

PLEA BARGAINING AS A SOLUTION TO HEAVY PENDENCY OF CRIMINAL CASES

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Abstract

Heavy pendency of criminal cases is a problematic issue for Indian courts. The right to a speedy trial is guaranteed under the Indian constitution as a component of the right to life under Article 21. Therefore, the courts are constitutionally bound to ensure speedy trial of cases. However, the judiciary has largely failed to achieve efficient disposal of cases. The reasons for the pendency of cases include, inter alia, the shortage of judicial man power and laxity in court culture. To remedy the situation plea bargaining provides an effective and workable solution. In plea bargaining the parties in a criminal proceeding decide the outcome of their case by mutual agreement under the judiciary's supervision. The parties avoid the trial process of the courts by doing so. Avoiding trial allows for the quick resolution of the case. The settlement of the case by the parties frees up the time of the court which otherwise would have been used in adjudicating the matter. Such reduction in the burden on the court's time allows the courts to dispose cases pending on their registers in an expedient manner. This paper aims to propose plea bargaining as a solution to the problem of huge pendency of cases in India. This paper highlights the positive aspects of the plea bargaining process which allow for speedy justice delivery.

Keywords: Plea Bargaining, Pendency, S. 265 of CrPC, Speedy Trial, Criminal Procedure etc.

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INTRODUCTION

The legal maxim of “*Justice delayed is justice denied*” illustrates the miscarriage of justice pendency of criminal cases in India cause. The heavy pendency of criminal cases is a huge problem for India. At the end of 2013 the total number of cases pending was a mammoth 31,367,915 in all courts.¹ The heavy pendency of cases in India is an important issue because delay in court proceedings erodes the confidence of the public in the effectiveness of the criminal justice delivery system. Naturally, the public will tend to grow weary of the efficacy of the courts if the courts are not doing their job of dispensing justice in a timely manner.

The Indian criminal justice system suffers from a number of problems which lead to the heavy pendency of cases. The 245th report of the Law Commission defines ‘*pendency*’ as “*all cases instituted but not disposed of*”.² One major problem causing pendency is the lack of adequate number of judges to carry out timely justice dispensation. The number of judges in Indian courts is far below the required number. As of December, 2013 out of 19,518 positions for judges in the subordinate courts, 4,403 seats remain vacant.³ Further, the Indian criminal law system does not impose any limitations on the time in which each stage of a case has to be completed. The lack of a clear guideline leads to criminal cases continuing for long periods.

Solutions to the gargantuan problem of pending criminal cases are incredibly important in light of the threat to delivery of justice such pendency causes. In the light of looking for solutions, introduction of the concept of plea bargaining is a step in the right direction. Plea bargaining was introduced in India by the Criminal Law (Amendment) Act, 2005. Plea bargaining is a system in which the parties in a criminal case enter into a pre-trial agreement to determine the consequences of their dispute. Plea bargaining has been implemented with great success in countries like USA. The impact of plea bargaining is so significant in USA that 90 to 95 per cent of guilty pleas are through negotiated settlements and not court trials.⁴ And, with proper implementation plea bargaining can prove to be successful in India as well.

This article aims to enumerate the constitutional basis for speedy trial. Also, adverse effects of pendency of criminal cases are analysed. Further, problems with the Indian criminal justice system which lead to heavy pendency of cases are presented. And finally, the plea bargaining system is proposed as the possible answer to the huge problem of heavy pendency of criminal cases in India.

CONSTITUTIONAL BASIS OF SPEEDY TRIAL

¹ Tom Lasseter, *India's Stagnant Courts Resist Reform*, Bloomberg, available at:

<http://www.bloomberg.com/news/articles/2015-01-08/indias-courts-resist-reform-backlog-at-314-million-cases>.

² 245th Law Commission of India Report, *Arrears and Backlogs: Creating Additional Judicial (Wo)man Power*, (2014)

³ Rashme Sehgal, *Why the Backlog of 3 Crore Cases in Indian Courts will continue to Grow*, Scroll, available at: <http://scroll.in/article/759809/why-the-backlog-of-over-3-crore-cases-in-indian-courts-will-continue-to-grow>.

⁴ S. Kathuria, *The Bargain Has Been Struck: A Case for Plea Bargaining in India*, 19(2) Student Bar Review 55, (2007)

The state is duty bound to ensure timely justice delivery. Indeed, the right to a speedy trial has been recognised to be a part of the right to life under A. 21 of the constitution.⁵ While determining the rights of the accused to a right to an appeal in *A R Antulay v. R S Nayak*⁶, the Supreme Court held that the right to a speedy trial was a part of fair, just and reasonable procedure implicit in Article 21 of the Constitution. Further, the right to a speedy trial is implicit at each and every stage of the investigation process. The Court held speedy trial is in the interests of everybody concerned including the general public as the justice delivery system serves the entire community and not only the parties in the proceeding.

The Indian state is also bound under the Directive Principles of State Policy as enumerated in A. 38(1), 39 and 39-A of the Constitution of India to ensure speedy trial. In *L Babu Ram v. Raghunathji Maharaj*⁷, the Supreme Court held while interpreting A. 38(1) that “social justice” includes “legal justice”. And legal justice means that justice administration system should provide a cheap, expeditious and effective instrument for realisation of justice.

ADVERSE EFFECTS OF PENDENCY OF CRIMINAL CASES

The pendency of criminal cases in Indian courts is a huge cause of concern. The concern arises because huge pendency of cases in the courts erodes public confidence in the whole justice delivery system. The judiciary is a tool by which the state ensures the social welfare of the citizens of the country. In India we have a situation where citizens knock at the doors of justice and get only ignorance in return. Such apathy threatens the credibility of the whole judicial system. Therefore, undermining of the judiciary by delay in justice delivery challenges the foundation of the democratic structure of our society.⁸

Long delays in criminal cases have sometimes the effect of not only delaying justice but also denying justice. As a result of delay, the statements of witnesses may become unreliable due to the memory of the witness fading or because of death of a witness. In such a situation even a legitimate case may not be granted proper remedies just because of the slowness of the judicial proceedings.⁹

In India criminal trials sometimes do not commence for as long a period as three to four years after the accused has been remitted to judicial custody.¹⁰ In certain cases the time spent by the accused in judicial custody exceeds the maximum punishment for the crime they have been charged for. Such extension of judicial custody is especially common for poor people who are unable to get a bail due to the monetary requirement in getting a bail.¹¹ The bail procedure under Code of Criminal Procedure, 1972¹² is such that the accused is required to

⁵ *Hussainara Khatoon v. Home Secretary, State of Bihar*, 1979 AIR 1360.

⁶ 1988 SCR Suppl. (1) 1

⁷ AIR 1976 SC 1734

⁸ 77th Law Commission of India Report, *Delay and Arrears in Trial Courts*, 1978

⁹ Ibid.

¹⁰ 142nd Law Commission of India Report, *Concessional Treatment for Offenders who on their own initiative choose to plead guilty without any bargaining*, 1991

¹¹ Supra 3

¹² Hereinafter, CrPC

furnish a personal bond guaranteeing payment of a certain sum of money if he fails to appear for a trial. The situation is further aggravated by the requirement of sureties who are again required to furnish a certain amount of money as guarantee for the accused's appearance in trial. Therefore, the bail provisions impose economic barriers on the poor who can neither get their cases heard nor leave jail while their case is pending.

PROBLEMS LEADING TO PENDENCY OF CRIMINAL CASES

There are numerous reasons for pendency of criminal cases in Indian courts. One of the problems is the deficit in the number of judicial officers. The 120th Law Commission recommended a judge to population ratio of 50 to 1.¹³ However, the current ratio is a long way off that mark. This results in most courts in India functioning below their capacity. Since the courts are not able to handle all the cases under their jurisdiction due to a lack of judges, cases start to pile up and pendency of cases reaches high levels. On a related note, the *National Court Management Systems (NCMS)* formed in 2012 by the Supreme Court suggests the amount of cases in Indian courts will increase to 15 crores by 2040.¹⁴ In light of such a figure the suggestion of the 120th Law Commission report becomes even more pertinent.

Cases in India run for long periods because no time periods are set for completion of different stages of the case. The lack of a guideline also allows the courts to adjourn cases without having the fear of accountability. The 245th report of the Law Commission mentioned the efficacy of time tables in benchmarking performance of courts.¹⁵ Such time tables are used in other countries like the USA, UK and Canada. However, no such tool for measuring the performance of cases exists in India. Therefore, courts enjoy the benefit of not being accountable for the time taken by them to dispose cases.

Generally, Indian criminal courts are unable to cope with the humungous work load in Indian litigation. Naturally, adjudging over the rights of more than a billion people is a herculean task any system of justice will have problem tackling. However, the main cause of the pendency of cases in India is the lack of manpower in the judiciary. The lack of manpower is complemented by the laxity in enforcing accountability on the courts. These two issues, inter alia, represent the general culture of delay in Indian court proceedings. Ultimately, such delay causes the problem of heavy pendency of cases in India.

PLEA BARGAINING AS A SOLUTION TO THE HEAVY PENDENCY OF CRIMINAL CASES IN INDIA

Plea bargaining is a possible solution to the huge pendency of criminal cases in India. Plea bargaining refers to pre-trial negotiations between the defendant and the prosecution. During negotiations the accused pleads guilty in exchange for concession in the sentence of

¹³ 120th Law Commission of India Report, *Manpower Planning in Judiciary: A Blueprint*, 1987.

¹⁴ R. Gogoi, *Challenges Facing the Indian Judiciary – Identification and Resolution*, 1 Law Weekly, Chennai, 1 (2014)

¹⁵ Supra 2

punishment. The court does not decide the outcome of the case; the concerned parties decide the outcome between themselves. The independent settlement of the case by the parties removes the burden each hearing takes on the court's time. Consequently, the workload of the court is lowered. And therefore the court is able to deliver judgments on the remaining cases under its jurisdiction faster.

The plea bargaining system in India has a significant degree of judicial supervision. The concept of plea bargaining has been added only recently by the Criminal Law (Amendment) Act of 2005. Plea bargaining was added in Chapter XXI of the CrPC by the amendment. The provisions under CrPC enable an accused to file a plea-bargaining application in the court where trial is pending.¹⁶ After the plea-bargaining application is filed the court must examine the accused in camera to find out whether he filed the application voluntarily.¹⁷ After the court is satisfied with the voluntariness of the application, the court must issue notice to the complainant or public prosecutor to negotiate a mutually agreeable consequence of the case. If an agreement is reached the court can award compensation to the victim and then decide the punishment to be conferred. Thereafter, the court may release the accused on probation if the law allows for it. Otherwise, the accused may be punished to half the length of the minimum sentence prescribed for the offence. If no minimum punishment is mentioned then the accused may be sentenced to one-fourth of the time mentioned as punishment for the offence.

After the plea-bargaining settlement between the parties, the court may announce the settlement in open court as the court's judgement. Importantly, the judgement of the court is final and no appeal can be filed except for a writ petition under A. 226 and 227 of the constitution or a special leave petition under A. 136 of the constitution. The finality of the court's judgment with regard to the plea bargaining agreement allows for the expedient settlement of the case. If appeals are allowed then the case may drag on for long periods of time. Conferring finality on the plea bargaining settlement saves the time of the courts because future proceedings on the case are avoided. Such proceedings act as a burden on the court's time. The courts can focus on expediting the disposal of cases pending before them if the burden upon their time imposed by appeals is reduced.

If the accused spends an amount of time in judicial custody before the plea-bargaining settlement is agreed, he can avail of S. 428 of the CrPC.¹⁸ S. 428 of the CrPC allows the accused to undergo punishment for a period subtracting the time he has already been in detention.

There are numerous positive aspects of the plea-bargaining system as introduced in India. For instance, the offences for which plea-bargaining is allowed are limited. Only an accused charged for an offence prescribing punishment less than seven years can file an application for plea bargaining.¹⁹ Accused persons in serious offence like sedition or culpable homicide

¹⁶ S. 265 B (1), CrPC

¹⁷ S. 265 B (4), CrPC

¹⁸ S. 428, CrPC

¹⁹ S. 265 B(1), CrPC

cannot avail recourse to plea bargaining. Therefore, only accused of offences which are not excessively grave can get lowered sentences through plea bargaining. Further, the judge supervises the whole process of plea bargaining.²⁰ Judicial control over the process is ensured. Therefore, the accused cannot take the liberty to coerce or bully the alleged victim into a plea bargaining agreement. Another point to note is the plea-bargaining system does not allow habitual offenders to avail of the system.

Plea bargaining is as rational and effective as the trial process. The process of bargaining benefits all the parties involved in a case. Further, plea bargaining saves the accused of incurring the costs, time and anxiety that a trial entails. The alleged victim gets the benefit of a settlement as per his consent. In a trial an element of risk is always present. By entering into a plea bargaining agreement the alleged victim can bypass this risk and settle the case on his own terms. The judiciary can save time and resources by transferring its duty of justice dispensation to the parties involved in the case. Even prosecutors benefit from the plea bargaining system because they are able to secure high conviction rates without incurring the risk, cost and uncertainty associated with a trial.

CONCLUSION

Addressing the issue of heavy pendency of criminal cases should be a priority for India. The state is duty bound to ensure the speedy trial of every case in India. Such a right to speedy trial is included within the right to life under A. 21 of the Constitution of India. Further, some Directive Principles of State Policy in the Constitution like A. 38(1) and 39 impose a positive obligation on the state to ensure fast justice delivery

The heavy pendency of criminal cases causes distrust in the entire system of law in India. The courts are obliged to ensure speedy trial by the constitution. If under such a framework the courts are unable to meet their responsibilities questions arise about the efficacy of their functioning. Such questions arise especially when justice is denied to a fit case because of delay in court proceedings. Such instances are common in criminal proceedings as witnesses may lose memory of events concerning the case or may even die or change their testimony.

Numerous problems exist for the delay in court proceedings in India. Prime amongst these causes is the deficit in the required number of judges in the judicial system. Most courts in India are unable to function at their full strength because of vacancies in bench. Further, the lack of a guideline or time table as to completion of hearings in a case add to the general culture of delay in the criminal courts of India.

Plea bargaining is a viable procedural solution to the problem of heavy pendency of cases in India. Plea bargaining is a system in which a negotiated settlement is entered into between the parties to a case before the start of trial. Such a system is extremely useful in expediting the pace of the criminal justice system. Plea bargaining disposes cases without occupying the time of the court. Therefore, plea bargaining frees up the court's time by taking care of some

²⁰ S. 265 C(a), CrPC

of its workload. Further, because of the reduced number of cases to look after, the court can focus on cases which are more important. Plea bargaining has been introduced in the CrPC by the Criminal Law (Amendment) Act, 2005. Provisions for plea bargaining have been included in Ch. XXI of the code under S. 265-A. Following from the success of plea bargaining in countries like the USA, it can be hoped plea bargaining will be a success in India too. And therefore, reduce the heavy pendency of cases in India.