

## PLEA BARGAINING

---

Delay and heavy workloads in the Courts have resulted in the informal system of pre-trial bargaining and settlement in some western countries, especially in the United States. The system is commonly known as “plea bargaining”. A suspect may be advised to admit part or all the crime charged in return for a specified punishment or rather than await trial with the possibility of either acquittal or a more serious punishment. Plea bargaining as most criminal justice reformers believe, is more suitable, flexible and better fitted to the needs of the society, as it might be helpful in securing admissions in cases where it might be difficult to prove the charge laid against the accused.

On recommendations of Malimath Committee, Code -of Criminal Procedure has been recently amended by adding Chapter XXIA, consisting of 12 Sections. The Central Government has notified the offences affecting the socio-economic condition of the country, which have been Kept out of the purview of plea bargaining. Not only will it expedite the disposal of the cases, it may also result in adequate compensation for the victim of the crime, since he along with prosecutor will be in a position to bargain with the accused.

### **What is Plea Bargaining?**

There is no perfect or simple definition of plea bargaining. As the term implies, plea bargaining involves an active negotiation process whereby an offender is allowed to confess his guilt in Court (if he so desires) in exchange of a lighter punishment that would have been given for such an offence. Plea bargaining usually occurs prior to trial but may occur any time before a judgment is rendered. Black’s Law Dictionary defines it as:

“The process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to Court approval. It usually involves the accused pleading guilty to a lesser offence or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that possible for the graver charge.”

---

*Text of speech delivered by Hon’ble Dr. Justice Arijit Pasayat, Judge, Supreme Court of India & Chairman, Supreme Court Legal Services Committee on 14-7-07 at Ahmedabad, Gujarat.*

From the point of view of the accused, it means that he trades conviction and a lesser sentence, for a long, expensive and tortuous process of undergoing trial where he may be convicted. In practice, it represents not so much of "mutual satisfaction" as perhaps "mutual acknowledgment" of the strengths or weaknesses of both the charges and the defenses, against a backdrop of crowded criminal courts and court case dockets. Thus, it involves an active negotiation process by which the accused offers to exchange a plea of guilty, thereby waiving his right to trial, for some concessions in charges or for a sentence reduction.

A plea bargain is an agreement reached in a criminal case to finally settle it. In a case instituted on a police report, the parties to the agreement are the accused, the investigating officer, the prosecutor and the victim. All of them must agree to settle the criminal case in which the accused pleads guilty to the offence for which a trial is pending. In any other case, the parties to the agreement are the accused and the victim. They must agree to settle the criminal case in which the accused pleads guilty to the offence for which a trial is pending. The agreement to settle a case must be under the guidance and supervision of the Court.

### **What are the types of Plea Bargaining?**

Plea Bargaining can be divided into three types- (1) Charge Bargaining; (2) Sentence Bargaining; and (3) Fact Bargaining. Each type involves implied sentence reductions, but differs in the ways of achieving those reductions.

The first category, i.e. charge bargaining, is such bargain in which a defendant pleads guilty to reduced charges. It occurs when defendant pleads guilty to necessarily included offences. Second type is Sentence bargaining which involves assurance of lighter or alternative sentences in return for a defendant's pleading guilty. In United States, it can only be granted if they are approved by the trial judge. It sometimes occurs in high profile cases, where the prosecutor does not want to reduce the charges against the defendant, usually for fear of how the newspapers will react. A sentence bargain may allow the prosecutor to obtain a conviction to the most serious charge, while assuring the defendant of an acceptable sentence. The third type of plea and least used negotiation is Fact Bargaining in which negotiation involves an admission to certain facts ("stipulating" to the truth and existence of provable facts, thereby eliminating the need for the prosecutor to have to prove them) in return for an agreement not to introduce certain other facts.

### **When are plea bargains made?**

A plea bargain may be made by an accused when-

- (a) The report has been forwarded by the officer in charge of the police station under Section 173 Cr.P.C. alleging therein that an offence appears to have been committed by him other than an offence for which the punishment of

death or of imprisonment of life or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force; or

- (b) A Magistrate has taken cognizance of an offence on complaint, other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years, has been provided under the law for the time being in force, and after examining complaint and witnesses under Section 200, issued the process under Section 204.

### **Who can file an application for plea bargaining?**

- Any accused person above the age of 18 years and against whom a trial is pending, can file an application for plea bargaining.
- But, there are some exceptions to this general rule.
- The offence against the accused should carry a maximum sentence of less than 7 years.
- The offence should not have been committed by the accused against a woman or a child below the age of 14 years.
- The accused should not have been covered under Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000.
- The accused should not have earlier been convicted for the same offence.
- The offence should not affect the socio-economic condition of the country.

### **What offences affect the socio-economic condition of the country?**

No plea bargaining is permitted in respect of the following:

- Dowry Prohibition Act, 1961.
- The Commission of Sati Prevention Act, 1987.
- The Indecent Representation of Women (Prohibition) Act, 1986.
- The Immoral Traffic (Prevention) Act, 1956.
- Protection of Women from Domestic Violence Act, 2005.
- The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992.
- Provisions of Fruit Products Order, 1955 (issued under the Essential Commodities Act, 1955).
- Provisions of Meat Food Products Order, 1973 (issued under the Essential Commodities Act, 1955).
- Offences with respect to animals that find place in Schedule I and Part II of the Schedule II as well as offences related to altering of boundaries of protected areas under Wildlife (Protection) Act, 1972.
- The SC and ST (Prevention of Atrocities) Act, 1989.
- Offences mentioned in the Protection of Civil Rights Act, 1955.
- Offences listed in Sections 23 to 28 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

- The Army Act, 1950.
- The Air Force Act, 1950.
- The Navy Act, 1957.
- Offences specified in Sections 59 to 81 and 83 of the Delhi Metro Railway (Operation and Maintenance) Act, 2002.
- The Explosives Act, 1884.
- Offences specified in Sections 11 to 18 of the Cable Television Networks (Regulation) Act, 1955.
- Cinematograph Act, 1952.

### **What incentive does an accused get to enter into a plea bargain?**

The principal benefit of plea bargaining, for most of the accused, is to receive a lighter sentence for a less severe charge than what might result from taking the case to trial and losing. Another fairly obvious benefit that accused can reap from plea bargaining is that they can save on advocates' fees. It almost always takes more time and effort to bring a case to trial than to negotiate and handle a plea bargain. There may be other benefits as well such as:

#### **● Getting Out of Jail :**

An accused who is held in custody and does not qualify for release on his own recognizance or who either does not have the right to bail or cannot afford bail may get out of jail immediately following the judge's acceptance of a plea. Depending on the offence, the accused may get out altogether, on probation, with or without some community service obligations. The accused may have to serve more time, but will still get out much sooner than if he or she insisted on going to trial.

#### **● Resolving the Matter Quickly :**

A trial usually requires a much longer wait and causes much more stress than taking a plea bargain.

#### **● Having Fewer or Less Serious Offences on One's Record :**

Pleading guilty or no contest in exchange for a reduction in the number of charges or the seriousness of the offences looks a lot better on an accused person's record than the convictions that might result following trial. This can be particularly important if the accused is ever convicted in the future.

#### **● Avoiding Hassles :**

Some people plead guilty especially to routine, minor first offences without engaging a lawyer. If they waited to go to trial, they would have to find a good lawyer and spend both time and money preparing for trial.

#### **● Avoiding Publicity :**

All persons who depend on their reputation in the community to earn a living and people who don't want to bring further embarrassment to their families may choose to plead guilty to keep their names out of the public eye. While news of the plea

itself may be public, the news is short lived compared to news of a trial. And rarely is an accused person's background explored in the course of a plea bargain to the extent it may be done at trial.

### **What's in a plea bargain for the Judge and Prosecutor? Why will the Court accept them?**

Crowded calendars and overburdened prisons provide powerful incentives to many judges and prosecutors. Most judges simply don't have time to try every case that comes through the door. Additionally, because jails are overcrowded, judges may face the prospect of having to release convicted people (housed in the same facilities as those awaiting trial) before they complete their sentences. Judges often reason that using plea bargains to process out offenders who are not likely to do much jail time leads to fewer problems with overcrowding. Plea bargaining helps Courts and prosecutors manage caseloads. This also means that the state is more easily able to fulfill its constitutional obligation to provide a speedy trial. Judges often reason that using plea bargains to process out offenders allows judges to preside over efficient trials, to minimize the risk of rulings being overturned on appeal, and to avoid the necessity of making rulings during trial.

For a prosecutor, the judge's concerns about clogged calendars are the prosecutor's concerns as well. Prosecutors are, of course, also concerned for their own calendars. Since plea bargains are much quicker and require less work than trials, they are also easier on the prosecutor's budget. Another benefit to the prosecution is an assured conviction. Since the justice system appears to value convictions more than actual sentences- i.e., obtaining harsh sentences or convictions on the original charges- prosecutors learn to view plea bargaining as an intelligent way to increase their conviction rates.

### **What about victims? How will victim view, plea bargains?**

Plea bargaining has canvassed "victim-oriented reform" to the criminal justice administration. It provides greater respect and consideration towards victims and their rights. It does so by giving greater choices to them in satisfactory disposition of the case, and by providing a scheme for compulsory compensation. The plea bargaining law mandates the Court to pay compensation to victims of crime once the plea bargaining process is complete and then hears the parties on quantum of punishment and possibility of probation.

Victim has now moved from being a 'forgotten actor' to become a key player in the Criminal Justice Process. The rights of the victim are better upheld as they can bargain over the Court's decisions. Earlier, the victim had to satisfy himself with, what the Court decides. Plea bargaining also spares the victim from the anxiety of having to give evidence in the Court, and the unpleasantness of hearing all the details of the crime analyzed at length in public. For those victims who do give evidence, the process is often stressful. Victims benefit especially when a victim wants to avoid the stress and publicity of trial.

## **United States**

Plea bargaining is a significant part of the criminal justice system in the United States - the vast majority of criminal cases in the United States are settled by plea bargain rather than by a jury trial. Plea bargains are subject to the approval of the court, and different States and jurisdictions have different rules.

A defendant who pleads guilty must do so, in the phraseology of a 1938 Supreme Court case, "knowingly, voluntarily and intelligently". The burden is on the prosecution to prove that all waivers of the defendant's rights complied with due process standards. Accordingly, in cases of all but the most minor offenses, the court or the prosecution (depending upon local custom and the Presiding judge's preference) will engage in a plea colloquy wherein they ask the defendant a series of rote questions about the defendant's knowledge of his rights and the voluntariness of the plea. Typically the hearing on the guilty plea is transcribed by a court reporter and the transcript is made a part of the permanent record of the case in order to preserve the conviction's validity from being challenged at some future time.

Other special pleas used in criminal cases include the plea of mental incompetence, challenging the jurisdiction of the court over the defendant's person, the plea in bar, attacking the jurisdiction of the court over the crime charged, and the plea in abatement, which is used to address procedural errors in bringing the charges against the defendant, not apparent on the "face" of the indictment or other charging instrument. Special pleas in federal criminal cases have been abolished, and defenses formerly raised by special plea are now raised by motion to dismiss.

## **Systemic Case Management**

One of the key arguments in favor of plea bargains is that they help courts and prosecutors manage case loads. In the United States, defendants have a right to a speedy trial under both the Sixth Amendment to the United States Constitution as well as by statute. The meaning of "speedy" is not fixed in terms of a specified amount of time but is determined according to the circumstances. However, if the speedy trial is not held, the case is dismissed and the defendant cannot again be charged with the crime. (See: Double Jeopardy) By plea bargaining, prosecutors can reduce the number of cases set for trial so that cases do not get dismissed.

Thus it has been argued that the American criminal justice system would simply cease to function without plea bargaining, and that it forms a framework wherein the accused and his accusers can reach an agreement which settles the case once and for all, in what is hoped will be a spirit of fairness.

Critics of the system claim that the plea bargain system can put pressure on defendants to plead to crimes that they know that they did not commit, and that the outcome of a plea bargain may depend strongly on the negotiating skills and

personal demeanor of the defense lawyer, which puts persons who can afford good lawyers at an advantage.

Furthermore, critics claim that the system can encourage prosecutors to overcharge at the start of a case which leads to caseload pressures or unusually severe penalties; one claimed example is young murderer Lionel Tate who received a lengthy sentence for killing a young girl. Finally, many jurists, especially in civil law nations, find the notion of plea bargaining contrary to the purpose of the law in which a specific action should be associated with a specific penalty. The introduction of a version of plea bargaining was highly controversial in France.

## **India**

Plea bargaining was introduced in India by amendment of the Code of Criminal Procedure starting January 11, 2006. This affects cases in which the maximum punishment is imprisonment for seven years; however, offenses affecting the socio-economic condition of the country and offenses committed against a woman or a child below the age of fourteen are excluded.

One reason plea bargainers are favored is that it allows criminals who accept responsibility for their actions to receive consideration for their remorse and for not causing limited resources to be expended in further investigating and litigating their case.

In other cases, a defendant may be culpable in one criminal matter, but have information that would help in prosecuting a broader or more significant matter. In such a case, prosecutors may agree to reduced charges or sentencing in the first matter, in exchange for the defendant's cooperation (e.g. testimony) in prosecuting the larger matter.

In still other cases, prosecutors may be certain of the guilt of the defendant in a matter, but the evidence may not be enough to convince a jury of the defendant's guilt. It is of benefit to both the prosecutor and the defendant to arrange a plea bargain - this avoids the chance that the defendant could be found not guilty (which is unfavorable to the prosecutor) or be found guilty of serious charges (which is unfavorable to the defendant).

Plea bargaining also allows prosecutors to settle cases without forcing a victim to endure a lengthy court process or have to testify in a jury trial.



# PROCEDURE TO BE FOLLOWED IN PLEA BARGAINING CASES

(Section 265-A to 265-L of Cr. P. C.)

---

---

## APPLICATION OF THE CONCEPT

- *Filing of charge sheet :-*

Where the Officer-in-charge of the police station forwards the report under Section 173, Cr.P.C. against the accused alleging therein commission of an offence by him for which punishment of imprisonment for term not exceeding 7 years is provided by the law.

- *Cognizance of offence and issuance of process :-*

Where the Magistrate has taken cognizance of an offence on complaint for which punishment of imprisonment for a term not exceeding 7 years is provided by the law and after examining the complainant and witnesses under Section 200, issued the process under Section 204 against the accused.

## STEP 1:

### Application for Plea Bargaining

- An application for plea bargaining must be filed in the Court where such offence is pending for trial.
- It must contain a brief description of the case including the offence to which the case relates.
- It must be accompanied by an affidavit of the accused stating therein that he has voluntarily preferred Plea Bargain in his case after understanding the nature and extent of punishment provided by law for the offence and that he has not previously been convicted by a Court for the same offence.

## STEP 2 :

### Procedure on filing of the application

- The Court will issue notice to the Public Prosecutor or the Complainant and to the accused for appearance on the date fixed for the case.
- The Court will examine the accused in camera to satisfy itself that the accused has filed the application voluntarily and the other party in the case shall not be present.



- If the Court is satisfied that the application was filed involuntarily or the accused was previously convicted by a Court for the same offence, it shall proceed further with the case according to the law from the stage of filing of the application.

**STEP 3:**

**To provide time for mutually satisfactory settlement.**

- Where the Court is satisfied that the application was filed by the accused voluntarily, it will provide time to the Public Prosecutor or the complainant and the accused to work out a mutually satisfactory disposition of the case and fix the date for further hearing of the case.

Mutually satisfactory disposition may include compensation to the victim and other expenses incurred in connection with the case.

**STEP 4:**

**Procedure for working out mutually satisfactory disposition**

- In a police case, the Court will issue notice to the Public Prosecutor, Investigating Officer, the accused and the victim of the case for participation in the meeting to work out a satisfactory disposition of the case.
- In a complaint case, the Court will issue notice to the accused and the victim of the case for participation in the meeting to work out a satisfactory disposition of the case.

**STEP 5 :**

**Representation by a Pleader/Advocate**

- In a case instituted on a police report, the accused can participate in such meeting with his pleader/Advocate.
- In a case instituted on a complaint, the accused or the victim can participate in such meeting with his pleader/Advocate.

**STEP 6 :**

**Duty of the Court**

- To ensure that the accused has preferred Plea Bargaining voluntarily.
- To examine the accused in camera where the other party shall not be present.
- To ensure that the accused has filed the application for Plea Bargaining after understanding the nature and extent of punishment provided by law for the offence.
- To ensure that the entire process of working out a satisfactory disposition of the case is voluntary.

**STEP 7:****Report of mutually satisfactory disposition**

- The mutual acceptable settlement of the case is reached between the parties participating in the meeting.
- The Court will prepare a report of such disposition and it will be signed by the Presiding Officer of the Court and the participating parties.
- If mutually satisfactory disposition could not be worked out, the Court will record its observation and proceed further with the case from the stage of filing of the application.

**STEP 8 :****Award of compensation and hearing the parties on the quantum of punishment**

- The Court will award compensation to the victim in accordance with the disposition and hear the parties on the quantum of the punishment, releasing of the accused on probation of good conduct or after admonition under Section 360, Cr.P.C. or dealing with the accused under the provisions of the Probation of Offenders Act, 1958.

NOTE : The application of section 360 of Criminal Procedure Code is subject to enforcement of Probation of Offenders Act, 1958.

**STEP 9 :****Mode of disposal of the case**

- Where Section 360, Cr.P.C. or the Probation of Offenders Act is attracted, the Court may release the accused on probation of good conduct or after admonition under Section 360, Cr.P.C. or the Probation of Offenders Act, 1958.
- Where minimum punishment has been prescribed by law for the offence committed by the accused, it may sentence the accused to half of such minimum punishment.
- In any other case, it may sentence the accused to one-fourth of the punishment prescribed or extendable for such offence.

NOTE : The application of section 360 of Criminal Procedure Code is subject to enforcement of Probation of Offenders Act, 1958.

**When the court may release on probation of good conduct under Section 360, Cr. P. C.?**

- When any person not under 21 years of age is convicted of an offence punishable with fine only or with imprisonment for a term of 7 years or less.
- When any person under 21 years of age or any woman is convicted of an offence not punishable with death or imprisonment for life.
- No previous conviction is proved against the offender.
- Age, character or antecedents of the offender and the circumstances in which the offence was committed are relevant considerations.

NOTE : The application of section 360 of Criminal Procedure Code is subject to enforcement of Probation of Offenders Act, 1958.

#### **When the Court may release after admonition under Section 360, Cr. P.C.?**

- When any person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any other offence under the Indian Penal Code punishable with not more than two years imprisonment or any offence punishable with fine only.
- No previous conviction is proved against the offender.
- Age, character, antecedents or physical or mental condition of the offender and trivial nature of the offence and any extenuating circumstances under which the offence was committed are relevant considerations for releasing, after admonition.

NOTE : The application of section 360 of Criminal Procedure Code is subject to enforcement of Probation of Offenders Act, 1958.

#### **When the Court may release after due admonition under Section 3 of the Probation of Offenders Act, 1958?**

- When any person is convicted for an offence punishable under section 379 or 380 or 381 or 404 or 420 of the Indian Penal Code or any offence punishable with imprisonment for not more than two years, or with fine or both under the Indian Penal Code or any other law.
- No previous conviction is proved against the offender.
- Circumstances of the case including nature of the offence, character of the offender are relevant considerations for releasing the offender after due admonition.

#### **When the Court may release on probation of good conduct under Section 4 of the Probation of Offenders Act, 1958?**

- When any person is convicted for an offence not punishable with death or imprisonment for life.

- Circumstances of the case including nature of the offence, character of the offender are relevant considerations.
- The Court shall take into consideration the report of the Probation Officer before directing the release of the offender on Probation of good conduct.
- The Court may direct the offender to remain under the supervision of the Probation Officer or impose conditions for preventing the commission of other offences or repetition of the offence by the offender.

**Restriction on imprisonment of offenders under twenty-one years of age under Section 6 of Probation of Offenders Act, 1958?**

- When any person under 21 years of age is convicted for an offence punishable with imprisonment other than imprisonment for life, the Court shall not sentence the offender to imprisonment unless it is satisfied that it is not desirable to deal with the offender under section 3 or section 4 of the Act.
- The Court shall have regard to the circumstances of the case, nature of the offence and character of the offender are relevant considerations.
- The Court shall record its reasons for passing any sentence of imprisonment.
- The Court shall call a report from the Probation Officer and consider the information regarding the character and physical and mental condition of the offender

**STEP 10 :**

**Pronouncement and finality of the Judgement**

- The Court will deliver the judgement in the open Court and it shall be signed by the. Presiding Officer of the Court.
- The Judgement will be final and no appeal will lie against it except the writ petition under Articles 226 and 227 of the Constitution of India and Special Leave Petition under Article 136 of the Constitution of India against the judgement.

**STEP 11 :**

**Setting off undergone period**

- The period of detention undergone by the. accused will be set off against the sentence of imprisonment passed by the Court since the provision of Section 428, Cr.P.C. is applicable to the Plea Bargaining.

**STEP 12 :**

**Stated facts cannot be used**

- The statements given or facts stated by the accused cannot be used for any other purpose except for the purpose of plea bargaining.

APPLICATION OF SECTION 360 OF Cr.P.C. IN THE STATE OF MAHARASHTRA

- In view of section 19 of the Probation of Offenders Act, 1958, section 360 of Cr.P.C. would become inapplicable to a State wherein, Probation of Offenders Act, 1958 has been brought into force [Emphasis supplied on the guidelines delineated in 'The State Vs. Lathsingh', {F.B.}, 1990 Cr.L.J. 723]

In the State of Maharashtra the provisions of Probation of Offenders Act, 1958 is made applicable to the various parts vide respective notifications published in the Government Gazette time and again, which are mentioned as below :-

Sr. No.	Name of State	District or Area in which Act is enforced	Date on which it was enforced	Gazette reference
1	Maharashtra	Districts of Aurangabad, Nanded, Bhir and Parbhani,	1-11-1966	Maha.Gov.Gaz. 13-10-66, Pt.IV-A, P.663.
		Districts of Greater Mumbai, Poona, Nasik, Kolaba, Ratnagiri, Nagpur, Akola, wardha and Amravati	1-2-1970	Maha.Govt.Gaz. 22.1.70, Pt. IV-A, P.11
		Districts of Osmanabad, Ahmednagar, Sholapur, Dhulia, Thana and Jalgaon	1-10-1970	Mah.Govt.Gaz. 23-7-1970, Pt. IV-A, P.825
		Districts of Sangli, Satara, Kolhapur and Yeotmal, Buldana, Bhandara and Chandrapur	1-10-1971 15-8-1972	Ibid 1971, Pt.IV-A, P.538 Ibid, 1972 Pt. IV-A, P.575

