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Increasing the Coverage of Plea Bargaining System in India

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ABSTRACT

This paper discusses the need of plea bargaining being practically implemented in our Indian legal system. This paper also discusses the various recommendations given by the law commission report and discusses the data of the National Crime Bureau to give a status on the undertrial prisoners and therefore the need of such a provision. Various suggestions to the existing to provisions are also given which would lead to effective use of such a provision.

Keywords: Plea of bargaining, Criminal Procedure Code, Law Commission Report.

The mounting arrears of criminal cases, especially at the trial court level, has been an area of great concern. In light of the growing reliance of western jurisdictions to dispose criminal cases through plea bargaining, the feasibility of the concept in the Indian scenario was analysed by the 142nd Law Commission Report³. The various concerns against possibility of misuse of the apparatus by the prosecution were noted examined, therefore a court monitored process was proposed to avoid any misuse.

These recommendations were also endorsed by the 154th Law Commission Report⁴, and finally in 2006, the Criminal Procedure Code, 1973 (“CrPC”) was amended to include Chapter XXIA on plea bargaining. Section 265A of CrPC specifies the category of criminal cases where an accused may file an application for plea bargaining. Plea bargaining cannot be availed for offences where the punishment is death or imprisonment for life or imprisonment for a term exceeding 7 years or where such offences affect the socio-economic condition of the country or has been committed against a woman or a child below the age of 14 years. The 142nd Law Commission had suggested the exclusion of such offences initially as it was envisaged that the scheme may be extended after assessing the results of the working of the pilot scheme.

There are ample justifications as to why plea bargaining helps in reducing the backbreaking

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³ Law Commission of India, *One hundred forty Second Report on Concessional Treatment for Offenders who on their own initiative choose to plead guilty without any bargaining*, 1991.

⁴ Law Commission of India, *One hundred and fifty fourth report on the Code of Criminal Procedure*, 1996.

burden on criminal courts. It drastically cuts down the number of steps, cost and human toll involved in litigation. Rather than looking for newer alternatives, I argue that it would be prudent to give more teeth to the plea bargaining process by allowing offences of all categories, regardless of the quantum of punishment, to be settled through plea bargaining. The suggested amendment to Section 265A of the CrPC are as follows:

265A. Application of the Chapter.—

(1) This Chapter shall apply in respect of an accused against whom—

(a) the report has been forwarded by the officer in charge of the police station under section 173 alleging therein that an offence appears to have been committed by him ~~other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force; or~~

(b) a Magistrate has taken cognizance of an offence on complaint, ~~other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years, has been provided under the law for the time being in force,~~ and after examining complainant and witnesses under section 200, issued the process under section 204,

~~but does not apply where such offence affects the socio-economic condition of the country or has been committed against a woman, or a child below the age of fourteen years.~~

The unfortunate ground reality is that very few cases have been disposed in the recent years by plea bargaining. While the model offers to be a great alternative to lengthy and arduous criminal trials, there just aren't many takers. It is noteworthy that the congestion in Indian jails is mainly attributable to the high number of under trials, who form around 70% of the prison population⁵. Undertrials languish in jail while their case files collect heaps of dust in trial courts after repeated adjournments. Since non-bailable cases are punishable with longer sentences, these undertrials are usually facing charges where the punishment tends to be upward of the seven year mark. These undertrials miss out on the concessional treatment that would be available to them under plea bargaining due to the restrictions imposed under Section 265A of the CrPC. Therefore, while the mechanism for plea bargaining exists on paper, the vast majority of undertrial prisoners are unable to access it.

⁵ National Crime Record Bureau, *Prison Statistics India*, 2018.

The 142nd and 154th Law Commission reports had chosen to restrict the plea bargaining system initially to less serious offences, in light of the reservations of various individuals to the concept of plea bargaining. However, the reports have already examined these concepts in depth as being practiced in other countries, the ground realities of the Indian legal system, and has created enough safeguards to adapt to the procedure of the Indian scenario. If there are any further reservations regarding the possible demerits of plea bargaining, the logical step would be to address these concerns by placing further checks and balances in the procedure, rather than restricting the system only to less severe offences. A half-hearted approach to plea bargaining should be avoided. Steps need to be taken at grassroot level to increase awareness and access to the plea bargaining system.

A criminal trial involves various steps such as framing of charges, examination of witnesses and arguments. The hard reality is that considering the various steps involved, the timelines cannot be crunched beyond a point. Therefore, it is important that the scope of plea bargaining, which remain practically unutilized, be increased to infuse life into the criminal adjudication system of the country.
