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PLEA BARGAINING

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Introduction-

It is the practice of negotiating an agreement between the prosecution and the defense whereby the defendant pleads guilty to a lesser offense or (in the case of multiple offenses) to one or more of the offenses charged in exchange for more lenient sentencing, recommendations, a specific sentence, or a dismissal of other charges. Plea bargaining is a pretrial negotiation between the accused and the prosecution where the accused agrees to plead guilty in exchange for certain concessions by the prosecution. It is a bargain where a defendant pleads guilty to a lesser charge and the prosecutors in return drop more serious charges. It is not available for all types of crime e.g. a person cannot claim plea bargaining after committing heinous crimes or for the crimes which are punishable with death or life imprisonment.

HISTORY OF PLEA BARGAINING

In the jury system, the need to plea bargaining was not felt as there was no legal representation. Later, in 1960 legal representation was allowed and the need for Plea bargaining was felt. However, the concept of Plea bargaining has traces of its origins in American legal history. This concept has been used since the 19th century. The judges used this bargaining to encourage confession.

PLEA BARGAINING IN INDIA

Plea Bargaining is not an indigenous concept of Indian legal system. It is a part of the recent development of Indian Criminal Justice System (ICJS). It was inculcated in Indian Criminal Justice System after considering the burden of long-standing cases on the Judiciary.

Two Kind Of Plea Bargaining.

Two categories of plea bargaining are there: one is charge bargaining and the other is sentence bargaining.

In **charge bargaining** the accused pleads guilty in exchange of a promise by the prosecutor either to reduce the charge to a less intensive one or to dismiss some of the multiple charges.

In **sentence bargaining**, the accused pleads guilty in exchange of a promise by the prosecutor to recommend a lighter sentence.

Who can apply for plea bargaining?

Two kinds of accused persons can apply for plea bargaining: one is the accused against whom police report has been forwarded by the officer in charge of the police station alleging the offence, and the other is the accused against whom a Magistrate has taken cognizance of an offence. But a plea bargaining is not applicable to any juvenile or child. An accused person satisfying the above conditions can file an application for plea bargaining in the court where such an offence is pending for trial.

Where plea bargaining not applicable

Plea bargaining is not available to an accused who has been charged with an offence punishable with death, life imprisonment or imprisonment for a term exceeding 7 years.

Similarly, plea bargaining is not permissible if the offence is against a woman or a child of less than 14 years of age.

Plea bargaining is impermissible, if the offence affects the socio economic condition of the country.

Favour Arguments for Plea Bargaining in India

Fast disposal of cases

The plea bargaining is beneficial for both the prosecution and the defense because there is no risk

of complete loss at trial. It helps the attorneys to defend their clients in an easy way because both the parties possess bargaining power. This is how the long-standing disputes can be resolved and the court would also not need to face encumbrance of case files. Moreover, Plea bargaining helps the courts in preserving scarce resources for the cases that need them most.

Less serious offenses on one's record

In a country like India, society plays a vital role. Once a person is stigmatized by society it becomes very difficult for that person to survive. Many a time stigmatization leads to ostracization. In such scenario, Plea Bargaining allows a person to plead guilty or no contest in exchange for a reduction in the number of charges or the seriousness of the offenses. This results in recording less serious offenses on the official court records of an accused. This can be good for the accused when he is convicted in the future.

It avoids publicity

Moreover, Plea Bargaining is also a good mechanism to avoid publicity because the longer the case goes the more publicity the accused gets. Therefore plea bargaining avoids such publicity by a fast settlement of the case. Famous and ordinary People who depend on their reputation in the community for their living, and those people who want to escape any unnecessary stigmatization. Although the news of the plea itself may be public yet it stays only for a short time when compared to news of a trial.

Arguments against Plea Bargaining in India

Voluntarily adopted Mechanism

As per the legal provision dealing with Plea bargaining, it is a voluntary mechanism which is only entertained when accused opts it willingly. But the law is silent on the point that in case, the settlement reached is contrary to the purpose of the legal system.

Involvement of Police

The Involvement of the police in plea bargaining also attracts criticism. As India is infamous for the custodial torture by police. In such scenario, the concept of Plea Bargaining is more likely to aggravate the situation.

Corruption

The role of victims in plea bargaining process is also not appreciated. The role of victim in this process would attract corruption which is ultimately defeating the purpose which is sought to be achieved by such action.

Landmark judgments:

1. **Murlidhar Meghraj Loya v. State of Maharashtra** (2010): In this case, the Supreme Court of India recognized the concept of plea bargaining as a statutory right under Section 265-A to 265-L of the Code of Criminal Procedure (CrPC). The court emphasized its importance in reducing the burden on the courts and promoting efficient case disposal. See <https://indiankanoon.org/doc/739213/>.
2. **State of Rajasthan v. Shambhu Kewat** (2014): In this case, the Supreme Court clarified the scope and applicability of its provisions in India. The court held that the purpose of Plea bargaining is to ensure a fair and speedy trial, and it should be applied to eligible cases based on the specific circumstances and facts of each case.
3. **Subhash Popatlal Dave v. State of Gujarat** (2014): In this case, the Supreme Court reaffirmed the constitutional validity of plea bargaining and emphasized that it should be conducted voluntarily and based on a full understanding of the consequences by the accused. The court highlighted that it is an important tool for reducing the backlog of cases and promoting efficient justice delivery.
4. **Sukesh Behl v. Union of India** (2018): In this case, the Delhi High Court observed that plea bargaining is an essential mechanism to expedite the disposal of cases and provide an opportunity to the accused to avoid lengthy trials. The court emphasized the need for effective implementation of its provisions and directed the government to take steps to promote awareness about it among stakeholders.
5. **Ajay Kumar v. State of Punjab** (2018): In this case, the Punjab and Haryana High Court highlighted the importance of plea bargaining in addressing the issue of overburdened courts and lengthy trials. The court emphasized that it is a valuable tool for achieving speedy justice and encouraged the use of plea-bargaining provisions wherever appropriate.

Conclusion

While plea bargaining offers advantages, it should be conducted in a fair and transparent manner, with adequate safeguards to protect the rights of the accused and ensure that the plea is voluntary and informed. The court's oversight and adherence to due process are crucial to maintain the integrity of the plea-bargaining process in India.

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