CHAPTER VI

LOCAL SURVEY ON PLEA BARGAINING

Introduction

The research has conducted a survey in the Kurukshetra counts on the topic “Plea Bargaining India – A Comparative Study”. Before moving ahead with the process of the survey and the analysis and interpretation of the data collected by the researcher, there is a need for attempting to discuss what is a research, legal research, objectives of legal research significance of legal research and the kind of legal research the researcher has opted for.

Encyclopedia of social sciences define research as the manipulation of things, concepts or symbols for the purpose of generalizing to extend or verify knowledge, whether that knowledge aids in construction aids in construction of theory or in practice of an art.

The Encyclopedia Britanica defines research to mean” The act of searching into a matter closely and carefully. Inquiry directed to the discovery of truth and in particular the trained scientific investigation of the principles and facts of any subject, based on original and first hand study of authorities or experiment. Investigation of every kind which has been based an original sources of knowledge may be styles research and it may be said that without 'research' no authoritative work have been written, no specific inventions or discoveries made, no theories of value pronounced.

6.1 Research :

Research means to search or to find out and to
examine again. This is the very process of acquiring new knowledge. The dictionary meaning of research is — “a careful investigation or inquiry especially through search for new facts in new branch of knowledge.” In the opinion of the Redman and Mory — “it is a systemized effort to gain new knowledge.” So, the research is the original and fundamental contribution to the knowledge on any subject or discipline leading for its advancement. It is a voyage towards truth.

6.2 Legal Research:

Legal research means research in that branch of knowledge, which deals with the principles of law and legal institution. There are three main sources of law—legislation, precedent and custom. Juristic writings are another source of law and their importance is dependant on the fact whether it is given due recognition by the courts or the legislatures or the jurists in solving the problems. The contents of these sources of law change with the changing requirement of the society and if these changes are not taken into account the law is bound to be doomed. The aim of the law is therefore to regulate the human behaviour and the research must be directed to the study of the relationship between the world of the law and the world that the law purports to govern.

6.3 Objectives of Legal Research:

The following are the objectives of legal research:-

1. To discover new facts.
2. To test and verify old facts.
3. To analyze the facts in the new theoretical framework.
4. To examine the consequences of new facts or new
principles of law; or judicial decisions.

5. To propound a new legal concept.

6. To analyze law and legal institutions from the point of view of history.

7. To examine the nature and scope of new law or legal institution.

8. To ascertain the merits and demerits of old law or institution or to give suggestion for a new law or institution in place of an old one.

9. To develop new legal research tools or apply tools of other disciplines in the area of law.

10. To develop the principles of interpretation for critical examination of statutes.

6.4 Significance of Legal Research:

In modern times law has assumed much significance. It provides for and dominates all activities of human beings. The significance of research may, based on justice, equity and good conscience, thus, be summed up as follows-

1. It helps the government in formulating the suitable laws to pursue its social and economic policies.

2. It helps in solving various operational and planning problems pertaining to business, industry and tax.

3. It helps the courts in solving the problems without much delay.

4. It helps the legal practitioner to take a decision as to how he should tackle the problem in hand.

6.5 Empirical Research:

Legal research work may be divided into-

1. Doctrinal or Traditional

2. Non-Doctrinal or Empirical
Non-Doctrinal research or Empirical research is carried out by collecting or gathering information by first hand study of the subject. It relies on experience and observance without due regard to any theory or system and hence it is called experimental research.

Unlike in the case of doctrinal research in which the research is carried on, on basis of facts and data, stored in the library, archives and other date base, the empirical research is carried on by collecting or gathering intimation by first hand study of the subject. It relies on experience or observation without due regard to any theory or system and hence it is also called as experimental types of research. In this type of research, the researcher attempts to investigate effect or impact by actual examination or observation of the functioning of law and legal institutions in he society. According to late Prof. S.N. Jain, it seeks to answer such questions as are law and legal institutions serving the needs of society? Are they suited to the society in which “they are operating? What factors influence the decisions of adjudicators (courts or administrative agencies)? It also concerns with the identification and creating an awareness of the new problems which need to be tackled through law, conducting empirical research. This land of research is not very popular amongs the researchers especially lawyers and judges. They prefer doctrinal or analytical research to find out a principle of law. However, it is now gaining recognition in certain areas such as criminology, juvenile offences, Labour Law, Corporate Law etc.

In such a research, the researcher first of all accepts a working hypothesis or guess as to the probable results and
then proceeds to collect; enough facts to prove or disprove his thinks will manipulate the persons or the materials concerned so as to bring forth the desired information. In this process the conclusion the researcher has to keep control over the variables which affect the conclusion one way or the other. This, kind of research is useful when proof is sought that certain variables affect the other variables in certain way. The Empirical method of research, although gaining significance day-by-day is not useful for determining the goodness or badness of a thing, standard of value or morality prevailing in the society. These areas can be examined only by doctrinal mode of research. Hence, it can be said that empirical research though of much value, it is not of universal application. The doctrinal research cannot be ignored for empirical research.

6.5.1 Distinguished Features of Empirical Research

The following are the features of empirical research-

1. It lays a different and lesser emphasis on doctrine.
2. It seeks to answer numerous and more broader questions.
3. It is not anchored exclusively to appellate reports and other traditional and legal resources for its data.
4. It may involve the use of research perspectives, designs, conceptual frameworks, skills and training not peculiar to law trained personnel.

The topic of the research is such that the empirical research is considered to be the best form of research.

6.6 Object of Survey

The researcher has surveyed on the topic of the thesis in order to know the views and opinions of court agencies
relating to “Plea Bargaining India – A Comparative Study” the researcher has drafted two performas – Form No.1 and No. 2 regarding the topic and has got them filled up in order to know the attitude of courts towards the Plea Bargaining.

6.7 Regarding Performa of Survey

The Researcher drafted two performas under the able and unique guidance and expertise of Prof. Dr. Narsha Rajdan, Prof. Deptt. of Law, Kurukshetra University, Kurukshetra. The information is collected by the researcher in the performas itself in the form of answers in two forms.

A Survey was conducted by the Researcher at Kurukshetra Courts. Questionnaire was prepared in two forms. Form No. 1 contained seven question and was meant to be filed up by the PPs/APPs. As many as 8 PPs/ APPs filled up questionnaires. The questions in Form No. 1 were:

1. In how many cases you have found Plea Bargaining is a successful procedure ___________(% cases)
2. In how many cases you have referred to the Presiding Officer of the court that Plea Bargaining would be a good way out? _________________ (% of cases)
3. After implementation of Plea Bargaining in India, have you ever seen any accused pleading guilty in lieu of lesser charge/punishment? If yes, in how many cases? __________ shameful (% of cases)
4. Has any accused/counsel for accused ever come forward to follow/ adopt Plea Bargaining? If yes, in how many cases? ____________ (% of cases)
5. Do you find Plea Bargaining would help reducing the backlog of cases in courts? _________ (Yes or No).
6. Tick mark one of the following two, which procedure is
better, easy, less time consuming and less cumbersome—

(i) To persuade an accused to compromise the matter and thereafter witnesses turning hostile.

or

(ii) To persuade an accused to plead guilty (Plea Bargaining) for a lesser charge/ punishment.

7. With the passage of time, would Plea Bargaining be successful in India as in US/Canada _________ (Yes or No).

Form No. 2 was the questionnaire meant for filing up by the Judicial Officers. 8 Judicial Officers filled up the Questionnaire and gave their views about the plea bargaining. The questions in Form No. 2 were:

1. Do you think there was any need of inserting provisions on Plea Bargaining in Criminal Procedure Code, especially when there is procedure for compounding of offences? __________(Yes or No).

2. Plea Bargaining is in its infancy in India. Do you think like US it would help clearing backlog of cases in Courts?__________(Yes or No).

3. After implementation of Plea Bargaining in India, in how many cases, Plea Bargaining has been followed in your court? _________ (% of cases).

4. Do you think Plea Bargaining is state, court and client friendly? ________ (Yes or No).

5. Tick mark the options which are better, easy, less time consuming and less cumbersome:-

(a) If the offence is compoundable-

To persuade an accused to compromise the matter
and thereafter witnesses turning hostile.

- To persuade an accused to compromise the matter and thereafter compounding the offence.
- To persuade an accused to plead guilty for a lesser charge/punishment

b) If the offence is not compoundable-

- To persuade an accused to compromise the matter and thereafter witnesses turning hostile.
- To persuade an accused to plead guilty for a lesser charge/punishment

6.8 Process of Survey

The Researcher has opted for filing up performas of Questionnaire by Hon’ble Judges and Learned Public Prosecutors of Kurukshetra Courts on these two agencies of judicial system could have supplied true and correct information on the factual points as well as the mental make up of judicial system after the introduction of the Plea Bargaining.

In this way 10 Public Prosecutors and 8 Judicial Officers filled up the Questionnaires and the Researcher has collected the data on practice of Plea Bargaining and the views of Courts to follow the practice.

6.9 Data Collection

The Researcher has surveyed almost all the courts and Public Prosecutors and collected the perceptions and total number of filled up questionnaires is 18 in number. In each performa, there are perceptions of judges and public prosecutors in the form of answers.
6.10 Data Analysis and Interpretation

The PPs have stated that they have found plea bargaining not as much successful as it is in U.S. and Canada (with one exception). It is further been pointed out by the PPs that since it is not as much successful in India as it is in foreign countries, therefore it is not helping in reducing backlog of cases in courts. They have further opined that it is a better method than the compromise entered between the complainant and the accused as it not only help the case to be disposed off at the earliest but it also makes a deterrent effect on the accused that once he has committed the offence he would be punished even if he has compromised the matter.

The Judicial Officers have opined that plea bargaining has been rightly introduced in the Cr.P.C. even if there is a procedure for compounding of offence. It has been opined by them that it is at it’s infancy in India and with the passage of time, it will help clearing backlog of cases. Strenuous efforts have been made by the officers to implement plea bargaining. They have stated plea bargaining is not only court friendly, but it is state as well as client friendly.

The aforesaid opinions therefore discloses that the courts are making efforts for disposal of cases by plea bargaining. They have found it much better than the compounding of offences.

6.11 Conclusion:

In the socio-economic circumstances prevailing in India, in most of the cases where the accused and the complainant enters into compromise the easiest way out that the courts, the parties and the State is following is that
either the offence is compound with the compromise of the courts under Section 320 on Cr.P.C, or the complainant or the eye-witnesses deviate from the earlier statements given by them through investigation. In such circumstances with the witness do not support the case of the prosecution. They are declared hostile on the request of state and ultimately the case of the prosecution weakens and the accused are acquitted. This is a common procedure which is followed in Indian Courts. However, such a procedure further once action against the witness is legally meant deviate from their earlier statements or if their deviation is true, action has to be taken against the Investigation Agency who has recorded their statements which altogether adverse from the statements given by them in the court. Hence, it is not only a way out for acquittal of accused but on the same site. It also once action against the complainant witnesses and the Investigating Agency which ultimately leads to further prosecution. Hence, it is cumbersome as well as lengthy procedure. On the other hand, plea bargaining is not as lengthy as the aforesaid procedure is further more the deterrent theory of punishment, also works if plea bargaining is implemented. Hence, the views and the opinions given by the State Agency as well as the courts support the implementation and execution of plea bargaining in India. The Researcher, therefore concludes that the survey remarks plea bargaining as a successful procedure to be adopted by the courts. (The Forms filled by the PPS/ APPs / Judicial Officers are attached as Annexure 1 with the thesis).