PLEA BARGAINING IN INDIA: CONSTITUTIONAL & STATUTORYSAFEGUARDS

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ABSTRACT

Justice is desired by each and every person on this earth. As we all know that Justice delayed is Justice denied, it's a matter of concern that how many people actually get justice in due time. Well, this is a vague question as there is no specificity to it. The pendency of criminal cases in India has assumed alarming propositions. The noose around the criminal justice system has been tightened by petty criminal cases and the cases in which punishment up to seven years has been prescribed which form a bulk of such pendency so much so those grave offences which have the effect of tearing the social fabric are not tried promptly. Delay in administering Criminal Justice makes the system weak and meek. It tends to dilute the purpose of Criminal Law - the prevention of crimes. A punishment imposed after a long time may not have the same impact on the victim or the perpetrator or the public at large.

Certainly, this poorly reflects the inefficient functioning of system apart from running counter to the democratic principles of the respectable republic. The Under trials accused in criminal charges under various sections of the Indian Penal Code are facing twin dilemma of denial of basic human rights and are forced to squander away their productive years of life under imprisonment without any immediate light at the end of the tunnel. Incarceration of the under trials for such a long time - in some cases even beyond the prescribed penalty-defies all theories of punishment. Though the Indian Courts including the apex court took a sympathetic view of the under trials, the insensitive and inflexible system did not allow the efforts to fructify. The corrupt and the lethargic bureaucracy objected and obstructed the unusually kind attitude adopted by the judiciary to release the under trials, who overstayed their punishment period had they been found guilty and ultimately punished by the court of law.

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INTRODUCTION

Chapter XXI A of the criminal procedure code provides legislative framework for plea bargaining in India contained in section 265A to Section 265L. An application with regard to plea bargaining may be made by an accused when the challan has been presented by the police in the court alleging that an offence, punishable with 7 years or less imprisonment, appears to have been committed by an accused or on a private complaint the accused has been summoned by the court in respect of the offences punishable with 7 years or less imprisonment. The accused person above the age of 18 years can file such an application for plea-bargaining provided the offence should not have been committed against a women or a child below the age of 14 years. The offence should not affect the socio-economic conditions of the country and the accused should not have earlier been convicted for the same offence. In July 2006 the Central Govt. Issued a notification classifying statutes as affecting the socio-economic conditions of the country and the offence in those statutes now stand excluded from the process of plea-bargaining. There is no bar on woman taking the benefit of plea bargaining. According to section 265 B the application for plea bargaining is to be filed in the court where the trial is pending. The application is should be accompanied by the affidavit from the accused that he is exercising this option voluntarily and he has no previous conviction for the same offence. The court then examines the accused in camera to ascertain whether the application has been filed voluntarily or not. On being convinced the court then calls upon the Public Prosecutor or the complainant to work out a mutually satisfactory disposition of the case. The negotiation is left to the freewill of the parties and if a settlement is reached, the court can award compensation based on it to the victim and then hear the parties on the issue of punishment. After hearing the accused on the quantum of punishment the court can decide upon releasing the accused under S.360 of the Code or under the provisions of the Probation of Offenders Act, 1958; if a minimum

sentence is provided for the offence committed, the accused may be sentenced tohalf of such minimum punishment; if the offence committed does not fall within the scope of the above, then the accused may be sentenced to one fourth of the punishment provided or extendable for such offence

RESEARCH ANALYSIS

PLEA BARGAINING AND THE CONSTITUTIONAL MANDATE

The key to this judicial activism is the ruling in Maneka Gandhi v Union Of India268 that the phrase "procedure established by law" in Art 21 does not mean 'any procedure' laid down in a statute but has to be fair, just and reasonable not fanciful, oppressive or arbitrary otherwise it should not be an procedure at all and all the requirements of Art. 21 would not be complied with 270 . A procedure which is unreasonable, harsh and prejudicial to the accused cannot be in consonance with Art. 21. This judicial approach has made Art 21 more or less synonymous with the concept of procedural due process in the U.S.A. The Supreme Court has observed in Sunil Batra v Delhi Administration (II) that thanks to Art. 21, human rights jurisprudence in India has a constitutional status and sweep... so that this Magna Carta may well toll the knell of human bondage beyond civilized limits. Accordingly, since Maneka, the Supreme Court has in a number of cases tested various aspects of criminal justice and prison administration on this touch stone. The protection of Art. 21 extends to all persons accused of offences, under trial prisoners, prisoners undergoing jail sentences etc., and, thus, all aspects of criminal justice fall under the umbrella of Arts. 14, 19 and 21. Speedy trial of a criminal case considered to be an essential feature of right of a fair trial. Right to fair trial in a criminal prosecution is enshrined in Art. 21[1].

In Moses Wilson v. Karturba the Supreme Court expressed concern in delay in disposal of cases and directed the concerned authorities to do needful in the matter urgently before the situation goes totally out of control. In present case, a suit was filed in 1947 for a sum of Rs. 7000/- and continued for 60 years and had not been

[1] Zachrias, F.C. (1998). "Justice in Plea Bargaining." William & Mary Law Review, P.1121

disposed of until now. Thus the Court expressed deep concern at the delay in disposing of cases in our courts. Because of delay in disposal of cases people in this country are fast losing faith in the Judiciary. This situation should be set right as soon as possible the Court directed concerned authorities to do needful in the matter. To reduce delay in disposing of criminal cases and to deal with pendency of cases, the Concept of plea-bargaining was introduced. This concept of plea bargaining becomes a guard against the system getting discredited and people losing faith in it. The introduction of plea-bargaining is aimed at quickly reducing the number of under trial prisoners and increasing the number of convictions, and therefore ensures speedy trial and avoids excessively long delays in trial of criminal cases that could result in grave miscarriage of justice.

In the case of Ganeshmal Jashraj v. Govt. of Gujarat, where on a plea of guilty by the accused the Magistrate took a lenient view and awarded a sentence less than the minimum prescribed, which was raised to the minimum by the High Court, the Supreme Court noting that the plea of guilty was entered after close of prosecution evidence and examination of the accused under section 313, Cr.PC observed: The learned Judicial Magistrate was in the circumstances not entitled to take into account the admission of guilt made by the appellant in reaching his decision in the regard to the conviction of the appellant. There can be no doubt that when there is an admission of guilt made by the accused as a result of plea bargaining or otherwise, the evaluation of the evidence by the Court is likely to become a little superficial and perfunctory and the Court may be disposed to refer to the evidence not critically with a view to assessing its credibility but mechanically as a matter of formality in support of the admission of guilt. The entire approach of the Court to the assessment of the evidence would be likely to be different when there is an admission of guilt by the accused. Here it is obvious that the approach of the learned Judicial Magistrate was affected by the admission of guilt made by the appellant and in the circumstances, it would not be right to sustain the conviction of the appellant[2]

DOCTRINE OF WAIVER IN CONTEXT OF PLEA BARGAINING

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[2] McConville, M., & Mirsky, C. (1995). "Guilty Plea Courts: A Social Disciplinary Model of Criminal Justice

J. K. Mathur J. in his article states that the concept of plea bargaining if brought into the Indian Judicial System will be unconstitutional To begin with definition of the concept of waiver, "Waiver proceeds on the basis that a man not under legal disability is the best judge of his own interest and if, with knowledge of a right or privilege conferred on him by statute, contract or otherwise, for his benefit, he intentionally gives up the right or privilege, or chooses not to exercise the right or privilege, or chooses not to exercise the right or privilege to its full extent, he has a right to do so ". The concept of waiver has also been defined by the Supreme Court in M.P. Sugar Mills Co. Pvt. Ltd. v. State of U.P. as an abandonment of a right and it may be either express or implied from conduct, but its basic requirement is that it must be an intentional act with knowledge. The Court expressly mentioned that there can be no waiver unless the person who is said to have waived is fully informed as to his right and with full knowledge of such right, he intentionally abandons it.

The concept of waiver is not accepted in Indian system. But in plea bargaining conscious waiver takes place. One who pleads guilty gives up a bundle of rights related to the trial process namely the right to a trial itself, the right to a trial by jury, the right to make an argument and to call witnesses in defense, the right to put the state to its proof and so on. Most of these rights are waived in India as well after the introduction of the concept of plea bargaining into the Indian criminal justice system in the year 2005. Hence it is submitted that very often; waiver of rights becomes necessary in the context of plea bargaining.[3]

PROHIBITION AGAINST SELF-INCRIMINATION

Clause (3) of Article 20 provides that no person accused of any offence shall be compelled to be a witness against himself. Thus Article 20(3) embodies the general principles of English and American jurisprudence that no one shall be compelled to give testimony which may expose him to prosecution for crime. The cardinal principle of criminal law which is really the bed rock of English jurisprudence is that

[3] Dr.Rai, Suman. (2014). "Law Relating to Pea bargaining: International & National Scenario", Orient Publication Company, p.42

an accused must be presumed to be innocent till the contrary is proved. It is the duty of the prosecution to prove the offence. The accused need not make any admission or statement against his own free will. The Fifth Amendment of the American Constitution declares that “no person shall be compelled in any criminal case to be a witness against himself”. The fundamental rule of criminal jurisprudence against self-incrimination has been raised to a rule of constitutional law in Article 20(3). This guarantee extends to any person accused of an offence and prohibits all kinds of compulsions to make him a witness against himself. Explaining the scope of this clause in M.P. Sharma v. Satish Chandra, the Supreme Court observed that this right embodies the following essentials:-

1) It is a right pertaining to a person who is “accused of an offence.”
2) It is a protection against “compulsion to be a witness”.
3) It is a protection against such compulsion relating to his giving evidence “against himself.”

The words 'accused of an offence' make it clear that this right is only available to a person accused of an offence. A person is said to be an accused person against whom a formal accusation relating to the commission of an offence has been leveled which in normal course may result in his prosecution and conviction. It is not necessary that the actual trial or inquiry should have started before the Court. Thus in M.P. Sharma v. Satish Chandra, it was held that a person, whose name was mentioned as an accused in the first information report by the police and investigation was ordered by the Magistrate, could claim the protection of this guarantee. Compulsion to give evidence “against himself” The protection under Article 20(3) is available only against the compulsion of accused to give evidence “against him. But left to himself he may voluntarily wave his privilege by entering into the witness-box or by giving evidence voluntarily on request. Request implies no compulsion; therefore, evidence given on request is admissible against the person giving it. To attract the protection of Article 20(3) it must be shown that the accused was compelled to make the statement likely to be in criminative of him. Compulsion means duress which includes threatening, beating or imprisoning of the wife, parent or child of a person. Thus where the accused makes

a confession without any inducement threat or promise Article 20(3) does not apply. In Nandini Satpathy v. P.L. Dani the Supreme Court has considerably widened the scope of clause (3) of Article 20. The Court has held that the prohibitive scope of Article 20(3) goes back to the stage of police interrogation not commencing in court only.It extends to, and protects the accused in regard to other offences pending or imminent which may deter him from voluntary disclosure. The phrase 'compelled testimony' must be read as evidence procured not merely by physical threats or violence but by psychic (mental) torture, atmospheric pressure, environmental coercion, tiring interrogatives, proximity, overbearing and intimidator methods and the like. Thus, compelled testimony is not limited to physical torture or coercion, but extends also to techniques of psychological interrogation which cause mental torture in a person subject to, such interrogation[4].

PLEA BARGAINING AND THE ROLE OF JUDICIARY: ANEMERGING TREND

In Brijial Amarbanshi v. State of Maharashtra In this case charge was framed on 19.6.2007. At that time the appellants pleaded not guilty. After some time, however on some advice they jointly pleaded guilty whereupon the court convicted them and imposed full sentence. The accused persons appealed to the High Court praying for remand of the case on the ground that they did not understand the implication of their pleading guilty, they would not have pleaded guilty had they understood that thereafter the sentence would be so severe and the plea-bargaining was held to be unconstitutional and illegal way back in 1980 at hence the trial court ought not have accepted their guilty plea. The Special Judge informed the accused persons that if they insist on pleading guilty. They would suffer sentence according to law and even they would not be able to prefer appeal. The Bombay High Court stated the law regarding pleading guilty as follows: Ordinarily in serious offence, plead guilty is to be avoided and it is desirable to direct that the case should be tried. Even if plea is recorded which would be done by distinctly putting to the accused each fact alleged in charge, which if proved, would constitute an offence. Yet even on observing these

[4] Alschuler, Albert. (1979). “Plea Bargaining and It’s History”, Criminal Law Review,79, p.2

safeguards, the court would not be relieved from its duty of being satisfied that the plead guilty was made by he accused upon fully understanding the repercussions and with free will, and is genuine and not due to misunderstanding and it would be to have the accused being tried. It is also to be ensured that the accused are duly represented through Advocate. It is to be noted that the charge was framed after the provision of Plea Bargaining in the Cr. P.C. had come into force. Hence the case was within the purview of the chapter XXIA of the Criminal Procedure Code, 1973. In absence of mention of any provision in the judgment, it is not clear as to under which provision of the Code the case was heard. Nonetheless, the case having been decided after coming into force of the Chapter XXIA of the Code, and the whole issue being whether the plea of guilty was valid and acceptable for lenient sentencing, the courts should have examined the matter from this angle also. Unfortunately that has not been done[5].

CONCLUSION

The right against self-incrimination under Article 20(3) mandates that for plea bargaining to be constitutional, it must be voluntary in nature. Voluntariness in such a circumstance means that the accused should agree to the offer of the prosecutor freely without being coerced. The idea of lesser punishment in lieu of admission of guilt is systemic coercion of the mind, and thus the validity of the whole plea bargain system is questioned. In relation to this, the plea bargain agreement basically incriminates the person who signs the agreement, or self-incrimination, the United States system upholds this, as fundamental rights can be waived there but in India, self-incrimination being a fundamental right under article 20(3) cannot be waived and thus the question of constitutionality of plea bargain has been raised by several critics .However this is laid to rest because of the argument that since it is the procedure established by law and reading article 20 and 21 together, there is no doubt as to the standing of the system. Further the criminal procedure code adds a safeguard against the use of statements of the accused for any other purpose, such uses are forbidden except as per the provisions of plea bargaining system. Hence it

[5] Dervan, Edkins. (2013). "The Innocent Defendant's Dilemma: An Innovative Empirical Study of Plea Bargaining's Innocence Problem", In: J. Crim. Law Criminal.p.6

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