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**PLEA BARGAINING-A SPEEDY JUSTICE FOR
UNDERTRIALS**

Speedy trial is the essence of criminal justice and delay in trial by itself constitutes denial of justice. "Pendency for long periods operates as an engine of oppression," said the Supreme Court in a 1996 decision and issued directions to criminal courts to protect and effectuate the right to life and liberty of the citizen (1966) MLJ (Cri) P549).

A crying Shame The Supreme Court in Kadra Pehadiya Vs State of Bihar- 1981 Cr.L.J. 481- held "It is a crying shame upon our ad-judicatory system which keeps men in jail for years on end without a trial." The court in a compassionate expression observed..."no one shall be allowed to be confined in jail for more than a reasonable period of time, which we think cannot and should not exceed one year for a session trial... we fail to understand why our justice system has become so de-humanized that lawyers and judges do not feel a sense of revolt at caging people in jail for years without trial"

Mr. Justice K.G.Balakrishnan, the present Chief Justice of India pointed out at National Seminar on Delay in Administration of Criminal Justice System, the State as a

guardian of fundamental rights of its citizens is duty-bound to ensure speedy trial and avoid excessively long delays in trial of criminal cases that could result in grave miscarriage of justice. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible. There are a large number of undertrial prisoners in this country. In many cases, the accused is the head of a family and is the only breadwinner; his responsibility is also towards the large family left behind him. It is not only the accused but also other members of his family who suffer because of delay in trial. Speedy trial ensures that a society is free of such vices. In many cases, large number of persons are arrested and kept in custody. It is said that large percentage of jail population is of under trial prisoners.”

To reduce delay in disposing off criminal cases the Law Commission recommended introduction of “plea-bargaining” as an alternative method to deal with huge arrears of criminal cases. This recommendation was supported by Dr. Justice Malimath Committee. The Code of Criminal Procedure has accordingly been amended by adding Chapter XXI-A consisting of 12 Sections. In the statement of objects and reasons of the Act it is mentioned that disposal of criminal trials in the courts takes considerable time and in many cases trials do not commence for as long as 3 to 5 years. In the given situation, plea-bargaining seems to be the only panacea left to bail out from this situation. The Act was enforced w.e.f. 5th July.2006.

WHEN ARE PLEA BARGAINS MADE?

A plea-bargain 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 woman 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 cataloging 19 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.

THE PROCESS OF PLEA BARGAINING

The process is very simple. The accused of an offence may file an application for plea-bargaining in the court in which such a trial is pending. The application shall contain brief description of the case including the offence to which the case relates and shall be accompanied by an affidavit sworn by the accused stating that he knows the extent of punishment of the offence or offences he is indicted for and that he is willing to plead guilty to the charge of the particular

offence or offences and that he has not been previously convicted of the same offence.

The court will then issue notice to the public prosecutor concerned, investigating officer of the case, the victim of the case and the accused for the date fixed for the purpose. When the parties appear, the court shall examine the accused in **Camera** where the other parties in the case shall not be present, to satisfy itself that the accused has filed the application voluntarily. If satisfied, the court shall then give time to the above parties to work out "**mutually, satisfactory, disposition**" of the case and the parties then are then to sit together and workout mutually, satisfactory, disposition of the case. The court will ensure that the process is completed voluntarily and the accused can also seek the help of an advocate in the process.

When the parties work out the disposition, a report shall be prepared which shall be signed by all the parties. This shall be followed by judgment imposing lighter sentence on the accused and providing compensation to the victims. The provisions also mandate the court to give accused the benefit of Probation of Offenders Act wheresoever it is permissible. If the court finds that the benefit of probation is not available to the accused, then the court may sentence the accused to $1/4^{\text{th}}$ of the punishment provided for such an offence. In cases, where the minimum punishment has been provided under the law for offence committed by the accused the court may sentence the accused to half of the

punishment to such minimum punishment. The judgment of the court will be final and no appeal shall lie against such judgment.

It may also be mentioned here that the period of sentence already undergone by the accused during investigation and trial of the case shall be set off against the sentence imposed by the court under this Chapter. It has also been made amply clear in this chapter that notwithstanding anything contained in any other law for the time being in force, the statement of facts stated by the accused in the application for plea-bargaining shall not be used for any other purpose except for the purpose of this Chapter of plea-bargaining. Where mutually satisfactory disposition of the case could not be arrived at, the case shall proceed further in accordance with the provision of the code from the stage of such application has been filed without prejudice to the contents of the application and affidavit or any other deposition made by the accused in this behalf.

One of the merits of the new system is that it helps the court to manage its load of work, and hence it would result in a reduction of the backlog of cases; another is that it relieves the magistrate of the burden to prepare a detailed judgment. This system offers advantage to the Public Prosecutors by relieving them of the burden of examining fragile and feeble witnesses like children and women of the household Plea bargaining secures significant

advantages to the accused, as he could save a great deal of time, energy and court expenses and the period of sentence.

There are certain flaws and disadvantages of this concept as well. Conceptually, the plea bargaining process reduces the administration of criminal justice to a barter system, where the haggling is between legal punishment and gains to the wrongdoer. Secondly, even the innocent accused would capitulate to wrong compromises and wrong convictions in order to escape from the ordeal of a prolonged and expensive trial. Thirdly, cases in which the accused might finally secure acquittal would be converted into cases of unmerited conviction. Such accused can develop a scornful attitude to the justice dispensing system. Finally, plea-bargaining can be construed as violating the principles enshrined in Article 21 of the Constitution that no person shall be deprived of his liberty except according to the procedure established by law. The main criticism in the U.S. has emanated from human rights activists on the ground that plea-bargaining impairs the human rights of the accused. Moreover by inviting the police investigators in plea-bargaining process it would invite coercion and corruption. If the plea guilty application of the accused is rejected then the accused will face great hardship to prove himself innocent before the same trial Court.

No doubt the plea-bargaining concept undermines the public confidence in the criminal justice system and result of this, it may lead to the conviction of innocent, inconsistent

penalties from similar crimes and lighter punishment for the rich still the advantages would out way the demerits. To conclude, plea-bargaining is undoubtedly, a disputed concept. Few people have welcomed it while others have abandoned it. It is true that plea-bargaining speeds up caseload disposition; but it does that in an unconstitutional manner. But perhaps we have no other choice but to adopt this technique. The criminal courts are too over burdened to allow each and every case to go on trial. Only time will tell if the introduction of this new concept is justified or not.

(The Writer of this article is
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