

Compounding of offences under criminal procedure law essay



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The compounding of offences is an act on the part of the victim whereby he/she decides to pardon the offence committed by the accused and request the court to exonerate him of all charges. The compounding of an offence does not mean that the offence has not been committed; it only means that the victim is willing to pardon it, or has accepted some form of a solatium as some form of compensation or redressal for what he has suffered[1]. This, however, does not mean that there can be no composition without the passing of any consideration or gratification. All that the law requires is that there must be some arrangement between the parties settling their differences[2]. The compounding of offences should not be confused with plea-bargaining, which is against public policy.

Section 320 of the CrPC is exhaustive as to the law of compounding in India. Section 320 is almost a verbatim reproduction of S 345 of the 1898 Code of Criminal Procedure, with the addition of some new provisions. It contains-

The persons who may compound

The criminal offences that may be compounded, either on the volition of the complainant or in certain cases with the additional backing of the court.

The stage of the criminal proceedings at which the composition is sought to be made.

Compounding of offences terminates the legal proceedings against the offender and the offender is entitled to an acquittal. When the law has allowed the compounding of offence as per the protocol laid down by the CrPC, there can be no question of such compounding being opposed to

public policy within the meaning of Section 23 of the ICA, 1872. Any agreement between an injured person and the offender to terminate criminal proceedings where recourse has not been had to this section immediately falls foul of Sec 23 of the ICA as it does not possess the sanction of the law. Except for Section 320, the concept of negotiated settlement of criminal cases is not permissible, as it is settled law that a case has to be decided on its merits alone and not on the basis of plea bargaining .

The Rationale Of Compounding Of Offences-

Ordinarily it is the state that has the right or power to punish offenders, although individuals might be directly and personally aggrieved by the commission of the offence. Criminal law regards the punishment imposed by the law at the instance of the state on the offender as the proper and sufficient satisfaction, not only for the society as a whole but also for individuals personally aggrieved by the offence. But in the case of certain offences the law permits the aggrieved person himself to receive satisfaction other than actual punishment in the substitution of the punishment. It is for such offences, which can be labelled as offences which are not very grave or serious in the eyes of a reasonable individual, that the law allows the offences to be compounded. The express policy of the law of Section 320 is to promote friendliness between the parties so that peace is restored[3]. The rationale of compounding can be better understood through an analysis of those cases where compounding is not permissible. Offences under Section 143, 147 and 148 of the IPC are not compoundable under any circumstances, because the legislature views them as offences concerning persons other than those immediately involved; such cases cannot be concluded because

of a reconciliation of the immediate parties involved as they are not private offences . but offences which affect the public at large[4]. From an assessment of this, it is not difficult to understand the basis of the classification of compoundable offences, offences compoundable with the sanction of the court and offences not compoundable at all. It is the degree of wrong done to the state by the commission of the offence that appears to be the basis of the distinction between compoundable offences and offences compoundable only with the permission of the court. The petty wrongs done to citizens, which do not seriously affect the interests of the community or the state are compoundable by the injured party without any reference to the state. The next class of offences, where sanction of the court is necessary to compound, consists of cases where the injury to the state is recognised, but the state considers it expedient in given cases, on the basis of the discretion exercised by a judicial authority, to permit the aggrieved party to compound the offence.

The Distinction Between Withdrawal And Composition-

Although the end effect of a withdrawal and a composition is essentially the same i. e acquittal of the accused at any time before a judgment is passed, there are certain differences between the two. Firstly, a withdrawal must be by intimation to the magistrate holding the trial whereas in several instances enumerated in Section 320(1) composition can be effected without the permission of the court. Secondly, withdrawal is a unilateral act of the complainant alone whereas composition presupposes some kind of arrangement between the complainant and the accused[5]. Thirdly, on withdrawal of the complaint the magistrate can award compensation to the

accused but compensation cannot be awarded when a case is compounded. In a nutshell, whether the petition praying that the case be struck off the file is a withdrawal or a composition, is to be judged from the fact whether the accused consented to it or not.

The Settlement Of Disputes At Sebi Incorporating The Concept of Compounding-

At the Securities and Exchange Board of India, in Administrative/Civil enforcement actions[6]before the Securities Courts or the Securities Appellate Tribunal (SAT), a settlement may be reached between the regulator and a person (Party) who may prima facie be found to have violated securities laws. Such a settlement is known as a consent order and through the process of compounding the accused pays compounding charges in lieu of undergoing consequences of prosecution. It has been stated through SEBI circulars that such an arrangement provides flexibility of wider array of enforcement and remedial actions which will achieve the twin goals of an appropriate sanction, remedy and deterrence without resorting to litigation, lengthy proceedings and consequent delays.

Scope Of Compounding In The CrPC

Certain Permissible Actions Within The Ambit of Section 320-

If the accused brings to the notice of the courts that there has been an agreement between the two parties, then the complainant is questioned by the magistrate and on his affirmation of the claims made the accused is acquitted. In case of a disagreement between the parties as to whether the composition took place or not, although there is no provision for the same,

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the magistrate will initiate an evidence-finding enquiry to determine the veracity of the accused's claims[7].

The controversy over whether an offence under Section 138 of the Negotiable Instruments Act 1881 could be compounded with conflicting judgments of the Madhya Pradesh[8] and Andhra Pradesh High Courts[9] has been resolved by the Parliament when it amended Section 147 of the Negotiable Instruments Act, making all offences under the Act compoundable.

A matter may be compounded at any stage under this section before a sentence is pronounced and a magistrate cannot refuse to accept a petition of compromise even if it is filed at a time when the judgment was being written[10].

Actions Which Outside the Scope of Section 320-

A compromise has the immediate effect of acquittal so as to deprive the magistrate of his jurisdiction to try the case, the subsequent withdrawal from it by either of the two parties can neither affect the acquittal nor revive the jurisdiction of the magistrate to proceed with the case[11]. It has been held that the discretion granted to magistrates must be exercised by them with caution, especially in those cases where the offences are of a serious nature[12]. A composition has the effect of acquittal only in respect of the offence which has been compounded, and not of any other offence or offences for which the accused is charged in the same case[13]. It is established law since pre-independence that the compounding of offences is a judicial act, the discretion of which lies with the magistrate, and the police

has no authority to interfere in these matters, and the magistrate should not take the opinion of the police in such matters[14]. It has been held in the case of Mangilal V. State[15], that acquittal under Section 320(8) can follow only when it was a lawful compromise not made under coercion or duress or other similar circumstances vitiating the compromise. If the accused is charged with two offences, one of which is compoundable and the other is non-compoundable, a composition in respect of the compoundable offence will not acquit the accused of the non-compoundable offence[16].

Contentious Areas In The Implementation Of Section 320

Ambiguity in the law over the compounding of certain non-compoundable offences-

One set of decisions suggests that Section 320 (9) is very explicit in its understanding and the HC, under the exercise of its statutory jurisdiction cannot vary or amend this statutory provision under Section 482. Those offences not mentioned in the section cannot be compounded, as the section is exhaustive of the law of composition[17]. Thus, the composition of one offence will not bar prosecution for a distinct offence which the accused might have been charged with on the same facts[18].

Another set of decisions hold that in the matrimonial disputes between husband and wife, it is the duty of the court to encourage genuine settlement between them and after the initiation of proceedings under Section 498-A of the IPC, if the wife wishes to settle the dispute, then her petition to quash proceedings under Section 482 should be allowed as Section 320 does not affect or limit the power of the High Court to quash criminal proceedings[19].

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There have been very many instances where non-compoundable offences have been compounded by Indian courts on the reasoning that natural justice would demand in those cases that the offences be compounded in light of the peculiar facts and circumstances. As an illustration, an offence under Section 307, which is neither listed under 320(1) nor 320(2), was allowed to be compounded by the Supreme Court in *Mahesh Chand V. State*[20].

The Malimath Committee Report

The suggestion of pre-trial sittings.

The Committee is in favour of giving a role to the victim in the negotiation leading to settlement of criminal cases either through courts, Lok Adalats or Plea-bargaining. The Committee is of the opinion that there should be pre-trial sittings, which would in turn facilitate compounding of offences. This calls for the court to adopt a more interventionist and authoritative role than has been traditionally observed in identifying the issues for trial and in securing the proper preparation by both parties to deal efficiently with them. This in turn requires adequate preparation, not only by the parties and their advocates, but also by the Judge with the benefit of sufficient time out of court in which to do it. Provisions for such pretrial sittings have been made in several countries.

The suggestion of an arrears eradication scheme

The committee also suggested the setting up of the arrears eradication scheme, whereby the services of the appointed judge, ideally a dynamic problem solving person, could be utilized for the compounding or quick

settlement of cases. The committee feels that plea-bargaining is a very viable alternative when it comes to the quick settlement of cases where the accused is penitent, and its usage and success in the USA suggests the same. Also it is felt that Section 360 of the CrPC (Order to release on probation of good conduct or after admonition) is underutilized. The caveat would be that unlike the USA where it is available for all offences, it not be extended for offences against women and children. Also it has to be well administered to prevent misuses, so that the taint of legalizing a crime not be attached to it.

Another recommendation as part of the arrears eradication scheme is that part time courts may also sit on holidays. Part time courts can conveniently be assigned compoundable cases for settlement.

The benefit of compounding of offences recommended by this Committee is advised to be extended to pending cases as well. A concerted effort should be made to dispose of the cases by compounding or settlement wherever that is permissible in law, it has been suggested.

If the compounding offences is there in the statute even under old Cr. P. C. there is no reason why, when the accused is not let off but he is sentenced for a lesser sentence plea bargaining should not be included in the Criminal Justice System, so that the object of securing conviction and also reducing the period of trial can be achieved and reduced pendency can also be achieved in 'one go'.

Primary recommendation with regards to compounding of offences

However, the Committee is of the view that in addition to the offences prescribed in the Code as compoundable with or without the order of the court there are many other offences which deserve to be included in the list of compoundable offences. Where the offences are not of a serious character and the impact is mainly on the victim and not on the values of the society, it is desirable to encourage settlement without trial. The Committee feels that many offences should be added to the table in 320(1) of the Code of Criminal Procedure. The Committee further recommends offences which are compoundable with the leave of the court, may be made compoundable without the leave of the court. These are matters which should be entrusted to the Committee. In certain cases, the committee has suggested that certain acts be given only a minor punishment as meting out imprisonment leads to social stigma, which can further lead to more offences by that individual. Hence even in this regard of the reclassification of offences into major and minor offences, the compounding of offences plays a major role.

Specific recommendation to address the ambiguity over section 498-A

Section 498-A of the IPC is provision which is intended to protect the wife from being subjected by the husband or his relatives to cruelty. But what has bothered the Committee are the provisions which make this offence non-bailable and non-compoundable. As this offence is made non-bailable and not compoundable it make reconciliation and returning to marital home almost impossible

This view of the Malimath committee finds support in the judgment of the Bombay HC in the case of Suresh V. State^[21] where the learned judge recommended that the parliament amend article 320 to include 498 A in the list compoundable offences.

Reasoning of the committee

The woman victim lodges an F. I. R alleging commission of offence under Section 498A, her husband, in-laws and other relatives of the husband would be arrested immediately. If she has no independent source of income she has to return to her natal family where also support may not be forthcoming. Her claim for maintenance would be honoured more in default than in payment especially if the husband has lost his job or suspended from his job due to the arrest. Where maintenance is given, it is often a paltry sum. (Thus the woman is neither here nor there. She has just fallen from the frying pan into the fire.) Even when there is a divorce, or reconciliation, the criminal case continues as Section 498A is non compoundable.

If the wife feels that she was very impulsive when she made the complaint, and she wants to withdraw it, there are several legal obstacles in the way owing to the offence being non-compoundable.-

She may change her mind and get into the mood to forget and forgive. The husband may realize the mistakes committed and come forward to turn a new leaf for a loving and cordial relationship. The woman may like to seek reconciliation. But this may not be possible due to the legal obstacles. Even if she wishes to make amends by withdrawing the complaint, she can not do

so as the offence is non compoundable. The doors for returning to family life stand closed. She is thus left at the mercy of her natal family

The committee's conclusion

This section, therefore, helps neither the wife nor the husband. The offence being non-bailable and non-compoundable makes an innocent person undergo stigmatization and hardship. Heartless provisions that make the offence non-bailable and non-compoundable operate against reconciliations. It is therefore necessary to make this offence (a) bailable and (b) compoundable to give a chance to the spouses to come together.

The committee report mentions at several places that the list of compoundable offences be enlarged, for the purposes of speedy justice and its belief that such modes of settlement of cases do not offend any principles of criminal law...although it fails to mention what these offences are.

All these recommendations have been incorporated into the crpc through the latest amendments.

Conclusion