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Plea Bargaining and its Constitutionality

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ABSTRACT

The concept of plea bargaining is not only a boon helpful for the overburdened judiciary but it renders benefits to many others. Plea bargaining is the most important and most popular as well as most discussed issue in the modern criminal procedure. The phenomenon of plea bargaining is common in the United States, and England & Wales and has become a feature of criminal case disposition in other common law jurisdictions like Australia, Canada, and South Africa as well as in civil law systems like Italy and the Netherland. Plea bargaining is useful to avoid the uncertain outcome of the trial and secure convictions. Although it's useful and efficient, there are few doubts regarding the constitutional validity of Plea bargaining.

Keywords: *Plea bargaining, Common law, System, Voluntarily, Constitutional, Validity, Exculpatory.*

I. INTRODUCTION

Plea bargaining is more popular because it provides benefit to the accused, where he is entitled to light punishment than usual punishment provided under the regular trial. It not only saves the cost but also valuable time for the court, defendant, and public prosecutor. The common law countries experienced that plea bargaining provides easy, cheap, and expeditious justice. Plea bargaining is more popular in the U.S.A. and more than 90% of the criminal cases are disposed of by the applying the method of plea bargaining. The constitutional validity of plea bargaining is upheld by the United States Supreme Court in Brady V/s United States, (397 US 742: 25 L. Ed. 2d. 747). Apart from the Unites States Supreme Court cases, the cases decided by the Indian judiciary also support the constitutional validity of plea bargaining.

(A) Objective of Studies

1) To find out the constitutional validity of plea bargaining
2) To find out the role of judiciary of India and the U.S.A. for constitutional validity of plea bargaining.

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(B) Research Methodology

This study embodying analytical method of research. This research is based on purely doctrinal method. Researcher is utilizing secondary method of data collection and has collected valuable information from statute, books, articles, journals, case laws and websites.

II. MEANING OF PLEA BARGAINING

A plea bargaining is a practice whereby the accused forgoes his right to plead not guilty and demand a full trial and instead uses a right to bargain for a benefit. In other words, plea bargaining means the accused's plea of guilty has been bargained for and some consideration has been received for it.

The term plea bargaining is used to cover different things. It is sometimes used to describe discussions between the prosecution and an accused's legal adviser relating to the charges upon which an accused will be presented for trial and including indications that the accused is prepared to plead guilty to certain offenses.

III. THE U.S.A. JUDICIARY AND CONSTITUTIONAL VALIDITY OF PLEA BARGAINING

According to the views of the various jurist, plea bargaining first appeared in American or Anglo- American courts. In the U.S.A. more than 90% of criminal cases are disposed of by plea bargaining. But initially, the United States Supreme Court did not address the constitutional validity of plea bargaining until it becomes an integral part of the criminal justice system in the U.S.A. In United States v/s. Jackson, (390 US 570 1968) the court questioned the validity of plea bargaining process if burdened a defendant's right to jury trial. It issues, in that case was a statute that imposed the death penalty only after jury trial but in this case, the defendant to avoid death penalty, plead guilty to lesser charges, and courts made opined that the statute itself encourage guilty plea to waive trial. The judges also agree in this case with the district court that the death penalty provision of Federal Kidnapping Act imposes an impermissible burden upon the exercise of a constitutional right, but they think that provision is severable from the reminder statute.

Later on, the Court itself defended plea bargaining in Brady v/s. United States (397 US 742 1970). The constitutional validity of plea bargaining has been upheld by the United States Supreme Court in the above case. The fact of the case is that petitioner was charged with kidnapping in violation of US C. 1201 (a). According to this clause punishment is (1) death if the person kidnapped has not been liberated unharmed, and (2) imprisonment for term of years or life, if death penalty is not imposed. Since the indictment charged that the victim of the

kidnapping was not liberated unharmed, petitioner faced maximum death penalty, if the verdict of the jury should so recommend. In this case petitioner firstly pleaded not guilty but later on petitioner changed his plea to guilty. His plea of guilty was accepted after the trial judge twice questioned him as to voluntariness of his plea. But, later on petitioner reiterated that his plea of guilty was not voluntary because his counsel exerted impermissible pressure upon him. And his plea was induced by representation with respect to reduction of sentence of clemency. It was also alleged that the trial judge had not fully complied with the rule 11 of the Federal Rules of Criminal Procedure. After studying the case, according to Justice White, plea bargaining is beneficial to both state and the defendant. As far as the defendant is concerned, he sees a slight possibility of acquittal and limiting penalty by pleading guilty. In the case of the State, it reduces the practical burdens of trial and quick conviction which conserved the scarce resources. According to Supreme Court of the U.S.A. guilty plea are valid if they are voluntarily, and intelligent. There must be material to show that the guilty plea is voluntarily, deliberate, and informed. The record must affirmatively disclose that a defendant who pleads guilty to enter his pleas understandingly and voluntarily. Therefore court must be satisfied regarding defendants pleading guilty and waiving the right to trial voluntarily and intelligently.

The Court further observed that plea bargaining is not unconstitutional for the state to extend the benefit of a lesser penalty than after a trial and who demonstrates by his crime and to enter the correctional system keeping in the mind rehabilitation. The United States Supreme Court made opinion in United States v/s Jackson merely required that guilty pleas be intelligent and voluntary.

In Santobello v/s New York, (404 US 257 (1971),in this case the petitioner was charged for two felony counts, promoting gambling and possession of gambling records. Petitioner first entered a plea of not guilty to both counts. After negotiation, the District Attorney in charge of the case agreed to permit petitioner to plead guilty to a lesser offence. The prosecutor also agreed to make no recommendation as to the sentence. Later on petitioner withdrew his plea of not guilty and entered a plea of guilty to the lesser charge. Petitioner represented that his plea was voluntary. The court accepted the plea and set a date for sentencing. Later on, the new counsel of petitioner moved immediately to withdraw the guilty plea. After studying the case, Chief Justice Burger, disposition of charges after plea discussion is not only an essential part of process but a highly desirable part for many reasons. It leads to prompt and largely disposition of criminal cases. It avoids much of the corrosive impact of enforced idleness during pre-trial confinement for those are denied release pending trial. It protect the public from accused person who are prone to continue criminal conduct even while on pre-trial

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release, it enhances whatever may be the rehabilitative prospects of the guilty when they are ultimately imprisoned. The court furthered justified the constitutional validity of plea bargaining, referring to it as an essential component of the administration of justice. The court also observed that as long as it is properly administered, plea bargaining to be encouraged. In the case Hutto v/s Ross (50 L. Ed. 2d 876,878) the U. S. Supreme Court observed that if plea bargaining properly administered. It is a proper method for the administration of justice. In the same way above the observation of United States Supreme Court also found in the judgment of Charrin v/s Stynochombe, (412 US 17 1973 ; Blackledge v/s Allison (52 L. Ed. 2d 136; Weatherford v/s Bursey (429 US 545 1977); and Newton v/s Rumery (94 L. Ed. 2d 405, 426.

Finally, the United States Supreme Court in the case of Brady v/s Maryland (373 US 83 1963) observed that timely disclosure of exculpatory and impeachment evidence, relevant to both guilt and punishment is most important. This Brady principle of timely disclosure exculpatory before to entry of guilty plea would improve the reliability and accountability of the criminal justice process. Such disclosure helps the accuracy and voluntariness of the plea.

IV. INDIAN JUDICIARY AND CONSTITUTIONAL VALIDITY OF PLEA BARGAINING

As far as India is concern this practice was strongly disapproved by the Supreme Court of India. It was considered as immoral compromise and settlement in criminal cases. The Supreme Court of India criticized the system of plea bargaining in the case of Mulridhar Meghraj Loya v/s State of Maharashtra. The supreme of Court of India again disapproved this system in the case of Kasambhai V/s State of Gujrat. In this case court held that mere acceptance or admission of guilt should not be reason for giving a lesser sentence. Accused cannot bargain for reduction of sentence because he pleaded guilty.

Later on, in the case of State of Gujrat v/s Natwar Harchanji Thakore, the Gujrat High Court observed the usefulness of plea bargaining for expeditious resolution of dispute. Court said that there should not be anything static. It can thus be said that plea bargaining is really a measure and redress and it shall add new dimension in the realm of judicial reform. The Law Commission of India studied an in-depth U.S.A. scenario of plea bargaining to introducing in the Indian Criminal Justice System.

As far as India is concerned, the constitutional validity of plea bargaining has been reflected in the Indian judiciary, in the case of P. J. Joseph v/s State of Kerala (O.P. (Crl). No. 6 of 2016. The fact of the case is that in this case the Magistrate Court had found that the petitioner was guilty of the offence punishable under section 138 of the Negotiable Instrument Act, and imposed sentences of fine of rupees twenty four lakhs. Such order was challenged because

Magistrate failed to comply the mandatory provisions contained under section 265 B (4) of Cr. P.C. 1973 as the court had failed to examine the petitioner in camera. In Gir raj Prasad Meena v/s State of Rajasthan Apex court held that all the procedures contemplated in chapter XXI A of the Cr. P.C. 1973 are mandatory in nature. In this case ofence under Negotiable Instrument Act, 1881, is not covered by section 265 e clauses (a) to (c). The Magistrate ought to have complied with the provisions of section 265 E (d) Cr. P.C. The Magistrate Court has done gross illegality in the procedure. The Kerala High Court concentrated on Article 21 of the Constitution of India and also an emphasis on the case of Maneka Gandhi v/s Union of India (1978 SCC 248). According to this court, chapter XXI A of Criminal Procedure Code, 1971 is the procedure engrafted by the parliament which is to be observed before the accused is found guilty and sentenced in such plea bargaining process. If such mandatory procedures are violated, then it will amount to a denial of procedural safeguards and ultimately denial of the constitutional right to life and personal liberty of the accused. The Kerala High Court also referred the cases such as Selvi v/s State of Karnataka (2010 7 SCC 263) and Nandini Sathpathy's case (1978 2 SCC 424) for the right of accused under Article 20 of the Constitution of India. In this case Kerala High Court held the constitutionality of plea bargaining and directed the Magistrate Court to resolve or dispose cases as early as possible. In this case Kerala High Court held that chapter XXI A of Cr. P. C. with provision section 265 A to 265 L is procedure established by law.

V. CONCLUSION

Plea bargaining is a boon to the administration of the criminal justice system. It is found very successful in the U.S.A. It reduces the backlog of cases and is useful in the speedy disposal of cases. After analyzing the judgment of Indian courts and the U.S.A. Supreme Court, it is concluded that if plea bargaining is used voluntarily, intelligently, knowingly, and disclosing all the facts to court and according to the procedure established by law it will work effectively without violating the rights of the parties in plea bargaining.

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VI. REFERENCES

Books

- Dr. Rai Suman, (2014). "Law Relating to Plea Bargaining," Orient Publishing Company, 2nd Edition.
- Rauxloh, Regina. (2012). "Plea Bargaining in National and International Law," Routledge

Case Laws

- Brady v/s Maryland; 373 US 83 (1963)
- Brady v/s United States; 397 US 742: 25 L. Ed. 2d 747
- Charrin v/s Stynchcombe; 412 US 17 (1973).
- Gir Raj Prasad v/s State of Rajasthan 2013 (4) KLT SN 80
- Hutto v/s Ross; 50L. Ed. 2d 876, 878
- Kasambhai v/s State of Gujrat AIR 1980 SC 854
- Maneka Gandhi v/s Union of India; 1978 SCC 248
- Mulridhar Meghraj Loya v/s State of Maharashtra AIR 1976 SC 1929
- P. J. Joseph v/s State of Kerala O.P. (Crl). No. 6 of 2016
- Newton v/s Rumery; 94 L. Ed. 2d 136
- Santobello v/s New York; 404 US 257 at 261-262 (1971).
- Selvi v/s State of Karnataka; (2010) 7 SCC 263
- State of Gujrat v/s Natwar Harchanji Thakore
- Weatherford v/s Bursey; 429 US 545 (1977)

Websites

- www.indiankanoon.org.
- www.sci.gov.in.

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