
ETHICAL AND NON-ETHICAL ASPECTS OF PLEA BARGAINING

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ABSTRACT

It is very definite that courts are overburdened with criminal cases. The courts are striving hard to find out different methods for expeditious disposal of the cases. Plea bargaining is one of the methods adopted by the judiciary for speedy disposal of cases involving offences which are less serious and petty. Regardless of its convenient aspect, plea bargaining has been subject to several moral and ethical challenges. Despite of several debates and disagreements plea bargaining still stands firm as an operative mechanism in administering justice. This paper aims to understand the utility of plea bargaining as an effective machinery in the judicature, to scrutinize its morality and ethicality and to analyse whether it can be relied upon by the judiciary without contravention to the moral standards and norms of society. Lastly, I would be conveying my outlook towards this mechanism

INTRODUCTION

The concept of plea bargaining also known as plea-deal surfaced in the 19th century and has been derived from the American Judiciary. Before the 19th century, it was not much practiced in America but the advent of excess criminal cases led to its adaptation. However, it was introduced in India quite a time later. It has been a necessity for the modern legal system because of its expeditious nature. It is more efficient and faster in resolving disputes than any other method used by the judiciary. The term ‘plea’ means request and ‘bargaining’ means negotiation.¹ This means that the accused negotiates with the prosecution that he shall be subjected to a lesser punishment in place of the maximum punishment as provided by law only if he admits his guilt and surrenders before the court of law. However, this mechanism is only applicable to those offences which are less grievous and don’t have a serious impact on the society. After being introduced in India, the morality and ethicality of plea bargaining were questioned several times. Several critics have also accused this mechanism to be impartial and more advantageous for the prosecution. Despite being put through so many debates, our Indian judiciary finds it quite reliable as it reduces the burden of the judiciary and works as a huge relief. Earlier only civil disputes were resolved through alternate dispute resolution mechanisms. But recently, our judicial system has started adapting alternate dispute resolution mechanisms for settlement of criminal cases and plea bargaining is the perfect example.

CONCEPT OF PLEA BARGAINING

According to Black’s Law Dictionary plea bargaining means, “An agreement set up between the plaintiff and the defendant to come to a resolution about a case, without ever taking it to trial².”

Through the Criminal Law (Amendment) Act, 2005 plea bargaining was introduced into CrPC for the first time through Chapter 21A containing provisions 265 A to 265 L. Today, the judiciary has been completely acquainted with the effectiveness of plea bargaining due to which this mechanism is very prevalent nowadays.

Plea bargaining can be categorized into:

Charge bargaining- Here, instead of pleading guilty to the actual offence the accused has been charged with, he pleads guilty to a lesser charge. For example, instead of pleading guilty to

¹ i pleaders, <https://blog.ipleaders.in/plea-bargaining-practice-india/> (last visited March 25, 2024)

² THE LAW DICTIONARY, <https://thelawdictionary.org/plea-bargaining/> (last visited Mar. 25, 2024)

house trespass under the IPC with which the accused has been charged, he may plead guilty to criminal trespass which carries a lesser punishment in comparison to house trespass.

Sentence bargaining- Here the accused doesn't plead guilty to a different charge lesser than the offence he is originally charged with. Instead, he pleads guilty for the same offence charged on the condition that he shall be subjected to a lighter punishment rather than the maximum punishment prescribed for the offence charged.

Fact bargaining- This is not normally adopted by the courts. Here, out of a series of facts only some facts are disclosed by the accused and the rest which are more serious or incline the accused towards a harsher punishment are kept secret.

These mechanisms are effective but somewhat become questionable when it comes to morality and ethics. But, in spite of so many questions asked and objections raised, it is not to be denied that this mechanism has found a strong place in our judicial system.

MORALITY AND ETHICALITY

Several judges and legal experts have pointed out how the plea-bargaining procedure is opposed to public policy, unconstitutional, illegal and supports corruption which should have led the lower courts to refrain from allowing the practice of plea deals as it pollutes the purity of justice.

There are many such instances where it is considered immoral. But gradually it was adopted by the judicial system.

Although today, the judiciary relies on plea bargaining for the smooth functioning of criminal proceedings it has several facets which make it seem unethical and immoral.

Some of these are:

1. If a party who is the accused feels that he doesn't have a strong case and justice leans towards the prosecution's side, then even if the accused is innocent, he may take the means of plea bargaining to escape harsh punishment and undergo the entire process of trial.

In a famous case in the United States, the accused who was guilty of murder and who might have been convicted for the same, stated before the court, that he knew that he wasn't guilty yet he would be pleading guilty. This shows the actual scenario where accused persons who are desperate to escape punishment plead guilty just because they know their innocence cannot

be proved and ultimately, they would be subjected to harsher punishment if they do not plead now.

The accused might be confident that he can't escape conviction and as a result in order to avoid further litigation expenses and the maximum punishment he might be willing to opt for plea bargaining. This results in a complete violation of justice because an innocent is ultimately being subjected to conviction in spite of being innocent.

2. Secondly, the pleader of the accused person may advise him to plead guilty so that he can escape a larger punishment. Thus, a person who should have been subjected to harsher punishment escapes liability by pleading guilty to his crime.
3. Various critics have claimed that plea bargaining is somewhat biased. It is more favourable for the prosecution. Since the accused pleads guilty, he is bound to compensate the prosecution. Also, the prosecution can have the upper hand on the accused by influencing him to plead guilty so that he can further avoid the tough punishment.
4. The whole process of conviction is achieved only after proper investigation, inquiry and trial. But if the accused himself submits to his guilt, the trial process is exempted. Where witnesses would have appeared and been examined and the court could have got enough time to analyse whether the accused is innocent or guilty, that process itself is skipped. The proper statutory procedure is not followed which adds more to the non-ethicity of plea bargaining.

ACCEPTANCE OF PLEA DEALS REGARDLESS OF CONTROVERSY

It is not a lesser-known fact that despite several questions and controversies the Indian judiciary has not deemed plea bargaining to be inadequate or faulty. However, turning a blind eye to its moral ambivalence is definitely not the approach of the judiciary.

The judiciary has maintained a balance between ethicality and non-ethicality while using such a controversial mechanism.

In other words, the institution of plea bargaining in itself is not immoral. Rather, it is the lack of proper measures to be taken while using the mechanism which makes it look faulty. Here are a few reasons why it has been accepted regardless of its moral ambivalence.

- Firstly, it is the prerogative of the accused to apply for plea bargaining. The prosecution themselves cannot apply for it unless the accused voluntarily files an application that specifically states his guilt and involvement in the said offence. This means the prosecution out of their own accord cannot resort to plea bargaining so as to prove to the court that the accused is guilty. Here, the accused has been given a complete opportunity to make a choice whether to plead guilty or not to do so.
- The judges ensure the fairness and free will in plea bargaining. The judges see to it that the prosecution does not coerce the accused into pleading guilty. The complete free will and consent of the accused are given importance. This is why the accused shall be asked to appear before the court for his examination 'in camera' i.e., clandestinely. This is done in order to analyse that the accused has pleaded guilty out of his own accord and there has been no coercion or undue influence.
- The advantage of plea bargaining is not available to habitual offenders. It is only applicable to first-time offenders. Many times, these mischievous offenders who frequently commit crimes on a regular basis want to get away with their misconduct as soon as possible. But unfortunately, plea bargaining does not allow that. This is why plea bargaining cannot be said as completely unethical. It makes sure that habitual offenders who continuously commit crimes do not escape punishment after pleading guilty.
- Plea bargaining doesn't allow the accused to escape punishment entirely. Only the quantum of punishment is reduced. So, the ends of justice are not entirely defeated. Punishments in India are inflicted with a view to reform or transform the character of the offender so that after serving punishment he fits into the society as a person of good character. Plea bargaining gives a chance to the accused to accept his wrongdoing and undergo punishment. He is given a chance to change himself. This definitely establishes the morality of plea deals.
- Other factors such as saving the time of courts, and expeditious disposal of cases also play a role in the acceptance of plea bargaining into the judiciary despite many controversies. The skipping of the trial procedure is not much problematic as plea bargaining involves only petty and less serious offences which do not require so much of the lengthy trial process. Also, the whole mechanism of appeal need not be followed which saves enough time of the higher judiciary who need not waste their precious time in dealing with less serious offences.

Does plea bargaining affect the right against self-incrimination of the accused?

It has been extensively argued that the submission of the accused to his guilt during the process of plea deals results in the wavering of his right against self-blame and self-accusation as prescribed under Article 20(3) of the Indian Constitution. So, this right in no circumstance can be waived by the accused as it is his fundamental right. Therefore, it is still debatable whether the mechanism of plea bargaining is constitutional or not.

However, the courts have justified it to be constitutional only on the ground that it is made voluntarily and without any kind of inducement or coercion.

CONCLUSION AND SUGGESTIONS

Plea deals have been efficient in several ways which leads it into surpassing many of its deficiencies. In my opinion, this mechanism shall not be labelled directly as non-ethical as the free consent of the parties is given prime importance by the courts. The provisions of CrPC specify that the court shall make sure that the accused pleads guilty with his consent and that the mutually satisfactory disposition has been entered into by all persons without any coercion or influence and with full consent. In this way, the risk of convicting innocent people is eliminated. Also, the offences for which plea bargaining is applicable are trivial and not very grievous.

The entire process of plea deals cannot be said unethical. Rather if the courts remain careful and take appropriate measures through the entire bargaining process the immorality of plea bargaining can be overlooked. The complexity of plea bargaining is indeed true but it is the judiciary that can make this controversial mechanism constitutional and virtuous by balancing its efficiency and disadvantages. Therefore, the judges need to have a proper plan and strategy so as to carefully dispose off the case without any injustice to either of the parties. I strongly feel that along with the judges, there is a strong sense of responsibility with the public prosecutors to focus on justice and not to force the accused to plead in order to convict him.