

# PLEA BARGAINING

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**New Chapter – XXI-A**  
**(Sections 265A to 265L)**  
**has been added w.e.f. 05<sup>th</sup> July, 2006**

The source of Plea Bargaining can be attributed to United States where about 90% of criminal cases are disposed of on the basis of Plea Bargaining. The concept of plea bargaining is said to be based on the principles of **Nolo Contendere**, which is a Latin word, it means “**I do not wish to contest.**”

The concept of Plea Bargaining is now used in many countries in Europe, Australia and South-East Asian Nations.

## **View of Supreme Court Prior to the Legislation**

In India, the concept of Plea Bargaining was not recognized by courts and it was considered to be against the public policy.

In **Murlidhar Meghraj Loya v. State of Maharashtra; AIR 1976 SC 1929**, the court held that-

“It is idle to speculate on the virtue of negotiated settlements of criminal cases, as obtains in the United States but in our jurisdiction, especially in the area of dangerous economic crimes and food offences, this practice intrudes on society’s interests by opposing society’s decision expressed through predetermined legislative fixation of minimum sentences and by subtly subverting the mandate of the law.”

In this case, the Supreme Court observed that a streamlined procedure should be devised if the state was to administer justice by having recourse to plea bargaining.

In **Kasambhai Abdul Rehman Bhai Sheikh v. State of Gujarat; (1980) 3 SCC 120**, the court held that-

“the practice of Plea Bargaining was unconstitutional, illegal and would tend to encourage corruption, collusion and pollute the pure fount of justice.”

In **Uttar Pradesh v. Chandrika; AIR 2000 SC 164**, the court held that-

“it is settled law that on the basis of plea bargaining Court cannot dispose of the criminal cases. Mere acceptance or admission of the guilt should not be a ground for reduction of sentence. Nor can the accused bargain with the Court that as he is pleading guilty sentence be reduced.”

Keeping in view the huge arrears and inordinate delays in disposal of criminal cases and on the recommendations of the Malimath Committee, a new chapter XXI-A of Plea Bargaining has been added to the Code of Criminal Procedure.

## **Circulars of Hon'ble High Court**

- 1. C.L. No. 31/2007 dated 29.08.2007 for informing Accused:** While issuing summons to an accused, he may be informed of the provisions of Plea Bargaining.
- 2. C.L. No. 49/2007 dated 13.12.2007 for Maximum Use of Plea Bargaining:** Subordinate Courts must make application and maximum use of provisions of Plea Bargaining.

## **Scope of Plea Bargaining:**

The concept of Plea Bargaining has now become a part of criminal jurisprudence. It benefits both the State and the accused under the scheme of Plea Bargaining. If an eligible accused admits his guilt voluntarily, the court may release him on probation or award lesser punishment than prescribed. This way the accused saves time and money both.

## **Application of the Chapter "Plea Bargaining"**

The provisions of Plea Bargaining are not applicable in the following cases:-

- The offence in which the maximum sentence is above 7 years.
- The offence which has been committed against a woman or a child below 14 years of age.
- Where the accused has been previously convicted for the same offence.
- Offence which affects the socio-economic condition of the country.

The Central Government has, by S.O. 1042(E), dated 11<sup>th</sup> July, 2006, determined the offences under the following laws for the time being in force which shall be the offences affecting the socio-economic condition of the country for the purposes of sub-section (1) of section 265A, namely,-

- (i) Dowry Prohibition Act, 1961.
- (ii) The Commission of Sati Prevention Act, 1987.
- (iii) The Indecent Representation of Women (Prohibition) Act, 1986
- (iv) The Immoral Traffic (Prevention) Act, 1956.
- (v) The Protection of Women from Domestic Violence Act, 2005
- (vi) The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992.
- (vii) Provisions of Fruit Products Order, 1955 (issued under the Essential Services Commodities Act, 1955).
- (viii) Provisions of Meat Food Products Orders, 1973) (issued under the Essential Commodities Act, 1955).
- (ix) 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 the Wildlife (Protection) Act, 1972.

- (x) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- (xi) Offences mentioned in the Protection of Civil Rights Act, 1955.
- (xii) Offences listed in sections 23 to 28 of the Juvenile Justice (Care and Protection of Children) Act, 2000.
- (xiii) The Army Act, 1950.
- (xiv) The Air Force Act, 1950.
- (xv) The Navy Act, 1957.
- (xvi) Offences specified in sections 59 to 81 of the Delhi Metro Railway (Operation and Maintenance) Act, 2002.
- (xvii) The Explosives Act, 1884.
- (xviii) Offences specified in sections 11 to 18 of the Cable Television Networks (Regulation) Act, 1995.
- (xix) The Cinematograph Act, 1952.

## **PROCEDURE OF PLEA BARGAINING**

### **A. APPLICATION STAGE**

1. If an accused wishes to plead guilty voluntarily under the aforementioned provisions, he may move an application to the concerned court with the details of his case supported by an affidavit declaring that :

- a) he is presenting the application **voluntarily** and
- b) he understands the nature of sentence and
- c) he has also to declare that he is not a previous convict for the same offence.

2. On receipt of application and affidavit from the accused, the trial court shall issue the notice to public prosecutor or the complainant, as the case may be, and to the accused to appear on the date fixed for the case.

3. The court shall examine the accused in camera and satisfy himself that the accused has given his application voluntarily and he is eligible for presenting such application.

4. If the court finds that the accused has not given his application voluntarily or he has been convicted earlier for the same offence then the application shall be rejected and the case shall be sent back for regular trial.

### **B. Guidelines for Mutually Satisfactory Disposition**

S. 265(C) of the Code of Criminal Procedure provides following procedures for the mutually satisfactory disposition under section 265(B)(4)(a):-

#### **(i) In a case instituted on a Police Report:**

The court shall issue notice to the Public Prosecutor, investigating officer, the accused and the victim of the case to participate in the meeting to work out a satisfactory disposition. Pleader of the accused may be allowed to participate in such a meeting.

#### **(ii) In a case instituted otherwise than a Police Report:**

The notice shall be issued to the accused and the victim of the case to participate in the meeting to work out the satisfactory disposition of the case. Pleader

of the accused or the victim may also be permitted to participate in the meeting on the desire of the victim or the accused.

In both the above cases the court shall ensure that the disposition is worked out voluntarily.

**C. BARGAINING/NEGOTIATION STAGE**

- When the court finds that :
  - the accused has **not been convicted** earlier for the same offence and
  - he is above 18 years of age and
  - he understands the nature of offence and the proposed sentence ,
- Then the court shall provide time to the public prosecutor or the complainant/victim, as the case may be, and the accused to work out a mutually satisfactory disposition of the case which may include giving to the victim by the accused the compensation and other expenses and fix the date of further hearing of the case.
- For purposes of negotiation and preparing a report, the aid and help of advocate may be taken.

**D. EXAMINATION & REPORT**

- After receiving such report, the court shall prepare its own report and take the signature of all the members who have taken part in such negotiation.
- If no such disposition is worked out, the court shall record such observation and proceed further from the stage the application was filed in such case.

**E. JUDGEMENT**

Where the satisfactory disposition of the case has been worked out :

- (i) The **court shall award the compensation** to the victim in accordance with the disposition and after hearing of the parties on the quantum of punishment, release the accused on probation of good conduct or after admonition U/s. 360 Cr.P.C. or deal with the accused under the Probation of Offenders Act, 1958,
- (ii) The court may sentence the accused to half of such minimum punishment provided under the law for the offence committed by the accused, or
- (iii) If minimum sentence is not provided under the Act, the court may sentence the accused to one fourth of the punishment provided or extendable, as the case may be, for such offence.

**FINALITY OF JUDGMENT**

The judgment delivered by the court shall be final and no appeal (except the SLP under Article 136 and W.P. under Article 226 and 227 of the Constitution) shall lie in any court against such judgment.

**NON APPLICATION OF PROVISIONS**

Under section 265 L of the code of criminal Procedure 1973, Nothing in this Chapter shall apply to any Juvenile or Child as defined in sub-clause (k) of section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000).

**PROTECTION AVAILABLE TO ACCUSED**

- Section 12 of the Probation of Offenders Act, 1958 provides that a person found guilty of an offence and dealt with under section 3 or 4 of the said Act, shall not suffer any disqualification attached to the conviction.
- The Government employees who are released on probation under the Probation of offenders Act are saved from the disqualification which is attached to conviction in view of Charan Singh Vs. M.C.D. (Writ Petition (Civil) No. 18725/2005) decided on 05/10/2006 .
- The major cause of concern for the accused in case of plea of guilt is that the same should not be used against him. Section 265-K provides that the statements or facts stated by an accused in an application for plea bargaining file under section 265-B shall not be used for any other purpose except for the purpose of this Chapter.

### **BENEFITS IN RESPECT OF VICTIM**

- a) Quick Justice for Victim
- b) He can easily get the compensation, which he may get on the discretion of Judge/Magistrate.
- c) He can save himself from long drawn Judicial Process.
- d) It is Less time and money consuming.
- e) End of Uncertainty

### **BENEFITS TO ACCUSED**

- a) Provision of lesser Punishment.
- b) If no minimum punishment is provided, then he will get one fourth of the punishment provided.
- c) He may be released on probation or admonition, which may not affect his career.
- d) He may get the gain of period already undergone in custody under section 428 of Cr.P.C
- e) No appeal lies against the judgment in favour of him.
- f) Complete Protection available for admission of accused cannot be used for any other purposes except for Plea-bargaining.
- g) Less time and money consuming.
- h) End of Uncertainty.