

CRIMINAL JUSTICE SYSTEM VIS-A-VIS PLEA BARGAINING IN INDIA: TEN YEARS AND BEYOND

By Dr. Meena Ketan Sahu⁶⁰

Introduction

The concept of plea bargaining ultimately finds its way into the Criminal Justice System of our country, though after considerable debate and discussions. By way of Criminal Law (Amendment) Act, 2005, Chapter 21-A (Sections 265-A to 265-L) entitled ‘Plea Bargaining’ has been inserted in the Code of Criminal Procedure, 1973. The amendment has come into force w.e.f. 5th July, 2006. The tool of Plea Bargaining had been successfully used in U.S.A for past more than a Century and has proved quite effective in expeditious resolution of criminal cases. So far this concept is concerned, it is necessary to examine its various facets so that it can be applied in an effective and intelligent manner to resolve cases and to reduce the burden on criminal justice system which is extremely over-burdened with around twenty five million cases pending before the Courts. It requires understanding the concept, definition, methodology and utility of this latest tool of dispute resolution. At the same time, it is necessary that those who have a role in the application of Plea Bargaining mechanism should have an open approach and adequate sensitization about its utility in the contemporary set-up.

Conceptual Analysis

The expression ‘Plea Bargaining’ as such has not been defined in Chapter XXI-A of the Code. In criminal cases, it refers to pre-trial negotiations between accused and prosecution during which the accused may agree to plead guilty in exchange for certain concession by prosecutor. In Black’s Law Dictionary the expression ‘Plea Bargaining’ has been defined as “ a negotiated agreement between a prosecutor and a criminal defendant (accused) whereby the defendant pleads guilty to a lesser offence or to one of multiple charges in exchange for some concession by the

⁶⁰ Reader, P.G.Department of Law, Sambalpur University, Jyoti Vihar, Burla, Odisha.

prosecutor, usually, a more lenient sentence or a dismissal of the other charges.” According to Wikipedia Encyclopaedia ‘Plea Bargaining’ is an agreement in which a defendant (accused) pleads guilty to a lesser charge and the prosecutor in return drops more serious charges. In precise terms, it is a process through which an accused pleads guilt to a criminal charge with the expectation of receiving some lenient consideration from the State.

Plea bargain is basically is a tool between prosecutor and the accused in which there may be an explicit or implicit permission to be lenient in sentence or to go for less serious charge. Considerable objections have been raised against the nomenclature ‘plea bargain’ on the ground that it implies that justice could be purchased at the bargaining table. In order to avoid the criticism, there has been a move to use relatively more neutral expressions such as ‘plea discussions’, ‘plea negotiation’, ‘plea agreements’ and ‘mutually satisfactory disposition’, a term used in Chapter XXI-A of the Code. To call it by whatever name, it cannot be denied that the scheme involves a process whereby prosecution, victim and an informed accused openly discuss a criminal case for its mutually agreeable disposition which may result in reasonable advancement of administration of justice.

Types of Plea Bargaining

Though it is said that plea bargaining may include fact bargain, charge bargain, sentence bargain, but in general, it is of two types:

- (i) Charge Bargain; and
- (ii) Sentence Bargain.

Apart that, we also come across expressions like ‘Alford Plea’ and ‘nolo contendere’. A guilty plea by an accused as part of a plea bargain, without actually admitting guilt is referred as ‘Alford Plea’. The principle got its approval after decision of U.S. Supreme Court in *North Carolina v. Alford*⁶¹. ‘nolo contendere’ simply means ‘I do not wish to contend’ meaning thereby a plea by the accused that he will not contest.

Charge Bargain

⁶¹ 4000 U.S 25.

Plea bargain in which a prosecutor agrees to drop charges on some of the counts or reduce the charge to a less serious offence by the accused is commonly referred to as charge bargain. It may include:

- The reduction of charge to a lesser or included offence;
- The withdrawal or stay of other charges;
- An agreement by the prosecutor not to proceed on a charge;
- An agreement to reduce multiple charges to one all inclusive charge;

For example, an accused with drunk driving and driving with license suspected, may be offered the opportunity to plead guilty to just the drunk driving charge.

Sentence Bargain

A 'sentence bargain' occurs when an accused is told in advance what will be his reduced sentence if he pleads guilty. Sentence bargain may allow the prosecutor to obtain a conviction to the most serious charge, while assuring the accused of an acceptable sentence. Sentence bargain may include the following:

- ❖ A recommendation by a prosecutor for a certain range of sentence or for a specific sentence;
- ❖ A joint recommendation by a prosecutor and defence counsel for a range of sentence or for a specific sentence;
- ❖ An agreement by a prosecutor not to oppose a sentence recommendation by defence counsel;
- ❖ An agreement by a prosecutor not to seek additional/optional sanctions, such as prohibition and forfeiture orders;
- ❖ An agreement by a prosecutor not to seek more severe punishment.

In most of the jurisdictions, sentence bargain generally can only be granted on being approved by the trial judge. Many jurisdictions severely limit sentence bargain.

Plea Bargain- Why?

The scheme of plea bargain is not a matter of choice rather it is a situation out of compulsion. With the sharp increase in the institution of criminal cases almost all the criminal jurisdictions over the world find it difficult to cope up with the arrears of cases. Disposition of cases through the scheme of plea bargaining, no doubt may not be equivalent to a full-fledged fair trial but docket explosion makes it imperative to go for plea bargaining. The concept of plea bargaining has the following distinct features:

Avoids Uncertainty of Trial

In most case, the plea bargain is to avoid uncertainty of trial and the risk of undesirable result to other side. Obviously, the scheme provides both, prosecution and defence, with some control over the outcome of the cases. The accused is left to choose between certainty of accepting sentence for a less serious charge or the uncertainty of trial in which he might be found not guilty, but which also carries the risk of being found guilty of the original, more serious charges.

Expedition

As Criminal Courts become more and more crowded, there is an increased pressure to resolve the cases as quickly as possible. Regular trials can take months, years or even decades. Resolution of a case through plea bargain can be arranged in a couple of days, thus, reducing the time consumed in resolution of a case. It affords total guarantee for expeditious disposal of a case.

Advantages

Incentives to accused

Plea bargain may have following specific incentives for an accused:

(i) Less time

The first and foremost incentive is that the accused is not required to wait for long.

(ii) Less expenses

Another fairly obvious benefit that accused can reap from plea bargaining is that they can save a lot of money on account of counsel's fee. Just imagine what may be the total cost of defending a case when accused has to face a trial for a decade or so regarding a charge under Section 324 or 325, I.P.C.

(iii) Less efforts

It always takes more time and efforts to bring a case to trial than to negotiate and handle a plea bargain, thus, it requires less efforts.

(iv) Less sentence

Receiving a lighter sentence for less severe charge that might result in taking the case to trial and losing it is also an obvious advantage. For those who are held in custody and who does not qualify for release on bail or cannot arrange for bail may get out of jail comparatively sooner.

(v) Less tarnished record

Pleading guilty in exchange for a reduction in the number of charges or the seriousness of the offences will definitely reflect in a better manner on an accused's record than the convictions that might result following trial for all charges.

(vi) Less Adverse Publicity

A quick disposition of the cases reduces the length of adverse publicity against accused and his family and thus, can save him from a lot of embarrassment. At the same time, some of the persons can view it as an act of remorse on the part of accused having a sympathetic approach for him.

Incentives for Judges

Crowded calendars and loaded daises have made the job of Judges quite cumbersome. The scheme of plea bargaining can prove a bonanza in this respect because pretty good number of cases can be resolved without lengthy examination, cross-examination of witnesses and long arguments. Time so saved can definitely be utilized for imparting qualitative justice in more serious cases. This can ultimately enhance the prestige of the judiciary as well as the faith of common man in the efficacy of the system.

Incentives for Prosecutors

Like a Judge, Prosecutor with clogged calendar and a long cause list always finds it difficult to prepare each case ideally for being presented before the court. This may not be humanly possible as well. Plea bargaining, being much quicker and requiring less time, tends to lighten burden of

the prosecutor, affording him an opportunity to do justice to more serious cases by preparing them in an effective manner.

Another benefit to the prosecutor is in the form of assured conviction. Despite long, expensive and valiant battle, the prosecution may lose the case but then plea bargaining provides him with a respite in the shape of conviction for a lesser charge or reduced sentence.

Plea bargain also provides flexibility to the prosecutor in the sense that the prosecutor can offer a deal to someone whom, though guilty, has given testimony about co-accused or helped in resolution of a ticklish case.

Benefits to the Victim/Witnesses

The sufferance of victim/witnesses in the present set up are well known to each and every functionary of Criminal Justice System. Victim and Witnesses feel marginalized and forgotten, something which can not be disputed. Plea bargain provides a victim the central role. Apart that, plea bargain may help those witnesses who find it inconvenient and embarrassing to depose before a Court and earn some sort of ill-will of the other party.

Benefits to the Criminal Justice System

Criminal Justice System may also have certain distinct advantages. Apart from the fact that some less serious cases can be disposed of quickly providing room for some more serious cases to be taken seriously, the scheme of plea bargaining has the potentiality of reducing the costs involved in the criminal justice set up. As per the available statistics in a small country like Canada, the cost of justice system including expenditure on police, prosecution, Courts, legal and prisons is close to 12 billion dollars, i.e 600 billion rupees.

As far as India is concerned, so far we do not have any empirical study to examine about the total expenditure involved in running the criminal justice system, but then, as per a news report, the cost incurred in the State Exchequer in processing a criminal case relating to defalcation of Rs. 19, 000/-, which remained pending for about 33 years, was found to be around one crore rupees.⁶²

⁶² 142nd Report of Law Commission of India, CH-II, para 2.10

Integrating the scheme of plea bargaining with the criminal justice system may considerably reduce the expenditure involved in criminal justice system. At the same time, resolving a case through plea bargain and thus, reducing the length of trial reduces the burden on judicial resources and Court facilities and decreases all the other incidental expenses connected with the prolonged regular trial.

Criticism

The practice of plea bargaining is criticized mainly on the following five grounds:

- (i) It undermines Constitutional and procedural guarantee for the accused.
- (ii) Effaces criminal law of its deterrence and effect.
- (iii) Facilitates manipulation of the system.
- (iv) Hurts the innocent and may induce him to plead guilty.
- (v) Unreasonable classification regarding sentencing for those pleading guilty and not pleading guilty.

The first and foremost attack on the scheme of plea bargaining is made on the ground that the practice subverts many of the basic values of jurisprudence relating to criminal justice like-

- ❖ Presumption of innocence;
- ❖ Right against self incrimination;
- ❖ Right to fair and free public hearing;

It is argued that the scheme is antithesis of Constitutional guarantee of free and fair trial because it allow circumvention of rigorous standards of 'due process' and proof imposed during criminal trials.

Another potent criticism is that the practice allows the offenders to receive lenient sentences which in turn undermines the deterrent effect of criminal sanctions and perpetuates the image that offenders can evade the law with light sentence provided they are willing to bargain. The undeserved leniency regarding sentence may indirectly encourage them to indulge in criminal activities.

Again it is argued that discount in sentence or charge for pleading guilty hurts the innocent. It penalizes those who exercise the right to presumption of innocence and there may be possibility that an accused who is in fact innocent may be induced to plead guilty. This again is against the basic values of criminal justice system.

Lastly, it is said that the basic rule of sentencing is the rule of proportionality. Simply because the conviction is based on the plea of guilty, that cannot be a ground to make a distinction so as to compromise with the principle of proportionality in sentencing.

The aforesaid criticism against the concept of plea bargaining is not well based. The concept of fair trial and the principle relating to presumption about innocence of the accused may not be violated because in regular trials also the plea of guilt is recorded and convictions are recorded on the basis of such plea.

Role of Judge During Mutually Satisfactory Disposition

A Judge though required to supervise the process should remain impartial. He should not be become involved in the process of preparing any party to change his position. He is expected to act as neutral guide and may bring to the notice of the parties the salient point of the case and direct the discussion to important issues. While deciding the quantum of sentence, the Judge may keep in mind that a guilty plea generally indicates general remorse on the part of offender and this may be considered as mitigating factor as far as sentence is concerned but then sentence that will ultimately be imposed is within the discretion of the Judge.

Role of Prosecutor and Lawyer

The Prosecutor should also execute his duty with fairness, openness and accuracy keeping in mind the supremacy of the public interest. It is important to ensure that the Court room proceedings that follow serve to verify the property of the discussions, and to enhance the public understanding of the nature and limits of this new process of dispute resolution.

Counsels are required to advice the Court that a resolution agreement has been made , and circumstances that led to it must always be fully disclosed in open Court.

Concluding observation

An examination of various factors having a bearing on the scheme of plea bargaining clearly indicates that the scheme, if applied carefully, may serve our criminal justice system in a better way and can serve it from collapse apart from instilling a new hope in the society about the efficacy of the system. Therefore, implementation of this scheme with an open mind and full fairness is the need of the hour.

