the concept of plea bargaining had been the part of American judicial system.

In the Jury System, the need for plea bargaining was not felt because there was no legal representation.[3] Later on, in 1960 legal representation was allowed and the need for Plea Bargaining was felt. It was used to encourage the confessions.

In a landmark judgment ***Bordenkircher v. Hayes*** [4], the United State Supreme Court held that, "*the constitutional rationale for Plea Bargaining is that no element of punishment or retaliation so long as the accused is free to accept or reject the prosecution's offer. The Apex Court however upheld the life imprisonment of the accused because he reject the 'Plea Guilty" offer of 5 years imprisonment*[5]. The Supreme Court in the same case however in a different context observed that, it is always for the interest of the party under duress to choose the lesser of the two evils.[6] The courts have employed similar reasoning in tort disputes between private

[2] https://www.britannica.com/topic/plea-bargaining
[3] https://blog.ipleaders.in/plea-bargaining-practice-india/
[4] 434 U.S. 357, 98 S. Ct. 663, 54 L. Ed. 2d 604, 1978 U.S
[5] http://www.legalservicesindia.com/article/1836/Plea-Bargaining-in-Indian-Legal-System.html
[6] ibid

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parties also. In countries such as England and Wales, Victoria, Australia, "Plea Bargaining" is allowed only to the extent that the prosecutors and defense can agree that the defendant will plead to some charges and the prosecutor shall drop the reminder.[7]

IV. SALIENT FEATURES OF THE PLEA- BARGAINING

There are certain salient features of the Plea-bargaining. They are as follows:

- On mutual terms case gets disposed off
- The prosecution authority can grant certain concessions to the accused
- Within the Judicial review the negotiation used to take place.

V. TYPES OF PLEA BARGAINING

Plea Bargaining has been classified into three categories.

- Sentence bargaining: In the case of sentence bargaining the accused tries to plead guilty on the charges being made. In this the prosecutor promises to recommend lesser Sentence or will refrain from it.
- Charge bargaining: It is considered to be very common in the criminal justice system where the defendant pleads guilty on the promise being made by the prosecutor to either dismiss or reduce certain charges made against the defendant.
- Fact bargaining: This is generally not used in courts because it is alleged to be against the Criminal Justice System. It occurs when a defendant agrees to stipulate to certain facts in order to prevent other facts from being introduced into evidence.[8]

VI. ADVANTAGES OF PLEA BARGAINING

Following are the advantages of the plea bargaining:

- It helps in reducing the burden of the courts in the criminal cases.
- It helps in getting speedy justice in criminal cases.
- It is less time consuming.
- It is less expensive.
- It provides protection from physical and mental health

[7] ibid
[8] https://blog.ipleaders.in/plea-bargaining-practice-india

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VII. SCOPE OF PLEA BARGAINING

The concept of Plea Bargaining has now become a part of criminal jurisprudence. It benefits both the State and the accused under the scheme of Plea Bargaining. If an eligible accused admits his guilt voluntarily, the court may release him on probation or award lesser punishment than prescribed. This way the accused saves time and money both.[9]

VIII. PLEA-BARGAINING IN INDIA AND U.S.A

The office of Prosecution commands immense relevance in America so it is directly allowed to negotiate an agreement with the accused.[10] The judicial approval is sought once the agreement has been negotiated.[11] In contrast the judicial officer plays the central role for administering plea bargaining in India. [12]Further it's a businesslike approach which guides negotiations in America thereby mandating the prosecutor to share all relevant information concerning the case with the accused.[13] Further the American prosecutor asks the accused to plead guilty to certain or all the charges framed against him. In consideration of this he would recommend reduction of charges or a short or lenient sentence to the judge. But in India such charge bargaining is not permissible.[14] Even if the accused pleads guilty he cannot bargain for reduction in charges[15]. Further the American system allows plea bargaining for all the offences except few making its applicability wide in scope. India only allows the accused to seek plea bargaining for a limited number of offences[16].

IX. INDIAN SUPREME COURT'S VIEW ON PLEA BARGAINING

The earliest case in which the concept of plea bargaining was considered by the Supreme Court was ***Madanlal Ramachandar Doga v. State of Maharashtra***[17] in which it observed *"In our opinion, it is very wrong for a court to enter in to a bargain of this character. Offences should be tried and punished according to the guilt of the accused. If the court thinks that leniency can be shown on the facts of the case it may impose a lighter sentence".*[18]

Justice V.R. Krishna Iyer in the case of ***Muralidhar Meghraj Lohiya versus State of Maharashtra*** stated that ""*Many economic offenders resort to practices the American call 'plea*

[9] http://ijtr.nic.in/PLEA%20BARGAINING.pdf
[10] https://epgp.inflibnet.ac.in/Home/ViewSubject?catid=20
[11] ibid
[12] ibid
[13] ibid
[14] ibid
[15] ibid
[16] ibid
[17] A.I.R. 1968 SC 1267
[18] Ibid

bargaining', 'plea negotiation', 'trading out' and 'compromise in criminal cases' and the trial magistrate drowned by a docket burden nods assent to the sub rosa anteroom settlement. The businessman culprit, confronted by a sure prospect of the agony and ignominy of tenancy of a prison cell, 'trades out' of the situation, the bargain being a plea of guilt, coupled with a promise of 'no jail'. These advance arrangements please everyone except the distant victim, the silent society. The prosecutor is relieved of the long process of proof, legal technicalities and long arguments, punctuated by revisional excursions to higher courts, the court sighs relief that its ordeal, surrounded by a crowd of papers and persons, is avoided by one case less and the accused is happy that even if legalistic battles might have held out some astrological hope of abstract acquittal in the expensive hierarchy of the justice-system he is free early in the day to pursue his old professions. It is idle to speculate on the virtue of negotiated settlements of criminal cases, as obtains in the United States but in our jurisdiction, especially in the area of dangerous economic crimes and food offences, this practice intrudes on society's interests by opposing society's decision expressed through predetermined legislative fixation of minimum sentences and by subtly subverting the mandate of the law. The jurists across the Atlantic partly condemn the bad odour of purchased pleas of guilt and partly" justify it philosophically as a sentence concession to a defendant who has, by his plea 'aided in ensuring the prompt and certain application of correctional measures to him."[19]

Justice P.N Bhagwati has stated in the case of ***Kasambhai Abdul Rehmanbhai Sheikh vs. State of Gujarat***[20] *that "To allow a conviction to be recorded against an accused by inducing him to confess to a plea of guilty on an allurement being held out to him that if he enters a plea of guilty, he will be let off very lightly. Such a procedure would be clearly unreasonable, unfair and unjust and would be violative of the new activist dimension of Article 21 of the Constitution unfolded in Maneka Gandhi vs. Union of India case. It would have the effect of polluting the pure fount of justice, because it might induce an innocent accused to plead guilty to suffer a light and inconsequential punishment rather than go through a long and arduous criminal trial which, having regard to our combers and unsatisfactory system of administration of justice, is not only long drawn out and ruinous in terms of time and money, but also uncertain and unpredictable in its result and the judge also might be likely to be defected from the path of duty to do justice and he might either convict an innocent accused by accepting the plea of guilty or let off a guilty accused with a light sentence, thus, subverting the process of law and frustrating the social objective and purpose of the anti-adulteration statute. This practice*

[19] (1976) 3 SCC 684.
[20] (1980) 3 SCC 120.

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would also tend to encourage corruption and collusion and as a direct consequence, contribute to the lowering of the standard of justice. There is no doubt in our mind that the conviction of an accused based on a plea of guilty entered by him as a result of plea-bargaining with the prosecution and the Magistrate must be held to be unconstitutional and illegal.[21]

X. LAW COMMISSION REPORTS ON PLEA BARGAINING

The Law commission of Indian has talked about the concept of Plea Bargaining in its 142th, 156th and 177th Report.

142th Law Commission Report (1991)

The Report routed for plea bargaining in wake of delay in disposal of cases and the time spent by accused in jails before the commencement of trial, which exceeds the maximum punishment which can be awarded to them. Thus, it recommended a detailed structure for incorporation of plea bargaining.[22]

154th Law Commission Report (1996)

It recommended making plea bargaining applicable as an experimental step, where an offence is punishable with less than 7 years imprisonment or for offences provided in Section 320[23]. Further, it suggested that the option of plea bargaining can be availed after filing of charge sheet in a police case and after taking cognizance in a complaint case. Lastly, a separate chapter in Cr.P.C. to be incorporated for the same [24].

177th Law Commission Report (2001)

It recommended that suggestions of the 154th Law Commission Report regarding Plea bargaining should be incorporated at an early date[25].

XI. COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM

The Law Commission adverted to the views of the Indian Supreme Court in this regard but however stated that plea-bargaining can be made one of the components of the administration of the criminal justice and the only caveat that they entered is that it should be properly administered and they recommend that in cases where the imprisonment is less than seven years

[21] ibid
[22] https://criminallawstudiesnluj.wordpress.com/2019/03/14/tracing-the-development-of-plea-bargaining-in-india-part-ii/#:~:text=The%20Law%20Commission%20of%20India,142nd%2C%20154th%20and%20177th%20reports.&text=It%20recommended%20making%20plea%20bargaining,offences%20provided%20in%20Section%20320.
[23] ibid
[24] ibid
[25] ibid

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and / or fine may be brought into schemes of things where plea bargaining should be there and they also stated that in respect of nature and gravity of the punishment quantum of punishment could be brought down but plea-bargaining in India should not be extended to socio economic offences or the offences against women and children.[26] As recommended by the Law Commission when the accused makes a plea of guilty after hearing the public prosecutor or the de facto complainant the accused can be given a suspended sentence and he can be released on probation or the court may order him to pay compensation to the victim and impose a sentence taking into account the plea bargaining or convict him for an offence of lesser gravity may be considered.[27] Taking into account the advantages of plea-bargaining, the recommendations of the Law Commission contained in the 142nd report and the 154th report may be incorporated so that a large number of cases can be resolved and early disposals can be achieved.[28]The Malimath Committee on Criminal Justice Reforms has advocated the concept of plea-bargaining and has emphasized upon its introduction in the criminal justice system. Hence, it lead to the introduction of chapter XXI-A under the Criminal Procedure Code,1973 containing the sections from 265A-265L.

XII. CR.PC AND PLEA BARGAINING

Criminal law amendment act 2005 incorporated the concept of plea bargaining Under The Criminal Procedure Code 1973 in chapter XXI-A from sections 265A - 265 L in total 12 sections deals with it.

Sec 265 A. Application of the Chapter.

Not applicable in those offences which are punishable with death or life imprisonment or of imprisonment for a term exceeding 7 years. It is also not applicable against such offences which affects the socio economic condition of the country or has been committed against a woman or a child below the age of 14 years. The central government has specified 13 offences which shall be considered as the offences which affect the socio economic condition of the country.They are as follows:

(i) Dowry Prohibition Act, 1961.

(ii) The Commission of Sati Prevention Act, 1987.

(iii) The Indecent Representation of Women (Prohibition) Act, 1986

[26] http://dfs.nic.in/pdfs/criminal_justice_system.pdf
[27] ibid
[28] ibid

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(iv) The Immoral Traffic (Prevention) Act, 1956.

(v) The Protection of Women from Domestic Violence Act, 2005

(vi) The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992.

(vii) Provisions of Fruit Products Order, 1955 (issued under the Essential Services Commodities Act, 1955).

(viii) Provisions of Meat Food Products Orders, 1973) (issued under the Essential Commodities Act, 1955).

(ix) Offences with respect to animals that find place in Schedule I and Part II of the Schedule II as well as offences related to altering of Page 3 boundaries of protected areas under the Wildlife (Protection) Act, 1972.

(x) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. (xi) Offences mentioned in the Protection of Civil Rights Act, 1955.

(xii) Offences listed in sections 23 to 28 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

(xiii) The Army Act, 1950.

(xiv) The Air Force Act, 1950.

(xv) The Navy Act, 1957.

(xvi) Offences specified in sections 59 to 81 of the Delhi Metro Railway (Operation and Maintenance) Act, 2002.

(xvii) The Explosives Act, 1884.

(xviii) Offences specified in sections 11 to 18 of the Cable Television Networks (Regulation) Act, 1995.

(xix) The Cinematograph Act, 1952"[29]

Section 265B: Application for Plea Bargaining.

Defendant can himself file an application to plead the guilty provided certain conditions are being fulfilled. That is it must contain the brief description of the case in the application, the application must be voluntary preferred, he must not the previously convicted by a court for the offence for which he is filing the application for pre bargaining .The court will send the

[29] http://ijtr.nic.in/PLEA%20BARGAINING.pdf

notice to the public prosecutor or the complainant of the case to appear on a date fixed by the court.

The court will examine the accused in the camera to satisfy himself that the accused has filed the application voluntarily. If the court finds that the application has been filed involuntarily by the accused or he had been previously convicted by the court in the same case then the application can be rejected by the court.

Guidelines for Mutually Satisfactory Disposition

S. 265(C) of the Code of Criminal Procedure provides following procedures for the mutually satisfactory disposition under section 265(B)(4)(a):-

(i) In a case instituted on a Police Report: The court shall issue notice to the Public Prosecutor, investigating officer, the accused and the victim of the case to participate in the meeting to work out a satisfactory disposition. Pleader of the accused may be allowed to participate in such a meeting.[30]

(ii) In a case instituted otherwise than a Police Report: The notice shall be issued to the accused and the victim of the case to participate in the meeting to work out the satisfactory disposition of the case. Pleader Page 4 of the accused or the victim may also be permitted to participate in the meeting on the desire of the victim or the accused. In both the above cases the court shall ensure that the disposition is worked out voluntarily. [31]

265 E: Disposal of the cases when a satisfactory disposition of the case has been worked upon The court shall dispose of the cases and shall award the compensation to the victim in accordance with the disposition under section 265 and can release the accused on the provision of good conduct and after admonition under section 360.

265 F: Judgment of the Court:

The court shall deliver its judgment in an open court and it shall be signed by the presiding officer of the court.

265 G. Finality of the Judgment:

The court's judgment will be considered as final and no appeal shall lie against it accept the special leave petition under article 136 and the writ petition under article 226 and 227 of the constitution.

[30] ibid
[31] ibid

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XIII. CONCLUSION

Case law after the introduction of plea bargaining has not developed much as the provision is possibly not used adequately.[32] However, earlier judgments of various courts in cases in which the accused enter a 'guilty' plea with a view to getting lesser sentences indicate that the judiciary may have reservations.[33] Courts are also very particular about the voluntary nature of the exercise, as poverty, ignorance and prosecution pressure should not lead to someone pleading guilty of offences that may not have been committed.[34]

Recently the case of Tablighi Jamaat has again raised the concern regarding plea-bargainig. In this case certain foreign official were released from the Court cases as the case was against them regarding the visa violation to attend The religious congregation in Delhi but they pleaded guilty and they have followed the concept of plea bargaining out of which they have been released from the cases against them .All of them walked freely by pleading the guilty for minor offences and paying the related fine to the courts.

With the huge pendency of the cases Plea- bargaining can be made a successful mode of Alternative Dispute Resolution in the criminal cases. If the accused is leading the guilty then not only the punishment will be reduced but both the victim and accused can be protected from the physical and mental humiliation. An accused who had been the first time offender can be prevented from being kept inside the jail along with the hardened criminals. This will also help in reducing the burden of the overcrowded jails. But there should be a proper management of the system so that this may not be abused. The lawyers, judges, police official legal aid societies must create awareness about this amongst the accused and the victim.

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[32]https://www.thehindu.com/news/national/the-hindu-explains-what-is-plea-bargaining-and-how-does-it-work/article32126364.ece
[33] ibid
[34] ibid

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