JUSTICE IN PLEA BARGAINING–IS IT A COERCION TO COMPROMISE

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Abstract

Plea bargaining is a novel concept in India. In modern era of criminal justice system the vast majority of criminal convictions are produced through bargained pleas. It is the process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to the court approval. It usually involves the defendant's pleading guilty to lesser offence as to only one or some of the courts of a multi-count indictment in return for a lighter sentence than that possible for the graver charge. Therefore, plea-bargaining refers to pre-trial negotiations between the defendant through his/her counsel and the prosecution during which the accused agrees to plead guilty in exchange of lesser punishment. In India, position is very different from US. In the US and Europe, plea bargaining is a widely prevalent practice which helps expedite the legal process. Today, when many defendants who come before the court have much less in the way of prospects to lose, leniency may be more likely to be regarded with cynicism, as an act of weakness by the state, and plea bargaining may grow more problematic. Plea bargaining allows the accused to bargain with the court on the sentence that will be awarded. In India, it was introduced by way of an amendment Act of 2005 in Code of Criminal Procedure and there are not many cases related to plea bargaining. Interestingly, there was controversy and huge debates with respect to the introduction of this concept in Cr.P.C. till 2005 because it was not accepted by the Indian Judiciary. Furthermore, the concept is not widely recognized as it came recently. In India the initiation of plea-bargaining has to be by accused which is different from US Law. Indian law provides for number of negotiations between the accused and the prosecutor or with the court itself which is different from US. Court has to take great care at the time of

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application of plea-bargaining. In this paper, an attempt has been made to discuss various aspects of plea bargaining including judicial attitude on this issue and appropriate suggestions will be given accordingly.

Keywords - Bargaining, Charges, Accused, Criminal Law

Introduction

"The greatest drawback of the administration of justice in India today is because of delay of cases..... The law may or may not be an ass, but in India, it is certainly a snail and our cases proceed at a pace which would be regarded as unduly slow in the community of snails. Justice has to be blind but I see no reason why it should be lame. Here it just hobbles along, barely able to work."

Nani Palkhivala[1]

The path of plea bargaining's rise was in great part a function of the powers and interests of individual courtroom actors. Although criminal defendants play a distinct part in this story, the most important actors prove to be prosecutors and judges. In the early decades of the nineteenth century, plea bargaining was the work of prosecutors, who found natural incentives in the quick and easy victories it gave them. But because judges and not prosecutors held most of the sentencing power and therefore most of the plea-bargaining power could spread no further than those few cases in which prosecutors happened to hold the balance of sentencing power.[2]

It is true too, in view of threats such as long terms in prison, there is a strong possibility that the innocent may plead guilty. It may well be a rational calculation, given the penalty of going to trial, for there is clearly such a penalty. The prosecutor typically induces a plea by offering a "carrot," the lesser charge, and at the same time a gigantic "stick." It is not simply that he may well tack on additional charges enabling mandatory or even consecutive punishments, should the defendant go to trial. He also can threaten that he will introduce evidence of uncharged conduct at the sentencing, or even evidence of counts for which the defendant was acquitted, so long as the defendant is convicted of

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1 "Plea- Bargaining: Present Status in India" available at http://www.legalservicesindia.com/article/article/plea-bargaining-present-status-in-india-658-1.html accessed on 27th October,2013

2 George Fisher,*Plea Bargaining's Triumph,The Yale Law Journal, 109, (2000)*

something. No other common law country in the world enables the prosecutor to seek a sentence based on criminal conduct never charged, never subject to adversary process, never vetted by a grand jury or a jury, or worse, charges for which the defendant was acquitted.[3]

Undoubtedly, speedy trial is an essence of criminal justice system and delay in trial by itself constitutes denial of justice. Pendency for long periods operates as an engine of oppression. In order to reduce the delay in disposing of criminal cases the Law Commission recommended introduction of "Plea Bargaining" as an alternative method to deal with huge arrears of criminal cases. Its introduction in Criminal Procedure code was recommended by Law Commission.[4]This recommendation was supported by Malimath Committee also. In statements of objects and reasons of the Act it is mentioned that disposal of criminal trials don't commence for as long as 3 to 5 years. In a given situation, plea bargaining seems to be the only panacea left to bail out from this situation. The Act was enforced with effect from 5th July, 2006.

This has certainly changed the face of the Indian Criminal Justice System. Some of the salient features of 'Plea Bargaining' are that it is applicable in respect of those offences for which punishment is up to a period of 7 years. Moreover it does not apply to cases where the offence committed is a socio-economic offence or where the offence is committed is committed against a woman or a child below the age of 14 years.[5]Plea bargaining is a concept in which a prosecutor and an accused settle a criminal case among themselves through bargain. In this case the accused agrees to plead guilty in exchange of some concession. This concession includes reducing the original charge, dismissing the charges etc.In fact a plea bargain allows the parties to settle the pending charge and the parties agree on the outcome. Thus, plea bargaining, in its most traditional and general sense, refers to pre-trial negotiations between the defendant, usually conducted by the counsel and prosecution, during which the defendant agrees to plead guilty in exchange for certain concession by the prosecutor.

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3 Ibid

4 42nd and 154th report of Law Commission

5 SouraSubhaGhosh,Plea Bargaining - An Analysis of the concept, available at http://www.legalserviceindia.com/articles/plea_bar.htm accessed on 27th October,2013

According to Black's Law dictionary defines plea bargaining as the process whereby the accused and the prosecutor in criminal cases work out a mutually satisfactory disposition.

This is not a new concept but it existed even in 19th century. In the United States, plea-bargaining is significant part of the criminal justice system. In American Criminal Justice System, plea bargaining is rule rather than exception. Majority of criminal cases are settled by plea-bargaining rather than by a trial by jury. According to an estimate ninety five percent criminal cases never go to trial because of the bargaining struck between the prosecution and the attorney of the accused well before the trial commences. But it is a subject to the approval of the court. The rules pertaining to Plea-bargaining in all states of US are different. Therefore, more than 90% of the cases are settled through Plea-bargaining in US. It has become a prominent feature of American Judiciary that the disposing rate of cases is very rapid therefore, backlog is under control. Prosecutor initiates about the plea-bargaining proceedings. One of the main arguments advanced in the favour of plea-bargaining is that it helps in speedy disposal of accumulated cases and will expedite delivery of criminal justice. In USA, Supreme Court established the constitutionality of plea bargaining in Brady v. United States (1970). But the court warned that it would have "serious doubts" if the "encouragement of guilty pleas by offers of leniency substantially increased the likelihood that defendants, advised by competent counsel, would falsely condemn themselves[6]."Sadly, there are numerous documented cases of innocent defendants pleading guilty, including well-known examples such as Brian Banks. In 2002, at the age of 17, Mr. Banks was wrongly accused of rape yet chose a plea bargain with a maximum sentence of seven years in prison. If he rejected the offer and lost at trial, he faced 40 years to life in prison. He took the deal and falsely confessed. In 2012, after definitive evidence of his innocence came to light, a California court reversed the conviction.

A million dollar question which comes to our mind is, how prevalent is the phenomenon of innocent people pleading guilty? The few criminologists who have thus far investigated the phenomenon estimate that the overall rate for convicted felons as a whole is between 2 percent and 8 percent. The size of that range

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[6] LuciucianeE.Dervan,The Injustice of the Plea-Bargain System, The wall street Journal,available at http://www.wsj.com/articles/the-injustice-of-the-plea-bargain-system- 1449188034 accessed on12thMarch,2016.

suggests the imperfection of the data; but let us supposes that it is even lower, say, no more than 1 percent. When you recall that, of the 2.2 million Americans in prison, over 2 million are there because of plea bargains, we are then talking about an estimated 20,000 persons, or more, who are in prison for crimes to which they pleaded guilty but did not in fact commit.[7]Similarly there are few cases such as Aaron Swartz, the twenty-six-year-old Internet prodigy accused of wire fraud and violations of the Computer Fraud and Abuse Act, who committed suicide after being offered a choice between a plea of guilty with a six-month sentence or a trial in which he risked a seven-year sentence under the guidelines if found guilty. Then there is the case of Kevin Ring, a lobbyist for Jack Abramoff, who was convicted at trial. Abramoff, the conceded ringleader, pled guilty and got four years. Offered a deal with no prison time if he cooperated, Ring refused, taking the case to trial. After a trial finding him guilty, the prosecutor urged a seventeen-to-twenty-two-year sentence, which the sentencing judge acknowledged could well have a "chilling effect" on the exercise of the right to a jury trial.[8]

On the other side of the coin, in India such data is not available and the position is also very different from US. As it came in the amendment Act of 2005 in Code of Criminal Procedure[9], there are not much cases regarding it but even though, position under Indian Judiciary is very clear. There were huge debates on this point before it was inserted in the Cr.P.C. till 2005, it was not accepted by the Indian Judiciary. Every time it was opposed by court of law by saying that it is not recognized under Indian law. The concept is not widely recognized as it came recently and because there are cases, in which it was not applied properly. The initiation of plea-bargaining has to be by accused which is different from US Law. Our law provides for number of negotiations between the accused and the prosecutor or with the court itself which is a major difference from US. Unlike in US, where plea-bargaining is for all sort of offences but in India, it is not for socio economic offences or the offences against women and children. Court has to take great care at the time of application of plea-bargaining.

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7 Jed S. Rakoff,Why Innocent People Plead Guilty, The New York Review of Books, available at http://www.nybooks.com/articles/2014/11/20/why-innocent-people-plead-guilty/ accessed on 12th March,2016

8 Why the Innocent Plead Guilty': An Exchange, available at http://www.nybooks.com/articles/2014/11/20/why-innocent-people-plead-guilty/ accessed on12th March,2016

9 Criminal Law Amendment Act,2005.

Origin

Initially it was not recognized under Indian Law, therefore, not much importance was given to it as it was not in statutes. Reference may, however, be made to Section 206(1) and 206(3) of the Code of Criminal Procedure and Section 208(1) of the Motor Vehicles Act, 1988. These provisions enable the accused to plead guilty for petty offences or less grave offences and whereupon the case is closed. Later on, on the basis of US, our Law Commission recommended the application of plea- bargaining in India. They also justified the reasons for the same. The Supreme Court of USA in *Brady* v. *United States*[10] and *Santobello* v. *New York*[11] upheld the constitutional validity and the significant role of the concept of plea- bargaining plays in disposal of criminal cases[12].

Law Commission of India in its 142nd and 154th report suggested the concept of Plea-bargaining in India. They observed that this tool will be alternative to be explored to deal with huge arrears of criminal cases. Malimath Committee was also substantially in agreement with the views and recommendation of the Law Commission. According to them it will help in procuring speedy trial with benefits such as end of uncertainty, saving of cost of litigation, avoiding prolonged trial and legal expensed of the parties. They recommended where the offences are not of a serious character and the effect is mainly on the victim and not on the society, it is desirable to encourage settlement without trial.

Reasons for introducing this concept in India

1. Speedy disposal of criminal cases i.e. reduction in heavy backlogs.
2. Less time consuming
3. End of uncertainty of a case
4. Saving legal expenses of both the parties i.e. accused and state.
5. Less congestion in jails
6. Under present system, 75% to 90% of the criminal cases results in acquittal, in this situation it is preferable to introduce this concept in India.
7. It is not fair to keep the accused with hard-core criminals because if the accused is innocent then he will accept his guilt and in this situation, it is not reasonable.

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10 397 U.S. 742 (1970
11 404 U.S. 257 (1971)
12 *Supra* note 2

Judicial Trend

Indian courts have examined the concept of Plea bargaining in a number of following cases and did not approve this concept in India on the basis of formal inducement.

In *Murlidhar Meghraj Loya* v. *State of Maharashtra*[13] the Hon'ble Supreme Court for the first time got an opportunity to examine Plea Bargaining. It was that it's the duty of the state to enforce the law and not to barter with the Accused for lesser sentence. Supreme Court declared that introduction of Plea bargaining is a necessary evil. Therefore, it should not be introduced in Indian Penal System. In *Kasam Bhai Abdul Rehman Bhai Shiekh* v. *State of Gujrat*[14] Supreme Court further viewed that awarding sentence on basis of plea bargaining is illegal and unconstitutional. Supreme court went a step ahead in case of *Thippaswamy* v. *State of Karnatka*[15]and opined that concept of plea bargaining is violative of Article 21 of the Constitution to induce or lead an accused to plead guilty under a promise or assurance that he would be let off lightly. In *State of UP* v. *Chandrika*[16]the court reiterated that conviction on plea of guilty entered by appellant as a result of plea bargaining is contrary to public policy because judge is likely to be deflected from his path of duty to do justice and he might convict an innocent accused of accepting plea of guilty or let off a guilty accused with lighter sentence thus subverting the process of law and frustrating the social objective. Therefore, it was argued that by plea bargaining court cannot dispose of criminal cases and court has to decide it on merits. Further, the Hon'ble Supreme Court in the case of *Kachhia Patel Shantilal Koderlal* v. *State of Gujarat* and another strongly disapproved the practice of plea bargaining. Interestingly, thereafter the courts started showing positive attitude towards concept of Plea Bargaining as in *State of UP* v. *Nasruddin*[17] Supreme Court held that reduction of sentence with respect to period already undergone as a result of plea bargaining would open a gate leading to serious miscarriage of justice. Similarly in *State of Gujrat* v. *Natwar Harchanji Thakore*[18]an emphasis was on an introduction of plea bargaining because the object of law is to provide easy, cheap and expeditious justice by resolution of

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13 AIR 1976 SC
14 AIR 1980 SC
15 AIR 1983 SC
16 AIR 2000 SC
17 (2000) 10 SCC
18 2005 Cr.L.J.

disputes. Considering the present realistic profile of pendency and delay in disposal in administration of law and justice, fundamental reforms are inevitable. There should not be anything static. Plea bargaining shall add a new dimension in the realm of judicial reforms. Consequently in 2005 it was made part of the Criminal Procedure code.

The salient features of plea-bargaining:

- It is applicable only in respect of those offences for which punishment of imprisonment is up to a period of 7 years.
- It 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 14 years.
- The application should be filed by the accused voluntarily.
- An accused must file an application for Plea-bargaining in the court in which such offence is pending for trial.
- The accused and prosecution both are given time to work out a mutually satisfactory disposition of the case, which may include giving compensation to the victim by the accused and other legal expenses incurred during pendency of the case.
- Where a satisfactory disposition of the case has been worked out, the Court shall dispose of the case by sentencing the accused to one-fourth of the punishment provided or extendable, as the case may be for such offence.
- The statement or facts stated by an accused in an application for plea-bargaining shall not be used for any other purpose other than for plea-bargaining.
- The judgment delivered by the Court in the case of plea-bargaining shall be final and no appeal shall lie in any court against such judgment.
- Three essentials work at the time of filing an application of plea-bargaining:
    - Accused's voluntariness to plead guilty.
    - The statements or facts stated by an accused in the application for plea-bargaining should not be used for any other purpose except plea-bargaining.

It is a contractual agreement between the prosecution and the defendant regarding the disposition of criminal charge. However, it is not enforceable until a judge approves it.

The Kinds of Plea Bargainings are as follows:

Charge Bargaining: It is a bargain or promise between the prosecutor and defendant to deduct some of the charges brought

against the defendant in exchange of guilty acceptance. When accused accepts for guilty that he has committed the wrong then with the approval of prosecution, there can be charge bargaining but it solely depends upon the will of prosecution. Prosecution may accept or neglect it. After charge bargaining the defendant will face specific charge.

Sentence Bargaining: it is a promise by the prosecutor, after acceptance of guilty, to recommend the court specific sentence or bargained sentence or it can be done directly with the trial judge. For this purpose, accused must be informed about the sentence likely to be imposed in case he does not accepts his guilt but if he does so then prosecutor demands for lesser sentence or favorable sentence instead what he was demanding earlier because of showing some sort of innocence regarding his guilt or for saving court's time.

Apart from this, taking into consideration of the other aspects, there are two kinds of plea bargaining, as endorsed in International jurisprudence. i.e., Express and implicit plea bargaining. Express bargaining occurs when an accused or his lawyer negotiates directly with a prosecutor or a trial judge concerning the benefits that may follow the entry of a plea of guilty. Implicit bargaining, on the other hand, occurs without face-to-face negotiations. In Implicit bargaining's, the trial judges especially, establish a pattern of treating accused who plead guilty more leniently than those who exercise the right to trial, and the accused therefore come to expect that the entry of guilty pleas will be rewarded.[19]

Plea Bargaining under Criminal Procedure Code

Section 265-A to 265-L provides for the plea-bargaining under Code of Criminal Procedure. It is a devise which ensures that victims receive acceptable justice in reasonable time without risking the prospects of hostile witness, inordinate delay and non-affordable costs. This principle is not applicable for hard crimes or serious crimes, therefore, Indian Law does not provides plea-bargaining for the offences in which (a) offence in punishable with death or imprisonment for life (b) punishable with imprisonment for a term exceeding 7 years (c) committed against socio economic

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19 *K.P. Pradeep,*Plea Bargaining- A New Horizon in Criminal Jurisprudence available at http://kja.nic.in/article/PLEA%20BARGAINING.pdf accessed on 27th October,2013

conditions of the country (d) offence committed against women and children below the age of 14 years.

Applicability: Section 265 A deals with applicability of the Chapter XXIA. Benefit of Plea bargaining can be extended in two circumstances. One is, if a report is forwarded by a Station House Officer of a Police Station after the completion of investigation to the Magistrate. The other is, if the Magistrate has taken cognizance of an offence on a complaint under S. 190 (a) followed by examination of a complainant and witness under S. 200 or S. 202 and issuance of process under Section 204. Thus, it means, after commencement of proceedings upon a private complaint under S. 190 (a) of the Code[20]. Under S. 265 L the provisions of plea bargaining are not applicable to any Juvenile or Child as defined under Juvenile Justice (Care and Protection of Children) Act, 2000.The Savings provisions under S. 265J has extended an independent existence to the Chapter, in case of inconsistency with other provisions of the Code.

Procedure: As per S. 265 B, the process of plea bargaining starts with an application from accused. The application is to be filed before the trial court only. The application must be in writing, with brief description of facts of the case supported with an affidavit sworn by the accused affirming the genuineness of application as voluntarily submitted[21]with details of previous conviction of the accused. Upon receipt of application, the trial court has to issue notice to prosecution, either to public prosecutor or to complainant in S. 190 (a) cases and also to the accused intimating the date of hearing of application. While appearing before the Court, after receipt of notice from the Court, the examination of the accused shall be done in-camera, avoiding the presence of other parties. It is specifically required so, to ensure the genuineness and authority of application. Before proceeding further the Court has to ensure that the application is made voluntarily by the accused. If the Court feels, after examination of the accused, the application is involuntarily submitted or the accused is not eligible for plea bargaining on the ground of earlier conviction in a case charged with same offence, the Court has to drop the proceedings and proceed further with the Trial from the stage, wherein the application is entertained by the Court.[22] After examination of the accused, if the Court feels the eligibility of the accused for plea bargaining, then proceed

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20 Ibid
21 Supra note 15
22 Supra note 15

further for a settlement, giving time to prosecution and accused to work out a mutually satisfactory disposition of the case. Such a mutually satisfactory disposition includes awarding of compensation and other charges and legal expenses to the victim. There must be a notice to Public Prosecutor (defined under S 2(u)and explained in S. 25 of the Code), Investigation Officer of the case, victim or de facto complainant and to the accused, in cases instituted upon police report, to work out the solution in a joint meeting of the parties. In cases instituted otherwise than a police report, there shall be notice to the accused and the complainant/victim to participate in the joint meeting. The accused can be participated with his lawyer in the meeting. That means the actual presence of the accused is required irrespective of a representation through the lawyer. Apart from that the Court shall to ensure that every actions of the parties during the meeting is voluntarily made and without any vitiating or coercive elements. That means the presence of the Judicial Officer is necessary, during the process of joint meeting. Under S. 265 D, the Court has to prepare a report, if a mutual satisfactory disposition of the case has been worked out and such report shall be signed by the presiding officer of the Court and the parties in the Joint Meeting. If no satisfactory disposition is made out, the Court has to proceed with the case, by dropping the proceedings in plea bargain and start the proceedings from the stage, wherein the application is entertained.

Disposal of Case on the basis of report: After completion of proceedings under S. 265D, by preparing a report signed by the presiding officer of the Court and parties in the meeting, the Court has to hear the parties on the quantum of the punishment or accused's entitlement of release on probation of good conduct or after admonition. Court can either release the accused on probation under the provisions of S. 360 of the Code or under the Probation of Offenders Act, 1958 or under any other legal provisions in force, or punish the accused, passing the sentence.

While punishing the accused, the Court, at its discretion, can pass sentence of minimum punishment, if the law provides such minimum punishment for the offences committed by the accused or if such minimum punishment is not provided, can pass a sentence of one fourth of the punishment provided for such offence. Apart from this, in cases of release or punishment, if a report is prepared under S 265 D, report on mutually satisfactory disposition, contains provision of granting the compensation to the victim the Court also has to pass directions to pay such

compensation to the victim. The Court has to pronounce the Judgment, under S. 265 F, in terms of its findings under S. 265 D, either releasing the accused or punishing the accused. [23]The judgment of plea-bargaining cases are final and no appeal lies on such judgment. However, a writ petition to the State High Court under Articles 226 and 227 of the Constitution or a Special leave petition to the Supreme Court under Article 136 of the Constitution can be filed by the accused. This acts as a check on illegal and unethical bargains.

The provisions also authorize the court to give accused the benefit of Probation of Offenders Act where so ever it is possible. Section 12 of the Probation of Offenders Act, 1958 provides that a person found guilty of an offence and dealt with under section 3 or 4 of the said Act, shall not suffer any disqualification attached to the conviction. Thus, the Government employees who are released on probation under the Probation of offenders Act are saved from the disqualification, attached to this. There is one case decided on this point (Sh. *Charan Singh* v. *M.C.D*[24]).

The litigant should be encouraged to avail the remedy of plea-bargaining to settle the pending cases. For the successful implementation of plea-bargaining, its application should be necessarily understandable. With the changing world scenario where all the countries are shifting to ADR mechanism from the traditional litigation process which is very lengthy and time consuming, the plea-bargaining may be one of the best recourse as an ADR mechanism to meet the challenges of disposal of pending cases.

There are other reasons also for backlog of cases. Even if everything is in order there are simply not enough mechanisms available to try a person. For example, in India, there are not enough courts to deal with the number of cases pending. There are also shortages of public prosecutors due to backlog in appointments.

Benefits in respect of Victim

a) He can easily get the compensation.
b) He can save himself from long drawn Judicial Process.
c) Less time and money consuming.

Benefits in respect of Accused

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[23] Supra note 15
[24] Writ Petition (Civil) No. 18725/2005) decided on 05/10/2006

a) In case of Minimum Punishment, he will get half punishment.
b) If no such punishment is provided, then he will get one fourth of the punishment provided.
c) He may release on probation or admonition.
d) He may get the gain of period already undergone in custody under section 428 of Cr.P.C.
e) No appeal lies against the judgment in favour of him.
f) Admission of accused cannot be used for any other purposes except for Plea-bargaining.
g) Less time and money consuming.

Recent Case Laws in India

In one recent case of Mumbai, published in 'Times of India' wherein, a Grade-I employee of RBI, was accused of siphoning off Rs 1.48 crore from the RBI by issuing vouchers against fictitious names from 1993 to 1997 and transferring the money to his personal account. He was arrested by the CBI in the year 1997, and released on bail in November the same year. Charges were framed and case came before Special CBI Judge.

The accused stated that he is 58 years old and moved an application of plea- bargaining by taking benefit of the amendment of 2005, came into force in 2006. The court directed the prosecution for its response. The court rejected the application but from that time, it has opened the doors and new hope in the minds of other accused[25].

In other case of *Vijay Moses Das* v. *CBI*[26], Uttrakhand High Court (Justice Praffula Pant) in March 2010 allowed the concept of plea-bargaining, wherein accused was charged under section 420, 468 and 471 of IPC. In the said case, Accused supplied inferior material to ONGC and that too at a wrong Port, which caused immense losses to ONGC, then investigation was done through CBI by lodging a criminal case against the accused. Notwithstanding the fact that ONGC (Victim) and CBI (Prosecution) had no objection to the Plea-bargaining Application, the trial court rejected the application on the ground that the Affidavit u/s (265-B) was not filed by the accused and also the compensation was not fixed. The Hon'ble High Court allowed the

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[25] The Times of India,October 15,2007,available at http://articles.timesofindia.indiatimes.com/2007-10-15/mumbai/27960117_1_plea-bargaining-application-sessions-court accessed on 27th October,2013

[26] Criminal Misc. Application 1037/2006

Misc. Application by directing the trial court to accept the plea-bargaining application.

Critical Analysis

It has become a disputed concept because there are many views regarding the stated point. Some authorities stress that introduction of plea- bargaining in India is exceptionally good as it will reduce heavy backlog prevalent in Indian Judiciary as well as reduce congestion in jails and other reasons whereas some authorities denied about it on the basis that the socio- economic conditions existed in US and India are very different. Law Commission in its report recommended it with the justification and reasons for accepting it. They stressed mainly on the points stated above. On the other hand, Opponent of this concept thinks that:

1. It is showing too much softness towards defendants.
2. The process is unfair with the innocent. It is like legalizing a crime to an extent, we already have provisions under probation of offenders Act, executive pardon.
3. According to one study of the US, one-third of the people who plead guilty would be acquitted if they went to trial.

Major drawbacks of plea-bargaining

A) Involvement of the police in plea-bargaining process would tempt coercion on innocent people.
B) If once guilty application of the accused is rejected then he would face great hardship to prove himself innocent.
C) Court is impartially challenged due to its involvement in plea-bargaining process.
D) Involvement of the victim may lead to corruption.

One argument is that plea-bargaining will instead likely to dramatically increase the number of cases where innocent persons find themselves imprisoned and with criminal records. Sometimes police make poor innocent people, accused of crimes that they never committed, after being paid off by the actual perpetrators. With the concept of plea-bargaining, these persons will be getting pushed to accept their guilt which they had never committed. In the prevalent situation, where the acquittal rate is as high as 90% to 95%, it is the poor who will be the victims of this concept and come forward to make confessions and suffer the consequent conviction. This measure to get speedy justice will only lead to miscarriages of justice. It is important to note that no programme of rehabilitation can be effective for the mind of

prisoner who has assumed himself as prisoner and convinced in his own mind that he is in prison because he has became the victim of a senseless, undirected and corrupt system of justice and it undermines the very basis of criminal justice system.

Secondly, it will have striking effects in cases involving state officers, accused of human rights abuse. In case of Custodial torture, this is yet to be made a crime. An Indian police officer accused of torturing a person in his custody may instead only be tried for other offences, such as those punishable under sections 323, 324 or 330 of the Indian Penal Code. The punishments for these offences are within the limit prescribed for punishment under the new law on plea-bargaining. This means that the new law may allow these torturers to escape with lighter penalties, even after knowing the fact that their offences fall into the gravest categories under international law.

Well, we no perfect solution, but it is very clear that if we eliminated excessively long sentences, reduce the role of police, and other threatening factors. We should give judges more time to try the important cases and allow plea bargaining only for cases involving short sentences or no felony record. The money we would save from reduced incarceration could then be used to increase the number of judges and courtrooms.

Conclusion

Even the Supreme Court has upheld that delay of one year in the commencement of trial is bad enough. How much worse could it be when the delay is as long as three or five or seven to ten years or more? Initially, the concept of plea- bargaining was criticized by a group of society including legal experts and intellectuals by stating that it will demoralize the public confidence in criminal justice system and also lead to lesser penalties to rich class, conviction of innocent people and therefore, it has become disputed concept now. It is argued that the plea bargaining concept no doubt undermines the public's confidence in the criminal justice system and as result of this it will lead to the conviction of innocent, inconsistent penalties form similar crimes and lighter penalties for the rich[27]. Today, it is used by all great countries like USA, Europe, Canada and some authorities stated that the prevalent conditions in India are very different from US,

[27] Soura Subha Ghosh, Plea Bargaining - An Analysis of the concept, available at http://www.legalserviceindia.com/articles/plea_bar.htm accessed on 27th October,2013

even then to meet out the huge backlog of cases in India and ultimately it will have to be done with the consent of both the parties i.e. accused and prosecution, then what undermines? Therefore, India cannot abstain itself for this law. This practice has been accepted by Indian Judiciary. It can reduce the heavy backlog of cases in Indian courts, as it requires today and we hope that overburdened criminal courts will soon get a relief with it and rate of disposing will become rapid. According to the statistics of Delhi till 17/01/2011, out of 8630 total cases, only 4129 cases have settled and there is no statistic which show that in how many cases plea-bargaining was demanded but even then only 309 were declared in which it was rejected. It shows the heavy backlog under Indian Courts and application of plea-bargaining[28].

When the process is complete and the quantum of punishment and possibility of the probation is finished, we can say that the victims are not the forgotten actor rather they have become a key player in the criminal justice system. According to the view of a Judge of Delhi High Court over three crore cases are pending in Indian courts. Plea-bargaining will solve cases involving petty offences and the courts will concentrate on more serious offences. Indian jails have capacity of 2.56 lakh prisoners but there are more than five lakh prisoners behind bars. The State governments spend more than rupee 55 per day on each prisoner and annual expenditure comes up to Rs 361 crore. This huge amount is spending by our Indian government to maintain these prisoners just because of delayed criminal justice system. Plea- bargaining will help in reducing backlog under Indian Judiciary and number of prisoners in jails also although the Constitutional obligation to provide speedy trial is also being fulfilled.

To sum up, plea bargaining is a disputed and controversial concept. Very few courts or judicial officers are welcoming it and others have abandoned it. Perhaps we in India have no other choice but to adopt this concept because of numerous abovementioned reasons. We are of the opinion that only time will tell if this concept will have fruitful effects and is justified or not.

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[28] *Supra note* 2