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The Notion of Plea Bargaining In India and the United States of America

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I. INTRODUCTION

This term called "plea bargaining" means such discussions and negotiating as are held amidst the defendant and the prosecution. It is felt that the aforesaid concept of discussions and negotiations is significantly traditional and shared meaning of "plea bargaining." A defendant is generally represented by his advocate or attorney. In the process of "plea bargaining", the defendant agrees that he is guilty. The guilt is admitted when he is promised some concessions or privileges from the side of the prosecution. "Plea bargaining" was incorporated inthe Indian justice structure through an amendment[1]of "the Code of Criminal Procedure".[2]"A new chapter XXIA was incorporated in "the Code of Criminal Procedure, 1973" . "Plea bargaining" wasendorsed by the Law Commission[3]for the purpose of lessening the large number of pendency of criminal trials in Indian courts. "The Malimath Committee[4] on "the Reforms of Criminal Justice System" too validated the endorsements of "the Law Commission"as well as perceived that a purpose of getting conviction done, of decreasing the time-period of trial, and of decreasing the pendency of cases can be accomplishedwithin "one go" with the help of the aforesaid novel notion called "Plea bargaining.[5]"

Rationalisation

A very significant improvement in "the Criminal Procedure Code" is the matter of "plea bargaining" or "mutually satisfactory disposition" in every criminal case other than for a criminal case for a crimethat imposes death penalty, or detention for lifetime, or prison term of beyond seven years. The frame of this plea bargaining is based on the concept of avoiding costly and fickle trials. In these trials of somewhat less grave criminal cases, there is the possibility that the offender will face persecution and hardships while the damage to the public/sufferer in these offences is comparativelyinsignificant. The viewpoint is the similar as in the compounding of some other offences. This permission for compounding of offences is alreadypresent in the Cr. P.C.[6], but the methodsvary. The schemerelated to plea bargaining has the capacity to decrease the movement and existence of criminal cases in the judicial structure. This system will further lessen the time, money, and energy of the directors/executors of the justice system (police, prosecutors, and judges), and these agencies will be able to take care of such significant and life-saving matters as serious crimes intimidating national security as well as large-scale destructionof life and property.

"Plea bargaining" is an instrument for making sure that that sufferersgetadequate justice within some limited time without facing a risk that the witness will turn hostile and there will be excessive and despairing deferments or adjournments . The victims of the crime committed will also know that the amount of money involved will be nominal. This system assists in making sure that the perpetrators of heinous crimes are not let off with soft justice/nominal punishment owing to the overabundance of work in the criminal justice apparatus. Lastly, it decreasesarrears and pendency when plea bargaining sends a numerous criminal cases for unconventionalreconciliation without trial. Even then, the process of plea bargaining is conducted under control of the court for the purpose of ensuring impartiality in the procedure and avoiding deception and oppression from either side.

Indian Judiciary and its Methodologyregarding Plea Bargaining

In the beginning, the Indian judiciary was not much enthusiastic with regard to implementing the idea of "plea bargaining"owing to its connection with criminal matters. This practice of plea bargaining was not approved or recommended by the Supreme Court of India. The court thought that this practice was invalid and it

violated the rights of the parties. The court said so in spite of the suggestions of "the Law Commission[7] and the Malimath Committee.[8]"The following cases highlight thisopinion of the Supreme Court:

In**"*MuralidharMeghraj v. State of Maharashtra*[9]**,"Supreme Court rejected this practice and indicated that it is slothful to take risks mostly on advantage of agreed criminal trails settlements, as this process is carried out in the United States, however in our dominion, particularly in the zones of treacherous economic offences and food-related crimes, this activity encroaches upon people's interests by refusing people's verdict articulated by prearranged legislative determination of least sentence. The Supreme Court further averred that this process further subverts the command of the law. The "State" cannever give and take. It must implement the law. For that reason, opentechniques of compromise are awkward and impossible.

Again in **"*KasamBhaiAbdulhmanBhaiSaikh v. State of Gujarat,*"**[10] the court once more condemned this practice and said that it would be opposing to public policy. This kind of bargaining will have the influence of contaminating the untaintedfountain of justice as it would convince an innocent person to admit guilty so that he gets a mild and irrelevantsentenceeither through anextended or gruelling jury trial.Nearly ananalogousopinion was articulated by the apex court in the matter of **"*Kachhia Patel ShantilalKoderlal v. State of Gujarat and Anr.,*"**[11]the court averred that the custom or the norm of plea bargaining is unenforceable, unlawful, and was most likely to embolden corruption, conspiracy, and contaminate the pure fountain of justice.In **"*MadanLal Ram ChanderDaga v. State of Maharashtra*"**[12]the judiciary made mention of a question mark about the notion of "plea bargaining."

Plea Bargaining in the United States of America

In **"*United States v. Jackson*[13],"** the court interrogatedabout the rationality of "the plea bargaining" procedure. This concept debarred anoffender'sprivilege for a jury trial. Justice Potter Stewart, who wrote for the majority team of the judges, stated that the problem with the law was not that it forced guilty-pleas but that it unnecessarilystimulated them.

After a period of two years, the Court shielded"plea bargaining" system "in **"*Brady v. United States*[14]"**, indicating that the methodreallyhelped both factions of the adversary structure. One year after that, in "*Santobello v. New York"*[15], the Court additionally vindicated the constitutionality of "plea bargaining", and made a mention about it by saying that plea bargaining means "an integralpart of judicial administration." The Court made a supplementary statement by telling that it has to be fortified as long as it is accurately administered.

In the U.S., more than 95 per cent of criminal matters do not ever enter the portal of the courts there . The reason of not going to the courts is that the bargain gets finalized amongst the prosecutor and the defendant's lawyer much before the date fixed for the initiation of the trial. This takes place sans such court supervision as is there in "the Criminal Procedure Code, 1973."[16] In the U.S., the allegation as well as the sentence is open to negotiation well before the beginning of the trial. In other words, the U.S. structure is, in some indirect way, propagating a tolerant deal in lieu for a guilty plea. The partplayed in the United States America by the judge under "plea bargaining" is comparativelyinconsequential and is restricted to the complianceof this process with constitutional measures. So much so that in the American system of criminal justice, "plea bargaining" isa routine and not something which is an exception.

Significant characteristics of India "Plea Bargaining"

- This Act allows that the notion of "plea bargaining" can be used about criminal cases wherein the approved maximum punishment is upto a period of seven years.[17]This Act is not pertinent in those cases where the crime matters with the socio-economic situationconcerning the nation or wherein the offence was carried against a lady or a child of lessthan 14 years.[18]
- Asubmissioncontaining the request regarding"plea bargaining" has to be filed by the defendantby stating that his/her application is without any duress or threat. This application is filed before the Court[19]. After the filing of this application, the court grants theaccuser and the defendant a limited time for arriving at a mutually agreeablesettlement of the legal matter. This settlement maycontain provisions for providingany victim by the defendant, some reimbursement and other expendituressuffered at the processing of the legal matter.[20]
- In case of an agreeable disposition of the situation, the Court shall sanction the recompense to the sufferer as per the disposition/settlement of the concerned persons or in case the Court infers that leastsentenceis provided in the with regard to the crimecarried out by the accused, the court may award the punishment to the guilty to half of such least sentence; or in case the Court notices that the crimecarried out by the accused is not enclosedin the law, the statute can punish the defendant to one-fourth of the sentencestated with regard to such kind of offence.[21]
- Any declaration or specificsmentioned by a guilty person in anysubmissionwith regard to "plea bargaining" will not be utilized for other mattersexceptthe matter of "plea bargaining"[22] The verdict pronounced

by the Court regarding "plea-bargaining" is final. Thereafter, any provision of further petition shall cease to exist in any court against the kind of judgment aforesaid.[23]

- In India,it is appropriate to observe that the proposed "plea bargaining" is not animitation of the structure operativein USA. Under a scheme prevalent in USA, the settlement is out of court while in India it encompasses the court as an adjudicator between the accused and the prosecutor for working out the process of the completion of the matter.

II. CONCLUSION

Having been existence in some other form, the notion of plea bargaining is not altogether a fresh norm. Plea bargaining does exist in our legal set-up although in some unofficial manner. We should study and examine the matter relating to compensation in the cases relating to road accidents or motor vehicle accidents. Plea bargaining is practised in the aforesaid matters. LokAdalatspractice one other form of this method of plea bargaining. All the same, the word or term "bargaining" with regard to criminal cases is somewhat unpleasant for a number of people in our society. This unpleasant term "bargaining" is all the same quite well accepted in therealm of justice by the Americans.

The notion of Plea Bargaining needs encouragement and the petitionerought to be positivefor advancing the therapy of "plea bargaining"for resolving numerous undecidedlegal matters. With respect to the fruitful execution of plea bargaining and achievement of the goals of plea deals, the part of judiciary as well as thelawyers is quite important. The associates or members of the lawyers' body ought to encourage the parties connected with any case for choosing plea bargaining and not considering"plea bargaining" a peril to occupation of the lawyers. As per the alteringglobal situation where everynation is shifting to alternate dispute resolution (ADR) as compared to the old, complex, and very long legal system, plea bargaining can be amongst the most excellentoptions as an ADR instrumentfor fulfilling the tedious tasks relating to the early and fair clearancethe legal matters pending in the courts.

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1 Criminal Law Amendment Act, 2005
2 Act No. 2 of 1974
3 142th and 154 Reports.
4 Malimath Committee was appointed by Ministry of Home Affairs, Govt. of India on 24 Nov. 2000 to consider measures for revamping of the Criminal Justice System.
5 Malimath Committee Report, Vol. I, GOI, MHA, March 2003 at 160.
6 Section 320 of the Code of Criminal Procedure, 1973.
7 142th , 154th and 177th reports.
8 Malimath Committee reports, Vol. 1, GOI and MHA, March, 2003 at 160.
9 AIR 1976 SC 1929
10 AIR 1980 SC 854
11 (1980) 3 SCC 120
12 AIR 1968 SC 1267
13 390 U.S. 570 (1968)
14 397 U.S. 742 (1970)
15 404 U.S. 260 (1971)
16 Section 265A of Cr.P.C.
17 Section 265A of Cr.P.C.
18 Section 265A of Cr.P.C.
19 Section 265B of Cr.P.C.
20 Section 265B of Cr.P.C.
21 Section 265E of Cr.P.C.
22 Section 265K of Cr.P.C.
23 Section 265G of Cr.P.C.