

# Plea Bargaining

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**In News:** Many members of the Tablighi Jamaat belonging to different countries have obtained release from court cases in recent days by means of plea bargaining.

## What is Plea Bargaining?

- Plea bargaining refers to a person charged with a criminal offence negotiating with the prosecution for a lesser punishment than what is provided in law by pleading guilty to a less serious offence.
- It is common in the US and has been a successful method of avoiding protracted and complicated trials.
- As a result, conviction rates are significantly high there.
- It primarily involves pretrial negotiations between the accused and the prosecutor.
- It may involve bargaining on the charge or in the quantum of sentence.

## When was it introduced in India?

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- It primarily involves pretrial negotiations between the accused and the prosecutor. It may involve bargaining on the charge or in the quantum of sentence.
- In India, the concept was not part of law until 2006. There has always been a provision in the Code of Criminal Procedure for an accused to plead 'guilty'

instead of claiming the right to a full trial, but it is not the same as plea bargaining.

- The Law Commission of India, in its 142nd Report, mooted the idea of “concessional treatment” of those who plead guilty on their own volition, but was careful to underscore that it would not involve any plea bargaining or “haggling” with the prosecution.
- 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.

### **How does it work?**

- Unlike in the U.S. and other countries, where the prosecutor plays a key role the Indian code makes plea bargaining a process that can be initiated only by the accused.
- Further, the accused will have to apply to the court for invoking the benefit of bargaining.

### **In what circumstances is it allowed? How does it work?**

- Unlike in the U.S. and other countries, where the prosecutor plays a key role in bargaining with the suspected offender, the Indian code makes plea bargaining a process that can be initiated only by the accused; further, the accused will have to apply to the court for invoking the benefit of bargaining.
- Cases for which the practice is allowed are limited.
- Only someone who has been charged sheeted 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.

- The applicant should approach the court with a petition and affidavit stating that it is a voluntary preference and that he has understood the nature and extent of punishment provided in law for the offence.
- The court would then issue notice to the prosecutor and the complainant or victim, if any, for a hearing.
- The voluntary nature of the application must be ascertained by the judge in an in-camera hearing at which the other side should not be present.
- Thereafter, the court may permit the prosecutor, the investigating officer and the victim to hold a meeting for a “satisfactory disposition of the case”.
- The outcome may involve payment of compensation and other expenses to the victim by the accused.
- Once mutual satisfaction is reached, the court shall formalise 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.

### **What is the rationale for the scheme? What are its benefits?**

- The Justice Malimath Committee on reforms of the criminal justice system endorsed the various recommendations of the Law Commission with regard to plea bargaining.
- Some of the advantages it culled out from earlier reports are that the practice would ensure a speedy trial, end uncertainty over the outcome of criminal cases, save litigation costs and relieve the parties of anxiety.
- It would also have a dramatic impact on conviction

rates.

- Prolonged incarceration of undertrials without any progress and overcrowding of prisons were also other factors that may be cited in support of reducing pendency of cases and decongesting prisons.
- Moreover, it may help offenders make a fresh start in life.

### **What is Tablighi Jamaat?**

- Literally, it means a society for spreading the faith. It is a conservative Muslim organisation.
- It is a Sunni Islamic missionary movement. The aim is to reach out to ordinary Muslims and revive their faith, particularly in matters of ritual, dress, and personal behaviour.
- It has a significant base in various countries including Bangladesh, Pakistan, United States, Britain, Indonesia, Malaysia, and Singapore.

### **How did the movement begin?**

- Launched by prominent Islamic scholar Maulana Muhammad Ilyas Khandhalaw in 1926 in Mewat (Haryana).
- Its roots lie in the Deobandi version of the Hanafi school of jurisprudence.
- Maulana Ilyaz trained several young men from Deobandi and Saharanpur and sent them to Mewat, where the Tablighi Jamaat established a network of madrasas and mosques.

### **The Tablighi Jamaat is based on six principles:**

- **Kalimah**, an article of faith in which the Tabligh accepts that there is no God but Allah and that Prophet Muhammad is his messenger.
- **Salaat**, or prayer five times daily.
- **Ilm and dhikr**, the knowledge and remembrance of Allah conducted in sessions in which the congregation listens

to preaching by the imam, performs prayers, recites the Quran and reads the Hadith; the congregation also uses these sessions to dine together, thus fostering a sense of community and identity.

- **Ikrām-i-Muslim**, the treatment of fellow Muslims with honour.
- **Ikhlas-i-niyat**, or sincerity of intention.
- **Dawat-o-tabligh**, or proselytisation.