Plea Bargaining- A New Development in the Criminal Justice System

"Plead Guilty and bargain Lesser Sentence" is the shortest possible meaning of Plea Bargaining. In its most traditional and general sense, "plea bargaining" refers to pre-trial negotiations between the defendant, usually conducted y the counsel and the prosecution, during which the defendant agrees to plead guilty in exchange for certain concessions by the prosecutor. "Plea bargaining" falls into two distinct categories depending upon the type of prosecutorial concession that is granted. The first category is "charge bargaining" which refers to a promise by the prosecutor to reduce or dismiss some of the charges brought against the defendant in exchange for a guilty plea. The second category, "sentence bargaining" refers to a promise by the prosecutor to recommend a specific sentence or to refrain from making any sentence recommendation in exchange for a guilty plea. Both methods affect the dispositional phase of the criminal proceedings by reducing defendant's ultimate sentence. The concept of plea bargaining was introduced in India Criminal Justice System in the year 2005 by means of Criminal Law (Amendment) Act, 2005. By this amendment, a new Chapter XXI A has been introduced in the Code of Criminal Procedure.

Plea Bargaining is the result of modern judicial thinking. Prior to the introduction of Plea Bargaining in the criminal justice system, most courts and scholars tended to ignore plea bargaining, and when discussions of the practice occurred, it usually was critical. Most legal experts described plea bargaining as a lazy form of prosecution that resulted in undue leniency for offenders.

Earlier the Criminal Jurisprudence of India did not recognize the concept of "plea bargaining" as such. However, reference may be made to section 206 (1) and Section 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 and to pay small fines whereupon the case is closed.

The Government was hesitant to take a policy decision on the introduction of the plea bargaining in the criminal justice system due to opposition from the legal experts, judiciary etc. The Hon'ble Supreme Court has criticized the concept of Plea Bargaining in its judgment namely, **Murlidhar Meghraj Loya v. State of Maharashtra, AIR 1976 SC 1929** in the following words:-

"To begin with, we are free to confess to a hunch that the appellants had hastened with their pleas of guilty hopefully induced by an informal, tripartite understanding of light sentence in lieu of nolo contendere stance. Many economic offenders resort to practices the Americans call 'plea bargaining',

'plea negotiation', 'trading out' and 'compromise in criminal cases' and the trial magistrate drowned by a docket burden nods assent to the sub rosa ante-room settlement. The businessman culprit, confronted by a sure prospect of the agony and ignominy of tenancy of a prison cell, 'trades out' of the situation, the bargain being a plea of guilt, coupled with a promise of 'no jail'. These advance arrangements please everyone except the distant victim, the silent society. The prosecutor is relieved of the long process of proof , legal technicalities and long arguments, punctuated by revisional excursions to higher courts, the court sighs relief that its ordeal, surrounded by a crowd of papers and persons, is avoided by one case less and the accused is happy that even if legalistic battles might have held out some astrological hope of abstract acquittal in the expensive hierarchy of the justice-system he is free early in the day to pursue his old profession. It is idle to speculate on the virtue of negotiated settlements of criminal cases, as obtains in the United States but in our jurisdiction, especially in the area of dangerous economic crimes and food of fences, this practice intrudes on society's interest by opposing society's decision expressed through predetermined legislative fixation of minimum sentences and by subtly subverting the mandate of the law. The jurists across the Atlantic partly condemn the bad odour of purchased pleas of guilt and partly justify it philosophically as a sentence concession to a defendant who has by his plea 'aided in ensuring the prompt and certain application of correctional measures to him' :

In civil cases we find compromises actually encouraged as a more satisfactory method of settling disputes between individuals than an actual trial. However, if the dispute....finds itself in the field of criminal law, "Law Enforcement" repudiates the idea of compromise as immoral, or at best a necessary evil. The "State" can never compromise. It must "enforce the law". Therefore open methods of compromise are impossible. [Arnold : Law Enforcement--An attempt at Social Dissection, 42 Yale, L.J.I. 19 (1932)]

(Emphasis Added)"

Further, the Hon'ble Supreme Court in the case of **Kachhia Patel Shantilal Koderlal v. State of Gujarat and Anr 1980CriLJ553** strongly disapproved the practice of plea bargain. The Apex Court held that practice of plea bargaining is unconstitutional, illegal and would tend to encourage corruption, collusion and pollute the pure fount of justice. Similarly, in **Kasambhai v. State of Gujarat, AIR 1980 SC 854** the Supreme Court had expressed an apprehension that such a provision is likely to be abused.

The Law Commission of India advocated the introduction of 'Plea Bargaining' in the 142nd, 154th and 177th reports. The 154th Report of the Law Commission recommended the new XXIA to be incorporated in the Criminal Procedure Code. The said Report indeed referred to the earlier Report of the Law Commission, 142nd Report, which set out in extenso the rationale behind the said concept, its successful functioning in the USA and the manner in which it should be given a statutory shape. The Report recommended that the said concept be made applicable as an experimental measure to offences which are punishable with imprisonment of less than seven years and/or fine including the offences covered by section 320 of the Code. It was also recommended that plea-bargaining can also be in respect of nature and gravity of the offences and the quantum of punishment. It was observed that the said facility should not be available to habitual offenders and to those who are accused of socio-economic offences of a grave nature and those accused of offences against women and children. The recommendation of the 154th Law Commission Report was supported and reiterated by the Law Commission in its 177th Report. Further, the Report of the Committee on the reform of criminal justice system, 2000 under the Chairmanship of Justice (Dr) Malimath stated that the experience of United States was an evidence of plea bargaining being a means for the disposal of accumulated cases and expediting the delivery of criminal justice.

New Chapter Introduced

Based on the recommendation of the Law Commission, the new chapter on plea bargaining making plea bargaining in cases of offences punishable with imprisonment upto seven years has been included in Crl.R.C and the same has come into effect from 05.07.2006. A consideration of Chapter XXI-A dealing with plea bargaining will show that certain procedure prescribed for plea bargaining under **Sections 265-A to 265-L of Cr.P.C** are to be complied to make it a valid plea bargaining.

Procedure of Plea Bargaining

- As per **Section 265-A**, the plea bargaining shall be available to the accused charged of any offence other than offences punishable with death or imprisonment or for life or of an imprisonment for a term exceeding seven years. Section 265 A (2) of the Code gives power to notify the offences to the Central Government. The Central Government issued Notification No. SO 1042 (II) dated 11-7-2006 enumerating the offences affecting the socio-economic condition of the country.

- **Section 265-B** contemplates an application for plea bargaining to be filed by the accused which shall contain a brief description of the case relating to which such application is filed, including the offence to which the case relates and shall be accompanied by an affidavit sworn by the accused stating therein that he has voluntarily preferred, after understanding the nature and extent of the punishment provided under the law for the offence, the plea bargaining in his case and that he has not previously been convicted by a court in a case in which he had been charged with 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.
- **Section 265-C** prescribes the procedure to be followed by the court in working out a mutually satisfactory disposition. In a case instituted on a police report, the court shall issue notice to the public prosecutor concerned, investigating officer of the case, the victim of the case and the accused to participate in the meeting to work out a satisfactory disposition of the case. In a complaint case, the Court shall issue notice to the accused and the victim of the case.
- **Section 265-D** deals with the preparation of the report by the court as to the arrival of a mutually satisfactory disposition or failure of the same. If in a meeting under section 265-C, a satisfactory disposition of the case has been worked out, the Court shall prepare a report of such disposition which shall be signed by the presiding officer of the Courts and all other persons who participated in the meeting. However, if no such disposition has been worked out, the Court shall record such observation and proceed further in accordance with the provisions of this Code from the stage the application under sub-section (1) of section 265-B has been filed in such case.
- **Section 265-E** prescribes the procedure to be followed in disposing of the cases when a satisfactory disposition of the case is worked out. After completion of proceedings under S. 265 D, 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 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.

- **Section 265-F** deals with the pronouncement of judgment in terms of such mutually satisfactory disposition.
- **Section 265-G** says that no appeal shall lie against such judgment.
- **Section 265-H** deals with the powers of the court in plea bargaining. A court for the purposes of discharging its functions under Chapter XXI-A, shall have all the powers vested in respect of bail, trial of offences and other matters relating to the disposal of a case in such Court under the Criminal Procedure Code.
- **Section 265-I** makes Section 428 applicable to the sentence awarded on plea bargaining.
- **Section 265-J** contains a non obstante clause that the provisions of the chapter shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of the Code and nothing in such other provisions shall be construed to contain the meaning of any provision of chapter XXI-A.
- **Section 265-K** says that the statements or facts stated by the accused in an application for plea bargaining shall not be used for any other purpose except for the purpose of the chapter.
- **Section 265-L** makes the chapter not applicable in case of any juvenile or child as defined in Section 2(k) of Juvenile Justice (Care and Protection of Children) Act, 2000.

Unless the aforesaid procedure contemplated in Chapter XXI-A is followed the same cannot be a valid disposal on plea bargaining. Even though 'plea bargaining' is available after the introduction of the said amendment is available, in cases of offences which are not punishable either with death or with imprisonment for life or with imprisonment for a term exceeding seven years, the chapter contemplates a mutually satisfactory disposition of the case which may also include giving compensation to victim and other expenses. The same cannot be done without involving the victim in the process of arriving at such settlement.

The provisions also mandate the court to give accused the benefit of Probation of Offenders Act where so ever it is permissible. Thus, if an admonition or a supervisory order is passed under the Probation of Offenders Act, 1958, then Section 12 of the said Act provides that it shall not cast any stigma on the offender. 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 which is attached to conviction. The Hon'ble Delhi High Court in the case of **Sh. Charan Singh Vs. M.C.D. (Writ Petition (Civil) No. 18725/2005) decided on 05/10/2006** has held that no disqualification on account of conviction could be attached to petitioner as he had been released on probation. In this case, the Hon'ble Delhi High Court has quoted the case of **Trikha Ram v. V.K. Seth and Anr. AIR1988SC285 wherein the Hon'ble Supreme Court held** that the benefit of Section 12 of The Probation of Offenders Act, 1958 can be extended to the service of the offender.

The Government of India had an occasion to deal with the effect of Section 12 of The Probation of Offenders Act, 1958 through the disciplinary proceedings. The Deputy Director-General (Vigilance), P.&T., D.O. No. 3/16/71-Disc.II, dated 30.8.1971 came out with the following view:

> *(c) Under Probation of Offenders Act. In accordance with Section 4 of the Probation of Offenders Act, 1958, when any person is found guilty of having committed an offence and the Court is of the opinion that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, it may direct that he be released on his entering into a bond with or without sureties for keeping peace and good behavior for a specified period. Section 12 of the same Act states that a person found guilty of an offence and dealt with under the provision of Section 4 shall not suffer disqualification, if any, attached to conviction of an offence under such law. It has been represented that persons convicted by Courts of Law and released under the Probation of Offenders Act are not liable to be removed or dismissed from service merely on the ground of their conviction in accordance with the provisions contained in Section 12 cited above.*

The matter has been considered in consultation with the Ministry of Law and it has been held that the Disciplinary Authority is precluded under Section 12 of the Probation of Offenders Act from dismissing/removing an employee merely because he is convicted of an offence. That Ministry has held that the order of dismissal/removal, etc., of the employee should be on the ground of conduct which has led to his conviction and not the conviction itself.

Concept of Plea Bargaining should be encouraged and the litigant should be encouraged to avail the remedy of plea bargaining to settle the pending cases. For the successful implementation of plea bargaining and to achieve its objectives, the role of judiciary and the bar is very important. The member of the bar should encourage the litigant to opt for the plea bargaining rather than to treat the plea bargaining a threat to their profession. With the changing world scenario where all the countries are shifting to ADR from the traditional litigation process which is lengthy as well as complex, the plea bargaining may be one of the best recourse as an ADR mechanism to meet the challenges of disposal of pending cases.