Subject Name: Code of Criminal Procedure
Topic Name: Plea Bargaining

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Introduction

Plea bargaining, in its most traditional and broadest sense, refers to an agreement in a criminal case between the prosecution and defence. This agreement typically involves the accused changing their plea from not guilty to guilty in exchange for certain concessions, such as a reduced sentence offered by the prosecution or an informal indication from the judge that a guilty plea will result in a minimised sentence.

It serves as a tool of criminal procedure aimed at reducing enforcement costs for both parties and allowing prosecutors to focus on more substantial cases. Through plea bargaining, the accused can negotiate with the court regarding the sentence they will receive.

An important aspect of plea bargaining is that the facts disclosed during the process are intended solely for the purpose of plea negotiations and should not be used for any other proceedings. Nowadays, many criminal defendants are offered plea bargains as it provides an opportunity for them to lessen their punishment by admitting their guilt.

The practice of plea bargaining has been a subject of debate, particularly regarding its nature and terminology. In Canada, for instance, there has been discussion about the terminology used to describe the practice. Initially defined as "plea bargaining," objections arose against the implication that justice could be negotiated.

As a result, more neutral terms such as "plea discussions," "resolution discussions," "plea negotiations," and "plea agreements" began to be used. This shift in terminology reflects an acknowledgment of the broader scope of the practice, which involves considerations beyond simply pleading guilty for a reduced penalty.

In the context of contemporary legal systems, delay in delivering justice to citizens has become a challenge in crime prevention. The current scenario often sees crime rates escalating faster than the punishment of offenders.

Thus, there is a need for mechanisms that can balance the deterrence of crime with the administration of justice.

Plea bargaining is one such method that can help alleviate the burden on courts. Governments may introduce plea bargaining as part of broader reforms aimed at improving the efficiency and effectiveness of the justice system.

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Types of Plea Bargaining

1. Charge Bargaining

Charge bargaining involves a promise by the prosecutor to reduce or dismiss some of the charges brought against the defendant in exchange for a guilty plea. This can be further classified into:

a. Multiple Charge Bargaining: In multiple charge bargaining, some charges are dropped in exchange for a guilty plea to one of them.

b. Unique Charge Bargaining: In unique charge bargaining, a serious charge is dropped in exchange for a guilty plea to a less serious charge.

2. Fact Bargaining

Fact bargaining occurs when a prosecutor agrees not to contest the accused's version of the facts or refrains from revealing aggravating factual circumstances to the court. There is an agreement for a selective presentation of facts in return for a guilty plea.

3. Specific Fact Bargaining

This type of bargaining involves accepting sanctions without pleading guilty, known as nolo contendere pleas. Another category within this type is known as Alford pleas, where the defendant accepts sanctions but asserts innocence.

4. Sentence Bargaining

Sentence bargaining entails a promise by the prosecutor to recommend a specific sentence or to refrain from making any sentence recommendation in exchange for a guilty plea. In cases of sentence bargaining, trial judges typically opt to impose sentences not more severe than those recommended by prosecutors, or they may provide the accused with an opportunity to withdraw their guilty pleas.

Law Commission and Plea Bargaining

The Law Commission of India has played a significant role in advocating for the introduction of plea bargaining in the Indian criminal justice system.

142nd Report (1991): The report highlighted the issue of abnormal delays in the disposal of criminal trials and appeals in India. It recognized plea bargaining as a potential solution, drawing attention to its practice in the United States. The Commission conducted a survey indicating support for the introduction of plea bargaining, albeit with appropriate safeguards. Concerns about illiteracy, coercion, and potential misuse were addressed by proposing judicial oversight and explanations of consequences to accused individuals.

154th Report (1996): This report reiterated the need for remedial legislative measures to reduce delays in criminal proceedings. It recommended plea bargaining as a means to expedite case disposal and alleviate the suffering of undertrial prisoners. It also proposed incorporating plea bargaining as a separate chapter in Indian criminal jurisprudence.

177th Report (2001): This report also supported the incorporation of plea bargaining into the Indian criminal justice system. It acknowledged the experience of the United States as evidence of plea bargaining's effectiveness in case disposal and expediting the delivery of justice.

Recommendations and Criticisms: The Law Commission recommended that plea bargaining initially be limited to offences carrying imprisonment for less than seven years. It emphasised the importance of judicial oversight, exclusion of habitual offenders and cases involving offences against women and children, and ensuring that the scheme was not perceived as negotiation between the accused and the state.

Plea Bargaining under CrPC

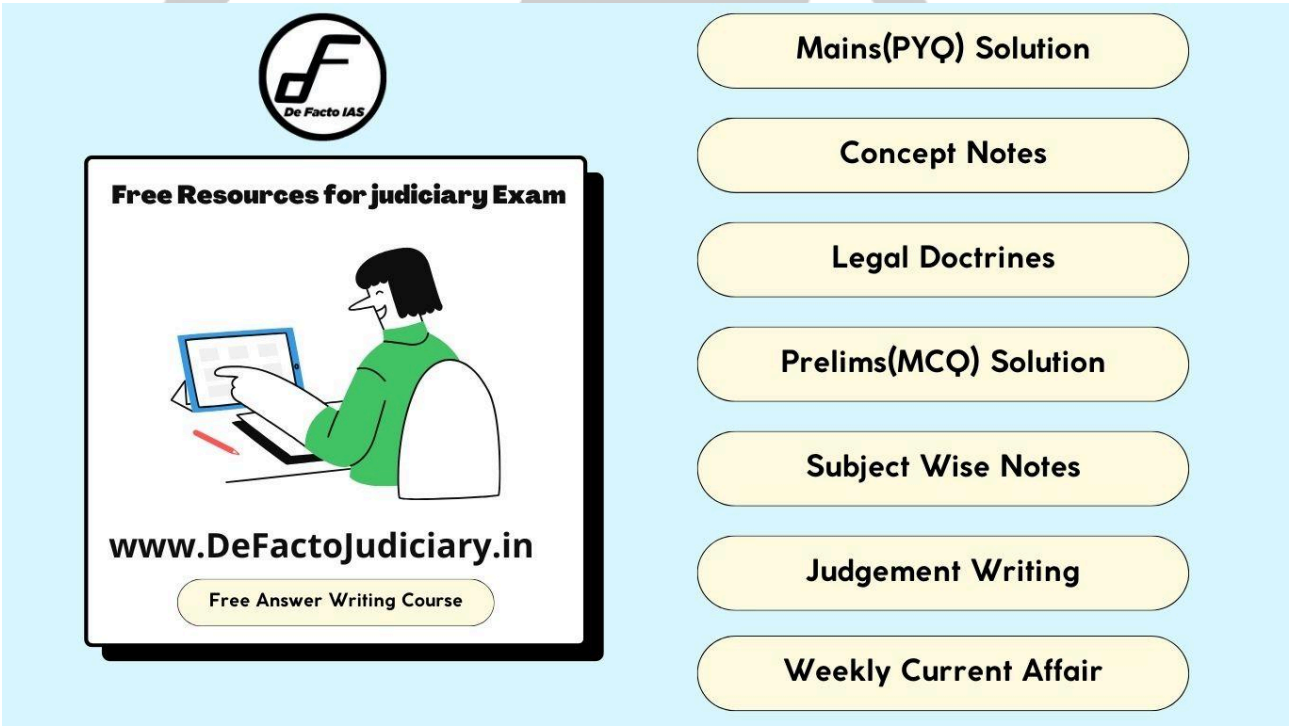
Plea bargaining, inspired by the Doctrine of Nolo Contendere, has been introduced in India to address the inefficiencies and delays in the criminal justice system. Here are the key provisions

outlined in Chapter XXI A of the Criminal Procedure Code, which was inserted by the Criminal Law (Amendment) Act, 2005:

1. Application of the Chapter (Section 265A): This chapter applies to accused individuals against whom a police report has been forwarded alleging an offence, except for those punishable by death, life imprisonment, or imprisonment exceeding seven years. It also applies to cases where a magistrate has taken cognizance of an offence on complaint, except for specified offences.

2. Application for Plea Bargaining (Section 265B): An accused may file an application for plea bargaining in the court where the offence is pending trial. The application must contain a brief description of the case and be accompanied by an affidavit stating that the accused has voluntarily opted for plea bargaining.

3. Guidelines for Mutually Satisfactory Disposition (Section 265C): The court shall facilitate meetings between the prosecution, accused, and victim to work out a mutually satisfactory disposition of the case. The process should be voluntary for all parties involved.



4. Report of Mutually Satisfactory Disposition (Section 265D): If a satisfactory disposition is reached, the court shall prepare a report signed by the presiding officer and all participants. If no disposition is reached, the court proceeds further as per the Criminal Procedure Code.

5. Disposal of the Case (Section 265E): If a satisfactory disposition is reached, the court awards compensation to the victim and decides on the punishment for the accused, considering options like probation or reduced sentencing.

6. Judgement of the Court (Section 265F): The court delivers its judgement in open court, and it is signed by the presiding officer.

7. Finality of the Judgement (Section 265G): The judgement delivered by the court is final, with limited appeal options under special circumstances.

8. Power of the Court in Plea Bargaining (Section 265H): The court has the necessary powers for discharging its functions under this chapter.

9. Period of Detention (Section 265-I): The period of detention undergone by the accused is set off against the sentence of imprisonment imposed under this chapter.

10. Savings and Non-Application (Sections 265J and 265L): The provisions of this chapter override any inconsistent provisions in other laws. Statements made by the accused during plea bargaining cannot be used for any other purpose.

Judicial Pronouncements on Plea Bargaining

In the matter of **Pradeep Gupta v. State,** wherein the petitioner lodged a bail application for plea bargaining, the court expounded that the invocation of plea bargaining could be sought by an accused against whom a report under section 173 CrPC had been filed for offences carrying a punishment of seven years or less.

Moreover, the entreaty could be evaluated taking into consideration the accused's role and the nature of the offence, among other factors. The court also upheld the trial court's stance, emphasising that the plea bargaining application cannot be dismissed merely on the basis of involvement in Section 120B IPC, thereby disqualifying the petitioner from seeking plea bargaining.

In another instance, **State of Uttar Pradesh v. Chandrika, (AIR 1999 SC 164)**, the court asserted that the practice of plea bargaining stands as unconstitutional and unlawful, potentially fostering corruption, collusion, and contaminating the pristine essence of justice. It articulated concerns that such a practice might coerce an innocent defendant to admit guilt to avoid a protracted and costly criminal trial, which, given the cumbersome and unsatisfactory administration of justice, is not only time-consuming and financially burdensome but also unpredictable in its outcomes.

The court cautioned against the risk of miscarriage of justice, where a judge might be swayed from the path of impartiality, leading to either wrongful conviction or lenient sentencing, thus undermining the legal process and thwarting the societal objectives behind anti-adulteration statutes. This scenario, the court opined, could breed corruption and collusion, thereby eroding the standards of justice.

Furthermore, in the case of **Kasambhai Abdul Rehman Bhai Sheik v. State of Gujarat and another (AIR 1980 SC 854),** where the accused stood convicted for adulteration, the court decreed that plea bargaining is intrinsically unconstitutional and illicit, posing a threat to the sanctity of the legal process and obstructing the social objectives underlying anti-adulteration legislation.