



# Law of Plea Bargaining in India

In the US and Europe, Plea Bargaining is an extensively ubiquitous practice which facilitates expedite the legal process. Plea bargaining allows the accused to bargain with the court on the sentence that will be awarded. The significant aspect is that the facts stated in an application for plea bargaining (*Section 265-B of CrPC, 1973*) are not meant to be used for any other purposes.

'Singhania & Partners Litigation team is praised for its 'responsiveness, business acumen and legal knowledge'

Legal 500 2010

## What is plea bargaining?

As per the detailed Report of Law Commission of India (144<sup>th</sup>), plea bargaining, in its most traditional and general sense, refers to pre-trial negotiations between the defendant, usually conducted by the counsel and prosecution, during which the defendant agrees to plead guilty in exchange for certain concession by the prosecutor.

## Categories of plea bargaining

Plea bargaining falls into two distinct categories depending upon the type of prosecutorial concession that is granted. The first category is "**charge bargaining**" which refers to a promise by the prosecutor to reduce or dismiss some of the charges brought against the defendant in exchange for a guilty plea. The second category is "**sentence bargaining**" which refers to a promise by the prosecutor to recommend a specific sentence or to refrain from making any sentence recommendation in exchange for a guilty plea.

"The firm's litigation team has provided efficient services within the required timeframe."

Chambers and Partners, 2010

As per the 144<sup>th</sup> report of Law Commission of India, which was published in the year 1991, both the methods will affect the dispositional phase of the criminal proceedings by reducing defendant's ultimate sentence; but after 15 years, finally India also realized the necessity of the law on plea bargaining and an important Amendment was introduced in the Criminal Procedure Code, 1973 in the year 2005, which came into force in the year 2006.

### Cases of plea bargaining in India

The first case of plea bargaining in Mumbai was recently published in 'Times of India', wherein, a Grade-I employee of RBI, was accused of siphoning off Rs 1.48 crore from the RBI by issuing vouchers against fictitious names from 1993 to 1997 and transferring the money to his personal account. He was arrested by the CBI in the year 1997, and released on bail in November the same year. The case came up before special CBI judge, Mumbai and charges were framed.

The accused, by taking benefit of **Amendment (2006) in Law of Plea-Bargaining under Criminal Procedure Code, 1973 Chapter-XXI A (Section 265-A to 265-L)** moved an application before the court stating that he was 58 years old and would seek plea bargaining. The court directed the prosecution and victim to file their response to his plea bargaining application. Though, after hearing arguments of prosecution, the trial court rejected the application for plea bargaining **but it has opened the doors for a new hope to the other accused/under trials, who have been facing trials of their petty cases for several years, may now resort to plea bargaining.**

In other significant case of **Vijay Moses Das Vs. CBI (Criminal Misc. Application 1037/2006), Uttrakahnd High Court (Justice Praffula Pant) in March 2010** allowed the concept of plea bargaining, wherein accused was charged under section 420, 468 and 471 of IPC. In the said case, Accused supplied substandard material to ONGC and that too at a wrong Port, which caused immense losses to ONGC, who got the investigation done through CBI by lodging a criminal case against the accused. Despite the fact that ONGC (Victim) and CBI (Prosecution) had no objection to the Plea bargaining Application, the trial court rejected the application on the ground that the Affidavit u/s (265-B) was not filed by the accused and also that the compensation was not fixed. The Hon'ble High Court allowed the Misc. Application by directing the trial court to accept the plea bargaining application. **(Case is attached for reference).**

### Procedure and Significant Aspects of plea bargaining

1. An accused for an offence may file application for plea bargaining (voluntarily) in the court, in which such offence is pending for trial.
2. Application should have brief description of the case with an affidavit by stating (a) it's a volunteer move by him/her after understanding the nature of punishment; (b) he/she has not been previously convicted by a court in a case in which he had been charged with the same offence.
3. After receiving application, court shall issue notice to prosecution or the complainant & to the accused to appear in the court on the fixed date.
4. In presence of all parties, court shall examine the accused **in camera** (i) application is filed voluntarily (ii) court shall provide time to prosecutor/complainant to work out a mutually satisfactory disposition of the case, which may include compensation to the victim (Guidelines for mutually satisfactory disposition are given in section 265-G).
5. If the above conditions are not met by any of the parties, court may proceed with the trial.
6. Once the aforementioned Report under section 265-D is filed, court will dispose of the case (section 265-E) by pronouncing Judgment in open court by (a) awarding compensation to the victim, hearing accused on quantum of punishment, releasing the accused on probation of good conduct etc.
7. Judgment passed under section 265-F shall be final and no appeal (except SLP Article 136 & Writ Petition in Article 226-227 of Constitution of India) can be filed against such judgment.
8. Statement of accused cannot be used except plea bargaining u/s-265-B.

We should also keep in mind that the judgment delivered in a case of plea bargaining is final and no appeals are allowed against such verdicts (Section 265-G). The accused may also be released on probation if he is a first-time offender.

Under the law [Section 265-A of CrPC, 1973], plea bargaining is applicable only in respect of offences for which the maximum punishment is imprisonment of seven years. It does not apply to serious cases wherein the punishment is death or life imprisonment or a term exceeding seven years or offences committed against a woman or a child below the age of 14 years (Section 265-L of CrPC, 1973). If practice of plea bargaining is accepted by the courts, legal fraternity, society and even by the victims, it could reduce the heavy backlog of cases in Indian courts; as it requires the accused to confess to a crime and does away with a lengthy trial, the time spent by courts on dealing with lakhs of cases could be reduced drastically.

Plea bargaining may also be helpful for the accused, who by confessing to a crime at the initial stage of trial for the prison term, may escape with a lesser punishment than what the court may award after a complete trial.

### [Plea Bargaining in Foreign Countries](#)

In the US, plea bargaining is a significant part of the criminal justice system; the vast majority of criminal cases are settled by plea bargaining rather than by a jury trial. But plea bargaining are subject to the approval of the court, and different states and jurisdictions have different rules.

Even our neighboring country Pakistan introduced the plea bargaining in the National Accountability Ordinance, 1999, an anti-corruption law. The accused applies for it accepting his guilt and offers to return the proceeds of corruption as determined by the investigators/prosecutors.

In Italy, the procedure of 'pentito' (literally, he who has repented) was introduced for counter-terrorism purposes, and generalized during the Maxi trial against the mafia in 1986-1987. The procedure has been contested, as the pentito received lighter sentences as long as they supplied information to the magistrates. Many of them have been accused of deliberately misleading the justice system.

### [Conclusion](#)

Though, the introduction of 'plea bargaining in Indian judicial system' has profoundly been criticized by a group of society including intellectual and legal experts with the argument that it will demoralize the public confidence in criminal justice system and will also lead to conviction of innocent, inconsistent penalties form similar crimes and lighter penalties for rich and influenced people. On the other hand, plea bargaining concept has been welcomed by the other groups of society as a revolutionary judicial reform in India, since the entire world including US, Europe and most of the Asian countries have already introduced and implemented the law of plea bargaining and hence India cannot refrain for this law. We hope that the overburdened criminal courts of India will get a relief with the law of 'plea bargaining' and the criminal judicial system will also speed up its disposal of the pending cases.

For further information on any subject raised in this article, please contact:



**Suneet Kr. Tyagi**  
Associate Partner,  
E [st@singhanian.in](mailto:st@singhanian.in)

This article published solely for the interests of clients and associations of Singhanian & Partners. This document is for general guidance only and does not constitute definitive advice. For specific information on recent developments or particular factual situations, the opinion of legal counsel should be sought.

Copyright © 2010 Singhanian & Partners.