

LAW AREA NAME : WOMAN
SECTION NAME : CRIMINAL LAWS
SUB SECTION NAME : PLEABARGAINING

LAW IN BRIEF

Plea bargaining in criminal cases refers to pre-trial negotiations between the defendant through his/her counsel and the prosecution during which the accused agrees to plead guilty in exchange for lesser punishment. The concept of plea bargaining was introduced vide The Criminal Law (Amendment) Act, 2005 in Chapter XXIA of the Code of Criminal Procedure.

LAW IN DETAIL

- Applicability:

The plea-bargaining is applicable only for those offences with a punishment of imprisonment up to a period of 7 years. It is not applicable for offences affecting the socio-economic conditions of the country or which have been committed against a woman or a child below 14 years of age and to habitual offenders.

- Essentials of plea-bargaining:

1. Voluntariness of the accused to plead guilty in exchange for a concession is an essential pre-requisite for admitting an application for plea-bargaining.
2. The statement or facts stated by an accused in the application for plea-bargaining should not be used for any other purpose except plea-bargaining.
3. A plea-bargain is a contractual agreement between the prosecution and the defendant regarding the disposition of criminal charge. However, such an agreement is not enforceable until a judge approves it.

- Types of “Plea-bargains”

Plea-bargaining, though new to India, is already being practiced in other countries across the globe. In fact it is a norm in the United States of America, where 75% of the criminal cases get decided on plea-bargaining. The types of plea-bargaining as existing in other countries are as follows:

Charge bargain: The accused has the option of pleading guilty to a lesser charge or to only some of the charges filed against him. For example where a defendant is charged with both Drunk driving and Driving with license suspended, he may given an opportunity to plead guilty to only drunk driving.

Sentence bargain: The accused has an option of admitting guilt and settling for a lesser punishment. For this, he must be informed in advance of the sentence that is likely to be imposed upon him. For example, he is facing serious charges and is afraid of being hit with the maximum sentence, he may plead guilty and be punished with an acceptable sentence.

Fact bargain: The accused pleads guilty in return for a less incriminating presentation of facts.

Note: All of the above types may not be practiced in India.

PROCESS FOR SOLUTION

Complaint Under which Section ?

Chapter XXIA of the Code of Criminal Procedure, 1973

Whom to complain / where to complaint?

The application for plea-bargaining must be made in the court in which the offence is pending for trial. It must be made voluntarily by the accused.

How to file the Case ?

Plea-bargaining is initiated after the accused makes an application to the court. The court may also *suo-motu* make an offer for plea-bargaining which if the accused accepts, he has to make an application.

The court will conduct a preliminary examination in camera that the accused has filed the application voluntarily. It will also examine the prosecutor and the aggrieved party and if it is convinced that the accused was forced to plea-bargain, it will reject the application.

The court will then issue a notice to the Public Prosecutor to the complainant to work out a mutually satisfactory disposition of the case. The negotiation of such a mutually acceptable settlement is left to the free will of the prosecution and the accused. If a settlement is reached, the court can award the compensation based on it to the victim and then hear the parties on the issue of punishment.

The court may release the accused on probation if the law allows for it.

If a minimum sentence is provided for the offence committed, the accused may be sentenced to half of such punishment.

If the offence committed does not fall within the scope of the above, then the accused may be sentenced to one-fourth of the punishment provided or extendable for such offence.

The accused may also avail of the benefit of section 428 of Cr.P.C, 1973 for setting off the period of detention undergone by the accused against the sentence of imprisonment in plea-bargained settlements.

The court must deliver the judgment in open court according to the terms of the mutually agreed disposition and the formula prescribed for sentencing including victim compensation.

What Next ?

The judgment delivered in plea-bargain cases is final and no appeal lies on such judgment. However, a writ petition to the State High Court under Articles 226 and 227 of the Constitution or a Special leave petition to the Supreme Court under Article 136 of the Constitution can be filed by the accused. This acts as a check n illegal and unethical bargains.

ALTERNATE REMEDIES

The concept of plea-bargaining is itself an alternative remedy to the long and tortuous process of trial in courts. It has been introduced to ensure speedy disposal of cases and to reduce congestion of prisons.