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DISCRETION OF COURTS IN FRAMING OF CHARGES

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INTRODUCTION

Charges in India are framed by the Court of law which is the final authority to interpret the law. During this process, the accused is made aware of the charges levied against him. Offences are of 2 kinds – cognizable and non-cognizable i.e. authority of the police officer to arrest without warrant and with warrant respectively. Cognizable offences require a First Information Report (FIR) to be filed with the police officer and non-cognizable offences require a Non-Cognizance Report (NCR). The authority of police officer to arrest with or without warrant plays a pivotal role under cognizable and non-cognizable offences. The types of offences that come under these two heads have been provided in Schedule-I and its classification under Schedule-II of the Code of Criminal Procedure, 1973.

Offences that are punishable with more than 3-7 years are cognizable. There is an urgency to prevent the accused from absconding as the offence is of such grave nature that it affects the society and will go against public interest. Non-cognizable offences are punishable with less than 3 years and require a warrant as the offence is not if such grave nature. However, certain offences though being serious in nature are made non-cognizable like offences relating to marriage Ss. 493-497 of the Indian Penal Code. The rationale is that they are in the nature of a private wrong and making them cognizable risks police intervention in private family rights of the individual. Contrarily, there are certain cases where the punishment is less than 3 years but they have been made cognizable. The necessity of prompt arrest of the offender is the probable reason. For example, offences like affray.

Complaints can be made directly to the magistrate or through police report or by the knowledge of stranger.[1] After receiving the complaint of a cognizable offence, the police officer by himself can proceed for investigation but under non-cognizable offence, the order has to be taken by the Court before proceeding with the investigation.

After considering all relevant facts and circumstances the Court then frames the charges under Chapter XVII of Code of Criminal Procedure 1973. 'The purpose of framing a charge is to give intimation to the accused of clear, unambiguous and precise notice of the nature of accusation that the accused is called upon to meet in the course of a trial' as laid down in the case of V.C. Shukla v. State Through C.B.I[2]. While taking the cognizance of the case the Court has to apply its mind to the extent that is there any ground for framing the charges. Any charges framed by the police officer will not be the final charges levied on the accused, hence the Court applies its mind very carefully in doing so. As also laid down in the case of State of Maharashtra v. Som Nath Thapa[3] 'at the stage of framing charge the Court has to apply its mind to the question whether or not there is any ground for presuming the commission of the offence by the accused. As framing of charge affects a person's liberty substantially, need for proper consideration of material warranting such order was emphasised.' Accused should be given precise information about the accusations against him in order to have a fair trial. [4]

CHARGE

Charge helps in giving a clear and unambiguous notice of the matter to the accused for what offences he is being charged. While framing the charges, utmost caution has to be taken regarding the evidence which should be only tendered against the charges levied and not any other matter which is not in question. There should be a prima facie case which will further lead to framing of the charge by the judge. Accused should have the notice of the matter of which he is being charged. If the judge is not convinced that there are grounds for framing of charge then he is required to discharge the accused and write an order and record the reasons for the same.

[1] S. 190(1)(a) of the Code of Criminal Procedure, 1973.
[2] 1980 AIR 962.
[3] (1996) 4 SCC 659.
[4] Justice Y. Srinivasa Rao, Framing of Charge in Criminal Cases, Legal Services India, http://www.legalservicesindia.com/article/1122/Framing-of-Charge-In-Criminal-Cases.html.

Sections 211-214 of the Code of Criminal Procedure describe the form and content of a charge. As per S. 211, every charge shall state the offence with which the accused is charged. If the law which creates the offence gives it any specific name then that offence must be described by that name only. But if the law does not give it any name, then the definition of the offence must be stated so as to give the accused intimation of what he is being charged for. The law and the section of the charge must be mentioned. Section 212 says that the charge shall contain the time and place of the alleged offence and the person or thing against whom the offence was committed so as to give the accused the notice of the matters that he is being charged.

Sections 216-217 of the Code of Criminal Procedure, 1973 mention the power of the Court to alter the charge and the Procedure to be followed in case of such alterations. Section 216 clearly says that any Court may alter or add to any charge at any time before the judgement is pronounced and that every such alteration and addition shall be read and explained to the accused. This section gives a comprehensive power to correct all those defects in the framing and non-framing of a charge, whether they are discovered at the initial stage or any other subsequent stage prior to passing of the judgement. The Courts have wide power to alter the charge but the power should be used judiciously and wisely and not carelessly.

Discretion of the Courts is to alter or add any charge as may be necessary so as to proceed with the trial more accurately. It must be noted that discretion is only with respect to addition and alteration but not in reducing the charge or releasing the accused from a more serious charge as applicable in the country like USA. Although plea bargaining has been added in chapter XXIA of Code of Criminal Procedure, 1973 by the way of the 2006 Amendment, it does not deal with charge bargaining unlike U.S.A. India has observed plea bargaining in sentences to some extent.

DIFFERENCE BETWEEN CHARGE BARGAINING AND PLEA BARGAINING

To understand the difference between charge bargaining and plea bargaining it is important to understand ‘Plea bargaining’ as it is a wider term and includes charge bargaining within its ambit. It is an agreement in which the accused pleads guilty to a lesser charge and the prosecutors in return drops more serious charges so therefore, it an agreement between the prosecution and the defence. Charge bargaining is that when the defendant pleads guilty in order

to receive a lesser charge against him than he is receiving now. Sentence bargaining, on the other hand, is where the defendant pleads guilty to reduce his sentence i.e., the punishment.

The 154th Report of the Law Commission of India recommended the introduction of the concept of plea bargaining as an alternative method to deal with increasing number of Criminal cases. In the case of State of Uttar Pradesh v. Chandrika[5] It was held that the Court cannot dispose of criminal cases only on the basis of plea-bargaining. The Court has to decide it on merits. If the accused confesses his guilt, appropriate sentence is required to be imposed on him. Mere acceptance or admission of guilt is not a just ground for reduction of sentence. Nor can the accused bargain with the Court that as he is pleading guilty sentence be reduced. [6]

The concept has been taken from USA but it is not directly applicable in India. It is being applied with some modification according to the scenario present in the country. There are many who are opposed to the concept of Plea bargaining but at the same time there are people who support it as a method to relieve the burden of criminal courts. Plea bargaining in India is not applicable for certain offences under Sections 115, 119, 302, 304, 304B, 305, 307, 498, 498A, etc. of the Indian Penal Code, The Explosives Act 1884, The Dowry Prohibition Act 1961 etc. The same is not the case in USA.

In State of Gujrat v. Natwar Harchanji Thakore,[7] the Court has observed that "An introduction of plea bargaining had the aim to provide easy, cheap and expeditious justice by resolution of disputes. Considering the current realistic profile of pendency and delay in disposal of cases in the administration of law and justice, there should not be anything stagnant. Plea bargaining shall add a new dimension in the realm of judicial reforms." Consequently in 2005, it was made a part of the Criminal Procedure Code vide an Amendment which came into force in the year 2006.[8]

INDIAN SCENARIO

Applying charge bargaining in India would invest great discretion with the Court. The Court will be free to frame the charge as per its discretion if the defendant pleads guilty and the prosecution

[5] 2000 Cr.L.J. 384(386).
[6] Id. at 5; Soura Subha Ghosh, Chapter XXIA of the Criminal Procedure Code on Plea Bargaining, Legal Service India, http://www.legalserviceindia.com/articles/plea_bar.htm.
[7] 2005 CriLJ 2957.
[8] Id. at 6.

is willing. In a country such as India, where the rate of crime is not less, applying the concept of charge bargaining would completely diminish the deterrent effect of a criminal trial and the purpose of punishment. It is more likely that it would encourage people to commit crimes and later plead guilty to reduce the charge and effectively evade justice. There would be no deterrent to stop them from repeating crimes. It is a vicious cycle that will only end in devastation. This cycle can be termed as a "Release Cycle" where the person after committing a crime will plead guilty in order to get 'Released' from a more serious offence and take a lesser charge, as a lesser charge necessarily means lesser punishment. Although the current legal belief in India is more towards reformation, i.e., reformative theory than on deterrence but if the charge itself is reduced, there is no scope for reformation. How will the accused understand the grave damage he has caused to himself and more importantly, to the Society? Vesting discretion with the Court to increase or reduce charges will create havoc. It should not be a discretionary power. If this is allowed, it will lead to miscarriage of justice. The Court must frame charges only if the relevant grounds exist. Hence, the discretionary power of Courts in reducing a particular charge if the offender pleads guilty is no good to the society. Although plea bargaining itself has its restrictions, it is still debateable whether it betters or worsens the situation.

CONCLUSION

The most important element of fair trial is to secure the ends of justice. Lessening charges does not lead to justice. It therefore, negates the core principle of fair trial. It will knock down the people's belief in the rule of law and the supremacy of justice. Habitual offenders will most likely continue to commit crimes with growing confidence. Therefore, charge bargaining as it stands should not be used in the Courts of India as having such discretionary power to release the offender from a more serious offence if he pleads guilty goes against the welfare and greater interests of society. Therefore, it is better if the concept of charge bargaining remains untouched for now.