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"Plea bargaining: It's brief History, Types and Procedure and why it is redundant in India"

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Abstract

This paper is a sincere attempt to present both the theoretical and practical intricacies of law relating to plea bargaining in India. This paper aims to articulate various aspects of plea bargaining which is understandable to not only the lawmen but laymen. The paper starts with the simple meaning of plea bargaining and its benefits and proceeds with brief history and evolution of plea bargaining in India. The paper further consists of the practical procedure along with the theoretical procedural provisions pertaining to plea bargaining. The paper ends with the author's comments as to why plea bargaining is becoming redundant in India and practical difficulties in its implementation.

Meaning

Plea bargaining is an agreement between the defence and the prosecutor. The defendant pleads guilty while the prosecutor recommends the judge to order a lesser sentence that is acceptable to the defence. In return, the defendant pays compensation to the victim.

Plea bargaining is an element of restorative justice wherein the accused restores the victim to the original position before a crime has taken place.

Benefits of plea bargaining

1. The burden of litigation upon the courts is reduced. Thus, precious time of court is saved.
2. Plea bargaining saves the litigation costs of parties i.e., both to the state and the defence.
3. Plea bargaining also provides benefit to undertrial prisoners.
4. The victim gets compensation which helps him or her to restore.

Types of plea bargaining

Charge bargaining –

In charge bargaining, the prosecution agrees to proceed against the accused for a lesser offence since he is compensating the victim. This type of plea bargaining is most prevalent in the USA.

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Sentence bargaining

In sentence bargaining, the prosecution pleads the court to reduce the sentence of the accused. This is seen in the UK and chapter XXI – A of the Code of criminal procedure,1973 deals with only sentence bargaining.

In India, the court can either reduce the sentence or release the accused on probation or admonition. However, in these three cases the accused will have to pay compensation and in three cases, the accused is said to be released after a conviction.

Fact bargaining

In fact bargaining, the accused and prosecutor enter into an agreement not to contend certain facts in court. Fact bargaining is prevalent in the USA and is not recognized by law in India and such an agreement to suppress facts and evidence is void as per section 28 of the Indian Contract Act, 1872.

History of plea bargaining

If we go by the history and evolution of plea bargaining, the Indian judiciary was never inclined to include the concept of plea bargaining in the criminal jurisprudence of the country. However, on the contrary, the law commission advocated for the same.

In 1991, the introduction of plea bargaining in CRPC was first recommended by the 12th law commission in its 142nd report. The report also talked about charge bargaining. Later in 1996, the law commission in its 156th report recommended plea bargaining but it was not accepted again. The reason for such non-acceptance of plea bargaining despite these recommendations by the law commission is prior to these two reports, the supreme court of India in its two judgments frowned upon the concept of plea bargaining. The judgements are as follows:

In [1]Muralidhar Megraj Loya vs. State of Maharashtra (1976) SC, the supreme court opined that “plea bargaining is not a good concept and it shall not be introduced as there are chances of misuse of plea bargaining”.

In [2]Kasam Bhai Abdul Rehman Bhai sheikh vs. State of Gujarat (1980) SC, the apex court held that “the practice of plea bargaining was unconstitutional and illegal and would tend to embolden corruption, collusion and contaminate the pure fount of justice”.

However, in 2003 the Malimath committee recommended several reforms in the criminal justice system of the country and one of the main reforms was plea bargaining. This has resulted in the codification of the concept of plea bargaining under chapter XXI-A of the Code of criminal procedure,1973 which came into effect from 5th July, 2006.

[1] 1976 AIR 1929
[2] 1980 AIR 854

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Section 265-A to section 265-L of the Code of criminal procedure,1973 deals with plea bargaining.

Applicability of plea bargaining

Section 265-A of the Code of criminal procedure,1973 deals with the applicability of plea bargaining. This section says that the provisions of plea bargaining are applicable in respect of an accused against whom a police report under section 173 CRPC is filed and against whom a complaint under section 200 of CRPC is filed where the examination of complainant and witnesses are completed and the process has been issued under section 204 CRPC.

In both cases, the offences with respect to which plea bargaining is pleaded must be offences which are less than seven years of imprisonment or equal to seven years of imprisonment. However, this chapter does not apply to offences which are punishable with more than seven years, offences which are of socio-economic condition, offences against women and offences against children below the age of 14 years.

It is upon the central government by notification to decide what constitutes an offence of socio-economic condition.

Though section 265-A is silent about information cases, plea bargaining can be conducted even in cases instituted through information.

Procedure and functioning of plea bargaining

The procedure of plea bargaining is as follows:

The accused person will have to file an application under section 265-B for plea bargaining before the commencement of trial and such application must contain a brief description and details of the case and offence to which he is accused of. Along with the application the accused needs to file an affidavit stating his voluntariness to file for plea bargaining and stating he is not previously convicted for the same offence.

Once the application is filed the court will issue notice to the prosecutor or the complainant as the case may and to the accused and fix a date of appearance. On the appearance of the accused on a fixed date the court will examine the accused in-camera, excluding the presence of the other party. The objective of such in-camera examination by the court is to satisfy itself the voluntariness of the plea-bargaining application.

On such examination if the court is satisfied with the voluntariness of the application and that there is no previous conviction of the accused for the same offence the court will give time for the parties to reach for a mutually satisfied disposition. If the court is of the opinion that there is no voluntariness in the application or there is a previous conviction for the same offence against the accused, the court shall proceed according to the provisions of the code from the stage when the application under section 265-B was made.

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Mutually satisfactory disposition basically means the disposition of a case after satisfying both parties. A meeting is conducted to reach such a satisfaction where both parties decide on compensation to the victim and decide on a reduction of punishment for the accused. The guidelines for mutually satisfactory disposition are provided under section 265-C of the CRPC. These guidelines provide for the issuance of notice to the parties to participate in the meeting, allowing them to engage their advocates and imposing a duty upon the court to ensure voluntariness in the proceedings.

A report has to be prepared under section 265-D of the CRPC by the presiding officer of the court if the mutually satisfactory disposition has been worked out and it shall be signed by the presiding officer and all other persons who have participated in the proceedings. However, if the mutually satisfactory disposition has not worked, the court shall proceed from the stage when the application under section 265-B of CRPC was made.

Disposal of the case – section 265-E

After a report under section 265-D has been made the court shall award the compensation to the victim as agreed in the report and hear the parties as to the quantum of punishment or release of the accused on probation or admonition. Upon such hearing, the court may either grant reduced imprisonment or release the accused on probation or release the accused by granting admonition. In all three cases, the accused is said to be convicted.

Probation is basically a conditional release of the accused based on the age, and character of the accused wherein the accused after the release will have to report to the probation officer who keeps an eye on the accused conduct for a certain period. In cases of further commission of a crime, such an officer will report it to the court and the accused will be re-arrested. While admonition is forgiving the accused person if the offence is punishable with less than 2 years. Unlike probation, the admonition is the release of the accused without any conditions. Both concepts seek reformation.

How much imprisonment is awarded in cases of plea bargaining

Where the offence provides for the minimum sentence, the court has the discretion to punish one-half of the minimum sentence. However, if no minimum imprisonment is provided, the court can award one-fourth of the maximum sentence. However, as per section 265-I of this chapter, the imprisonment undergone by him in the course of investigation, inquiry and trial has to be set off in the same manner as provided in section 428 of the CRPC.

Finality of judgment

The judgment passed by the court under this chapter is final and no appeal shall lie before any court except writ petitions under articles 226 and 227 of the constitution and special leave petition under article 136 of the constitution.

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Also, the statements made and facts stated by the accused as part of plea-bargaining proceedings shall not be used as evidence or for any purpose in case plea bargaining fails or in any other proceedings except for the purpose of this chapter.

Why plea bargaining became redundant in India?

The reason why plea bargaining has failed in India is because of its practical difficulties in its implementation. One such reason is that in plea bargaining, the entire domain is with the victim. In many cases, the victim may claim an exorbitant amount from the accused which makes the settlement impossible. Unlike in civil cases, there is no mediating authority like district legal services authority to facilitate the settlement process.

Another such reason is the fear of conviction among the accused persons. Unlike in the USA, charge bargaining is not permissible. The accused who was released or less sentenced is still a convict and he will have to face all the consequences and disqualifications of a conviction.

Conclusion

These were a few practical difficulties as to why the people are reluctant to plea bargaining in India. However, plea bargaining is not redundant in every case. Plea bargaining can be successful where there is no real victim i.e., when the state itself is the victim. One such example is offences under the Customs Act. In such cases, the accused can enter into a former agreement with the state and can get a lesser sentence.

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