



## Plea Bargaining

---

 [drishtias.com/printpdf/plea-bargaining](https://drishtias.com/printpdf/plea-bargaining)

### Why in News

---

Several citizens of various countries, who were accused of violating visa conditions and government guidelines following the **Covid-19 pandemic**, have obtained release from court cases in recent days by **means of plea bargaining**.

### Key Points

---

- **Plea Bargaining:**
  - It refers to a person charged with a criminal offence (**accused**) **negotiating with the prosecution for a lesser punishment** than what is provided in law **by pleading guilty to a less serious offence**.
  - It primarily involves **pretrial negotiations between the accused and the prosecutor**. It may involve **bargaining on the charge or in the quantum of sentence**.

- **Provision in India:**

- **Plead Guilty:** There has always been a provision in the Code of Criminal Procedure (CrPC) for an accused **to plead ‘guilty’ instead of claiming the right to a full trial**, but it is **not the same as plea bargaining**.
- **Plea Bargaining:** Plea bargaining was **introduced in 2006** as part of a set of amendments to the CrPC as **Chapter XXI-A**, containing **Sections 265A to 265L**.
- Cases for which the plea bargaining is allowed are **limited**.
  - Only someone who has been charged for an offence that **does not attract the death sentence, life sentence or a prison term above seven years** can make use of the scheme under Chapter XXI-A. It is **also applicable to private complaints** of which a criminal court has taken cognisance.
  - Other categories of cases that **cannot** be disposed of through plea bargaining are those that involve offences **affecting the “socio-economic conditions”** of the country, or **committed against a woman or a child below the age of 14**.

- **Procedure in India:**

- The plea bargaining process **can be initiated only by the accused**. This provision is **different from the one in other countries like the USA** where the prosecutor plays a key role in bargaining with the suspected offender.
- The accused will **have to apply to the court** for invoking the benefit of bargaining.
- Thereafter, the court may permit the **prosecutor, the investigating officer and the victim (if any) to hold a meeting** for a “satisfactory disposition of the case”.
- Once mutual satisfaction is reached, the court formalises the arrangement by way of a report signed by all the parties and the presiding officer.
  - The accused **may be sentenced to a prison term that is half the minimum period** fixed for the offence. If there is no minimum term prescribed, the sentence should run up to **one-fourth of the maximum sentence stipulated in law**.
  - The outcome may also involve **payment of compensation** and other expenses to the victim by the accused.

- **Arguments in Favour:**

- As per the **Justice Malimath Committee** on reforms of the criminal justice system (formed in 2000):
  - This ensures **speedy trial**, ends uncertainty over the outcome of criminal cases, **saves litigation costs** and relieves the parties of anxiety.
  - It would also have a dramatic **impact on conviction rates**.

It is common in the USA, and has been a successful method of **avoiding protracted and complicated trials**. As a result, conviction rates are significantly high there.
- **Prolonged imprisonment of undertrials** without any progress in the case for years and **overcrowding of prisons** are also other factors that may be cited in support of reducing pendency of cases and decongesting prisons through plea bargaining.
- It may help offenders make a **fresh start in life**.

- **Arguments Against:**

- People who are pushed to plea bargain are those **who do not have the wherewithal to arrange for bail**.
- Even courts are also very particular about the voluntary nature of the exercise, as **poverty, ignorance and prosecution pressure** should not lead to someone pleading guilty of offences that may not have been committed.

The Judiciary in its earlier verdicts (especially before the introduction of the process) had **disapproved of bargaining with offenders**, and pointed out that lenient sentences could be considered as part of the circumstances of the case after a regular trial. **Mere acceptance or admission of the guilt should not be a ground for reduction of sentence**.
- Further, it may **hamper the victim's right to fair trial**, involvement of coercion by the investigating agencies and corruption in the process.
- Some argue that it is **against Article 20 (3)** of the Constitution which provides **immunity to an accused against self-incrimination**.

## Way Forward

---

- To sum up, while plea bargaining is beneficial to the accused and victim of a crime, **enough safeguards** are required to be placed to **stop possible abuse of this process**.
- Plea bargain is a pragmatic vision to **overcome crowded criminal courts** and prisons and a potential way to **improve the litigation efficiency** and rationalize judicial resources, infrastructure and expenses.

**Source: TH**