PLEA BARGAINING IN INDIA: WHY IT HAS FAILED

Written by ***Ajay Kumar* & Nidhi Sudan*****

** Inspector, Delhi Police, India*

*** Research Scholar, Jagannath University, Jaipur, India*

INTRODUCTION

The year 2023 has been milestone for India for many a reasons, few of the reasons not worthy to be proud of though. It crossed the 3 trillion dollar mark four years ago in 2019, being the fastest growing major economies. In 2023, it pipped the UK economy to become the fifth largest economy in the world.

But there is another milestone that puts our head in shame is that India has now more than 5 crore pending cases across the courts all over the country and giving credit to the digitalization, the case load is multiplying at a whopping 18 percent. Adding to the ignonimity, there are people who have been in prison for a duration which exceeds the sentence for the crime committed had they pleaded guilty to the same. These are extreme examples and a glaring blot on our democracy.

One of the steps taken for tackling the huge menace of pendency of cases and plug the loopholes of criminal cases in courts was introduction of Plea bargaining, by way of the Criminal Law (Amendment) Act, 2005 wherein it was introduced in Chapter XXI A of Code of Criminal Procedure, 1973. The Act came into force on 5th July, 2006. The concept was borrowed from Constitution of United States of America.

WHAT IS PLEA BARGAINING?

It is basically a negotiation that happens in pre-trial period between the accused and prosecution where in the accused pleads guilty in lieu of certain concessions given by the prosecution. In simple terms, it means that accused pleads guilty to a lesser charge. The plea bargaining concept is not available for all type of offences and crimes. A person cannot seek plea

bargaining for crimes which are punishable with death of life and /or grievous offences such as murder, dacoity, rape, homicide etc. It is also not applicable for crime against women and child.

PLEA BARGAINING AND INDIAN CONTEXT

The concept of plea bargaining in India attracted much public dissatisfaction attention among academia, judiciary, lawyers and civil society, terming it against the public policy under our criminal justice system. The Apex court was strictly averse to the idea of plea bargaining, articulating that the negotiation in criminal cases is not permissible and immoral compromise in criminal cases. In fact, in the case of ***State of Uttar Pradesh vs. Chandrika***[i] it held that it is settled law that court cannot dispose f criminal case on the basis of plea bargaining. The Court further held that mere acceptance or admission of guilt by accused should not be ground for reduction of sentence nor a ground for the accused to bargain with the Court that he is pleading guilty and therefore, sentence should be reduced. Further in ***Murlidhar Meghraj Loya v. State of Maharashtra***[ii], the court referred to plea bargain as, advance arrangements (that) please everyone except the distant victim, the silent society.

Despite the concerns raised against the plea bargaining, the Government introduced it by adding Section 265 A to Section 265L to the Criminal Procedure Code.

PLEA BARGAINING: FAILURE TO MAKE AN IMPACT

Hailed once as panacea for our overburdened criminal justice system, it has failed miserably in India context. A report filed by American Bar Association Plea Bargain Task Force puts the number of cases in the federal Court ending up with plea bargaining at whopping 98% of a total of criminal cases, making the concept of plea bargaining highly effective and successful in reducing the backlog of criminal cases.[iii] However, the statistics available in Indian context show a very disturbing state of effectiveness of plea bargaining in India.

As per the study carried out by the Government and available with National Crime Records Bureau, In 2015, only 4815 cases out of a total number of 10502256 cases, pending for trial under the Penal laws opted for plea bargaining, which stands at .045%. The figure slipped to

.043% in 2016, the number of cases going for plea bargaining being 4887 out of 11107472 cases. The year 2017 saw some increase to 0.27% with 31587 cases out of 11,524,490 going for plea bargaining. However, this was not a continuing trend, since, in 2018, the cases saw an absolute decrease and only 20,062 out of 12,106,309, with a mere 0.16% of cases being disposed of through plea bargaining. In fact what is noteworthy and disturbing is that the statistics of number of cases opting for plea bargaining against the total number of cases has not even crossed a mere 1% in 18 years. Thus, plea bargaining failed to fulfill either of the two objectives it was envisaged to achieve in India, reduction in pendency of cases and halt the increase in number of undertrial prisoners.

WHY PLEA BARGAINING BECAME REDUNDANT IN INDIA

The reason why plea bargaining failed to take off in India can be attributed to the practical difficulties that lies in its implementation.

The average time taken to dispose of cases in India in 30 months at a minimum compared to 6 months in EU and likewise in USA as per the Economic Survey of 2019 published by Union Finance Ministry. In India, if the accused is lucky enough, the case can go on for life from trial to first appeal to second appeal …to final appeal. By that time, the accused has higher chances of passing out, without being convicted.

Further, there is saying in police parlance that more the delay in trial of the case, the chances for acquittal of the accused are more because over a period of time, either the victim starts losing interest in the case, frustrated over inordinate delay in trial or the witnesses starts their memory fading out, thereby turning hostile or contradicting their versions in investigation

There is grossly inadequate number of judicial officers in India. Across the board, there is an average 20 percent unfilled vacancies and the figure rises in case of judiciary at higher level. Addressing this issue can close the gap between new case load and disposal rate of existing cases. In USA, trial of case does not last for life and in all probability is over in few months.

Moreover, public prosecutors in India simply do not have the time to focus on resolving each case on their docket by going an extra mile since they have to handle a huge quantum of cases using the same scanty resources. Even though judges have a natural incentive to quickly

dispose of cases, they cannot be an active part of the process in order to eliminate doubts of coercion over the defendants.

The cost of litigation in USA is very high and can make even the richest people go bankrupt if they prefer litigation in the Court. However, the cost of litigation in the India is comparatively very low and what should have been blessing in disguise has become a curse wherein the accused prefer to slog it out in the Court rather than to enter plea bargaining.

There is every possibility of illegal plea bargaining taking place between real culprits and innocent accused, with the former making use of corrupt officials to escape the criminal justice system. The same has happened in recent past wherein a person presented self before the police as driver of the Mercedes car in a hit and run case in NCR Delhi, only to be discovered that he was trying to save the real culprit, of course for money and under influence.

The Indian police is well-known for implicating poor innocent victims for crimes that they never committed, often after being paid off by the actual perpetrators. In fact, a good number of under-trial prisoners in India are likely to belong to this category. With the introduction of plea bargaining, these persons will be getting pushed from one dark place to the next without the benefit of ever having a day in court or seeing a judge before whom to plead a case. This so-called measure to speed up justice will only speed up miscarriages of justice.

In case where the accused/ defendant wishes to settle matters with the complainant/victim, he would rather move the concerned High Court to terminate cases for compounding of offence[iv] as exercise of extraordinary jurisdiction[v] or even move to dismiss charges or withdraw the case at any time before conclusion for good reason[vi].

In Indian version of the plea bargaining. The entire onus is with the victim. In many a cases, the victim has be found to be demanding an exorbitant amount from the accused which makes the settlement impossible. Unlike in civil cases, there is no mediating authority like district legal services authority to facilitate the settlement process in criminal cases.

Another such reason is the fear of conviction among the accused persons. Unlike in the USA, charge bargaining is not permissible. The accused once released or less sentenced is still a convict and he will have to face all the consequences and disqualifications of a conviction.

A person who prefer to enter plea bargaining will have to face the moral and societal repercussions of having been convicted in society. A person who is financially secure, he

prefers to undergo trial than plead guilty and face consequences. Adding to high rate of acquittal in Indian criminal justice system coupled with inordinate delay of years, he can afford to drag his trail and finally get acquittal.

CONCLUSION

The concept of plea bargained was introduced 17 years ago and it has failed to reach a figure of not even 1% of total criminal cases, leaving a big question mark on the efficacy of the plea bargaining in the Criminal Justice system. Clearly, it has failed to make a mark and its high time to ponder and realize that not every concept that can be a huge success in some other country will deliver the same results, if incorporated in our country.

However, plea bargaining is not redundant in every case. Plea bargaining can be successful where there is no real victim i.e., when the state itself is the victim. One such example is offences under the Customs Act. In such cases, the accused can enter into a former agreement with the state and can get a lesser sentence.

It has to be modified and re designed as per the reality of our system, its socio-economic conditions and limitations therein, making it more appealing option for all actors involved.

ENDNOTES

[i] ***State of Uttar Pradesh*** vs Chandrika 2000 Cr.L.J 384 (386)
[ii] *Murlidhar Meghraj Loya Vs. State of Maharashtra*, (1976) 3 SCC 684 : AIR 1976 SC 1929 : 1976 Cri LJ 152
[iii] https://www.npr.org/2023/02/22/1158356619/plea-bargains-criminal-cases-justice#:~:text=In%20any%20given%20year%2C%2098,from%20the%20American%20Bar%20Association
[iv] CrPC, S 320

[v] CrPC, S 482 gives extraordinary jurisdiction to the High Court, under which it can quash proceedings too. See, State of Karnataka v. M. Devendrappa, mentioned in Gian Singh v. State of Punjab, (2012) 10 SCC 303
[vi] CrPC S 321