SUMMARY

A society is best known by the laws by which it is governed. In order to know the past and present of societal laws, the path and procedure by which its laws have been enacted are necessary to know. Laws obviously, are made by the law makers. It is the foresightedness of the law makers that advanced countries like America, Canada, England, Australia, etc. have incorporated such laws in their jurisprudence while the under advanced countries have still not even legalized them. Plea Bargaining is one of such concept of criminal jurisprudence. Plea Bargaining has got statutory recognition in developed countries. India has also legislated on this concept 08 years ago.

Plea Bargaining has been a successful concept in America where it is said that 90% of Criminal Cases are disposed off through it. In Canada, Courts are practising it since last many decades. In Australia too, the Courts have recognized Plea Bargaining as legal and Constitutional. However, in India its constitutionality has just gain momentum. Its only after the Amendment Act of 2005 that Plea Bargaining has got statutory recognition

Chapter I, Through this thesis, efforts have been made to study Plea Bargaining in India and its comparative study through the statutory recognitions and Courts behaviour towards it. The Courts approaches have always played effective role in success and failure of a legal concept. The thesis starts with the introduction of topic of Plea Bargaining. Introduction includes its meaning, types, historical background etc. It also examines the concept of Plea Bargaining in brief in U.S. and India alongwith the salient features of Plea Bargaining practiced in both the countries. It has been categorically mentioned that in United States it was in practise even in the year 1969 when defendant pleaded guilty to assassination of Martin Luther King to avoid execution sentence which was accepted by Court and
the defendant finally got 99 years of imprisonment. The **Brady Trilogy**\(^1\) and **Santbello Vs. New York**\(^2\) finally settled that Plea Bargaining is necessary for justice and should be encouraged.

In India, Plea Bargaining has got statutory recognition only by Criminal Law (Amendment) Act, 2005. Before it, this concept was held to be unconstitutional, illegal and violative of Article 21 of the Constitution of India in State of Uttar Pardesh Vs. Chanderika;\(^3\) Kasambhai Abdur Rehmanbhai Sheikh Vs, State of Gujarat;\(^4\) Madan Lal Ran Chandra Daga Vs. State of Madan\(^5\).

However, after the said amendment Act of 2005, the Courts have gradually started practising it. Three main characteristics of Plea Bargaining have been discussed which are - Voluntariness of Plea, involvement of Judge and Status of victim.

The plea of guilt taken by an accused/defendant should be voluntary. The American Supreme Court in Brady Trilogy\(^6\) has discussed in detail the necessity of voluntariness of plea. In America and other Commonwealth countries the judges play least role in pleading guilty. But in India, Chapter XXIA of Cr.P.C. specifically castes a duty upon Court/Judges to arrive at mutually satisfactory disposition, if the Judge considers the guilty plea is voluntarily made. The most important feature of the concept Plea Bargaining is that it considers the victim of an offence as a part of trial and helps him to be compensated.

In Chapter II of the thesis, the researcher has studied plea Bargaining in India. In India, Plea Bargaining finds its roots in 142nd Report of Law Commission of India headed by Mr. Thakkar. The Commission recommended that Plea Bargaining should be introduced

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\(^1\) **Brady v. United States**, 397 U.S. 742 (1970) **McMann v. Richardson**, 397 U.S. 759 (1970);


\(^3\) 2000 Cr.L.J.384.

\(^4\) 1980 PLR 549;

\(^5\) 1968 (3) SCR 34.

\(^6\) supra
in India because it would not only reduce the workload of Courts, but it will also be proved as a deal for the State, accused and victim in which all the three will gain and loose a little. Public money would be saved. It would also consume less time of Courts. With such kinds of recommendations, the Law Commission of India came up for incorporating Plea Bargaining in Criminal Procedure Code which was finally given a positive nod and chapter XXIA was added in Cr.P.C. by way of Criminal Law (Amendment) Act 2005 which incorporates provisions of Plea Bargaining.

Another major segment of the chapter is the law incorporated in Chapter XXI-A of Cr.P.C. This chapter dealing with Section 265-A to 265-L has taken care of the applicability, procedure, examination of accused, mutually satisfactory disposition report prepared by the Court and the judgment pronounced on the basis of the report.

Plea bargaining shall not apply in connection with offences affecting the socio-economic condition of the country or where such an offence has been committed against a woman or a child below the age of 14 years. But there is no bar on a woman taking the benefit of plea bargaining. Offences affecting socio-economic condition of the country can be notified by the Central Government.  

The process of plea bargaining starts with an application from accused. The application is to be filed before the trial court only. The application must be in writing, with brief description of facts of the case supported with an affidavit sworn by the accused affirming the genuineness of application as voluntarily submitted Section 265 A (2) of the Code gives power to notify the offences to the Central Government. The Central Government issued Notification No SO 1042 (II) dated 11-7-2006 enumerating the offences with details of previous conviction of the accused. Upon receipt of application, the trial court has to issue notice to prosecution, either to public prosecutor or to complainant in S. 190 (a) cases and also to the accused intimating the

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7 Under Section 265 A (2) of Cr.P.C.
date of hearing of application.

While appearing before the Court, after receipt of notice from the Court, the examination of the accused shall be done in-camera, avoiding the presence of other parties. It is specifically required so as to ensure the genuineness and authority of application. Before proceeding further the Court has to ensure that the application is made voluntarily by the accused. If the Court feels, after examination of the accused, the application is involuntarily submitted or the accused is not eligible for plea bargaining on the ground of earlier conviction in a case charged with same offence, the Court has to drop the proceedings and proceed further with the trial from the stage, wherein the application is entertained by the Court.

After examination of the accused, if the Court feels the eligibility of the accused for plea bargaining, then proceed further for a settlement, giving time to prosecution and accused to work out a mutually satisfactory disposition of the case. Such a mutually satisfactory disposition includes awarding of compensation and other charges and legal expenses to the victim. There must be a notice to Public Prosecutor, Investigation Officer of the case, victim or defacto complainant and to the accused, in cases instituted upon police report, to work out the solution in a joint meeting of the parties. In cases instituted otherwise than a police report, there shall be notice to the accused and the complainant/victim to participate in the joint meeting. The accused can participate with his lawyer in the meeting. That means the actual presence of the accused is required irrespective of a representation through the lawyer. Apart from that, the Court shall ensure that every action of the parties during the meeting is voluntarily made and without any vitiating or coercive element. That means the presence of the Judicial Officer is necessary, during the process of joint meeting. The Court has to prepare a report, if a mutual satisfactory disposition of the case has been worked out and such report shall be signed by the presiding officer of the Court and the
parties in the Joint Meeting. If no satisfactory disposition is made, the Court has to proceed with the case, by dropping the proceedings in plea bargain and start the proceedings from the stage, wherein the application was entertained.

After completion of proceedings by preparing a report signed by the presiding officer of the Court and parties in the meeting, the Court has to hear the parties on the quantum of the punishment or accused’s entitlement of release on probation of good conduct or after admonition. Court can either release the accused on probation under the provisions of S. 360 of the Code or under the Probation of Offenders Act, 1958 or under any other legal provisions in force, or punish the accused by passing the sentence.

While punishing the accused, the Court, at its discretion, can pass sentence of minimum punishment, if the law provides such minimum punishment for the offences committed by the accused or if such minimum punishment is not provided, can pass a sentence of one fourth of the punishment provided for such offence. Apart from this, in cases of release or punishment, if a report is prepared under S 265 D, report on mutually satisfactory disposition contains provision of granting the compensation to the victim. The Court also has to pass directions to pay such compensation to the victim. The Court has to pronounce the Judgment, in terms of its findings under S. 265 D, either releasing the accused or punishing the accused. The Judgment passed is final and no appeal will lie against such Judgment under Chapter XXIX of the Code. However such Judgments are subject to challenge under Articles 226 and 227 of the Constitution before the High Court by filing Writ Petition and Article 136 of the Constitution before the Supreme Court by filing Special Leave Petition. A court, while proceeding with an application of plea bargaining has all the powers invested with a Court, under the provisions of the Criminal

8 Under Section 265 D of Cr.P.C.
9 Under Section 265 F of Cr.P.C.
Procedure Code in respect of granting and rejecting bail, trial of offences and other general matters relating to disposal of case, particularly under provisions in Chapter XXIV of the Code. This procedure gives a chance to the victim to negotiate for a settlement. The status of the victim is to be considered by the prosecutor. In usual trial, only the state prosecutor has the right to plead on behalf of the victim. This relieves the victim with a considerate amount of compensation.

Chapter III of the thesis deals with the Courts and the Plea Bargaining. In India, the concept of Plea bargaining is not an alien one but still the practical utility of this concept is unknown to the Court. The Courts at lower level i.e. the Judicial Magistrates and the Metropolitan Magistrates are not keenly interested to follow this concept for many reasons though the same being legal and constitutionally valid can be a good instrument to lessen the burden of cases in Courts.

After the Amendment Act, 2005 and insertion of Chapter XXI-A in the Cr.P.C the Courts have taken positive note of the concept.

Earlier, the Courts were reluctant to adopt this method in criminal cases but now the Courts are free to adopt it as an instrument to handle the cases in a faster move. On the basis of this amendment in the Criminal Procedure Code, the judicial approach has been read by dividing the time into pre 2005 and post 2005 eras.

**Pre 2005 Era:** In *Kasambhai Abdur Rehmanbhai Sheikh etc. v. State of Gujarat*\(^{10}\), it was observed that conviction based on the plea of guilty entered by the appellant as a result of plea bargaining cannot be sustained. It was held to be unreasonable, unfair and unjust and would be **violative of the new activist dimension of Article 21 of the Constitution** as unfolded in Meneka Gandhi’s case. In *State of U.P. v. Chandrika*\(^{11}\) the court discussed

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\(^{10}\) 1980 PLR 549

\(^{11}\) 2000 CrLJ 384
the constitutionality of Plea Bargaining in light of Article 21 of the Constitution of India and observed that the concept of plea bargaining is not recognized and is against public policy under our criminal justice system. In *Kachhia Patel Shantilal Koderlal v. State of Gujarat* the Supreme court ruled that the practice of plea bargaining is unconstitutional, illegal and would tend to encourage corruption, collusion and pollute the justice system because it might induce an innocent accused to plead guilty and to suffer a lighter and in consequential punishment instead of going through a long and arduous criminal trial which is not only expensive and time consuming but also uncertain and unpredictable in its result. Similarly, in *Thippaswamy V. State of Karnataka*, Court observed that it would be violative of Art. 21 of the Constitution to induce or lead an accused to plead guilty under a promise or assurance that he would be let off lightly and then in appeal or revision, to enhance the sentence. Similarly, the High Courts have also followed the Supreme Court.

**Post 2005 Era:** However, the scene of the courts have changed after the Amendment Act has come into force. Now the courts have started accepting Plea Bargaining as legal and are adopting it gradually. Cases of *Guerrero Lugo Elvia Grissel vs The State Of Maharashtra*; *State vs Nitin*, V.Subramanian vs The State, *Vijay Moses Das And Anr vs C.B.I*, *State Of Uttaranchal vs Mohd. Sayed*, *Ranbir Singh v. State (Delhi)*, *Lokesh @ Luvkush Versus State*, *Manjinder Singh and others Vs. State of Punjab*, Gurdev
Singh and others Vs. State of Punjab\textsuperscript{22}, Ajay Rana and others Vs. State of Punjab\textsuperscript{23}, Sher Singh Vs. State of Haryana\textsuperscript{24} and State of Punjab Vs. Harbans Lal\textsuperscript{25} are the recent examples which have been discussed.

Chapter IV of the thesis deals with the comparative study of Plea Bargaining. In U.S. and Canada Plea Bargaining includes Resolution discussion embrace several practices, includes charge discussions, procedural discussions, sentence discussions, agreements as to the facts of the offence and the narrowing of issues in order to expedite the trial. Although they may sometimes involve a judge, these private discussions occur primarily between the prosecutor and the accused and his lawyer.

The accused may plead guilty during trial or without trial. The Researcher has studied the doctrine of Nolo Contendere as prevailing in U.S. In U.S., in some jurisdictions the plea of Nolo Contendere or ‘no contest’ is not an ‘admission of guilt’, but rather a ‘willingness to accept, declaration of guilt’, rather than to go trial. It is treated as a guilty plea to serve one purpose not served by a guilty plea in a subsequent civil suit possibly arising out of same event. Guilty plea is admissible as evidence against the defendant but plea of Nolo Contendere is not. It may be stated that the expression defendant is used in India in the civil dispute against whom civil action is taken whereas, in U.S. this expression is used in criminal trial also and thus the defendant is an accused.

A judgment of conviction entered on a plea of Nolo Contendere may be used by the accused on the basis of plea of double jeopardy since conviction and punishment, after the nolo plea operate for the protection of the accused against subsequent proceedings, is as full as a formal conviction or acquittal after a plea of guilty or not guilty.

\textsuperscript{22} Criminal M. No. 31266 of 2011
\textsuperscript{23} Criminal M. No. 32686 of 2011
\textsuperscript{24} RSA No. 186 of 1986
\textsuperscript{25} 1983 CrLJ 13
This doctrine is also expressed as an implied confession; a quasi confession of a guilt; a plea of guilty; substantially though not technically a conditional plea of guilty, a substitute for plea of guilty; a formal declaration that the accused will not contend, a query directed to the Court to decide on plea guilt; a promise between the government and the accused, and a government agreement on the part of the accused that the charge of the accused must be considered as true for the purpose of particular case.

The accused cannot, by qualifying the plea of Nolo Contendere curtail the Courts discretionary power. The plea of Nolo Contendere is not recognized in many circumstances. In some jurisdiction in U.S. the main ground assigned for refusing to recognize this plea is if either there is no provision for the plea in the criminal law statute of the State or, therefore, by implication it is not available to the accused, or that the plea has been outlawed by express statutory provisions. True is the fact that in some jurisdictions, in some of the States, either expressly or by implication, such plea is recognized as a part of their legal system.

In U.S. in celebrated case of Hudson Vs. United States\(^2\), it has been held that in the absence of statute to the contrary, the Court cannot accept a plea of Nolo Contendere for capital offence. It is also interesting to mention that in some Courts, this plea is not accepted where imprisonment is mandatory on conviction of the offence charged. Such plea has been accepted in prosecutions for crimes against the persons, property, public peace, public decency or good morals, public justice and in prosecutions for other offences and statutory violations.

It is well known that arraignment is the event occurring at the general trial Court level that formally initiates the trial process. As such, it is the first official occasion at which the accused is given an opportunity to answer the accusation. Hence, at this stage, accused is

\(^2\) 363 U.S. 807.
required to enter a plea. Arraignment is held in open court and generally begins with a formal reading of the indictment or charge by which the accused is again formally advised on the charges against him. In U.S., at this stage, he is again advised of his constitutional guaranteed rights of counsel and protection against self-incrimination. Accused is, therefore, required to answer the charge by entering a plea at this juncture. No doubt, the plea may take one of the several forms.

In U.S. the prosecution keep the following fundamental consideration in mind—strength of the case, the likelihood of an appealable issue, relative trial skills of the defense counsel and the prosecutor, Budgetary and resource constraints and the ability of the defendant to assist in the indictment of the higher-level offenders.


Victorian plea bargaining practices involve a Crown prosecutor or solicitor from the Office of Public Prosecutions (OPP) engaging in an informal discussion with defence counsel on the defendant’s likely plea, the possibility of negotiating the charge(s) and/or case facts, and the Crown’s possible sentencing submission. Plea bargaining can involve face-to-face meetings, phone calls, emails or facsimiles, and can occur at any time prior to the trial’s conclusion. The primary aim of plea bargaining is to arrive at a mutually acceptable agreement between the Crown and defence counsel, according to which the defendant pleads guilty. At the very minimum, discussions aim to identify any issues not in dispute, thus reducing the length of subsequent criminal proceedings and limiting the likelihood of later

27 363 U.S. 807
delays—for example, through trial adjournments. Depending on the jurisdiction, this practice is also labelled ‘charge bargaining’, ‘plea negotiations’, ‘pre-trial discussions’ and ‘plea agreements’.

In Victoria, there are no official statistics kept detailing when or why plea bargaining occurs, or how often discussions result in guilty pleas. Importantly, plea bargaining is not recognised in or controlled in any Victorian statute. Thus, not only is the process itself not monitored in any statistical or formal sense, but there is also no legal acknowledgement of plea bargaining in Victoria. Instead, it falls under the Crown’s discretionary powers, which means state solely rely upon trusting those who engage in discussions to ensure the process, and resulting agreements, uphold the same basic principles and rules of procedure that apply to more transparent proceedings, like the trial. This is particularly concerning given that agreements can alter the seriousness of the conviction and sentence imposed on defendants, and can remove the opportunity for the victim to provide testimony or for the Crown to prove its case within the confines of the contested trial. As it currently operates, plea bargaining undermines the established principle of public and open justice, whereby justice is seen to be done and the public have access to criminal proceedings except in rare cases under exceptional circumstances. In addition, because of this non-transparent way of providing justice, questions can emerge over the Crown’s motivations for plea bargaining, particularly given the potential for efficiency gains to be prioritised over victim, defendant and public interests. What is quite significant about this aberration from the principle of open and public justice is the lack of criminological and legal research examining plea bargaining’s non-transparency, its potential impact on the relevant parties to proceedings, and on the administration of justice. In particular, there is a prominent gap in criminology scholarship on the

28 Freiberg & Seifman, 2001; Mack & Roach Anleu, 1995; Samuels, 2002
29 Ashworth, 1994
potential justifications for whether plea bargaining should, or how it could, be formalised.\textsuperscript{30}

The absence of a Victorian-based analysis of plea bargaining’s informality and of the lack of accountability surrounding the process was acutely evident following the Victorian case, \textit{R v GAS}\textsuperscript{31}; \textit{R v SJK}, or more specifically the appeal made to the Australian High Court. The Australian High Court’s ruling in this appeal was the first to provide any official recognition of plea bargaining. The case itself involved two offenders who sexually and physically assaulted a victim, which ultimately resulted in her death. Due to forensic difficulties in identifying who was the primary offender, the Crown entered into discussions with both defendants. An agreement was subsequently made whereby both the offender pleaded guilty to manslaughter by an unlawful and dangerous act, on the provision that the Crown’s sentencing submission would state that they should be sentenced as aiders and abettors, meaning they should receive a lesser sentence than if they were charged as a principal offender.

\textit{There are two Australian projects which motivated the analysis of Plea Bargaining in Victoria. The first conducted by Mack and Roach Anleu (1995) examined Australian guilty plea processes and offered the analysis of Plea Bargaining in national context. The second conducted in Victoria by the Victorian Sentencing Advisory Counsel (VSAC) (2007) reported on a specified sentence discounts and sentence indications and provided an extensive examination of sentencing reform and guilty plea issues in Victoria. These two studies are dealt in detail in the chapter.}

\textit{Chapter Five of the thesis deals with controls on plea-bargaining. Legislative and judicial controls are the effective controls out of which legislative controls have been discussed in detail. The judicial control in India has been detailed in chapter three of the thesis and judicial}

\textsuperscript{30} (2002) VSC 94
\textsuperscript{31} (2004) 206 ALR116
control in other countries have been discussed at relevant places in chapter four of the thesis.

Section 24(c) of the Public Prosecutions Act 1994 (Vic) is one of the most important piece of legislation in Australia. It states that in the performance of his or her functions the Director must have regard to-

(a) Considerations of justice and fairness; and

(b) The need to conduct prosecutions in an effective, economic and efficient manner; and

(c) The need to ensure that the prosecutorial system gives appropriate consideration to the concerns of the victims of crime.

Another law is section 9 of the Victims’ Charter Act 2006 (Vic) which imposes statutory requirements on prosecutorial conduct following discussions, by requiring that prosecutors keep victims informed of any alterations to charges.

These two pieces of legislation are the only statutory controls, however limited, of prosecutorial discretion when plea bargaining in Victoria.

The Australian High Court established in R v Maxwell\textsuperscript{32} that a judge cannot be forced to sentence an offender on a factual basis and the judge cannot consciously accept. The trial judge has a residual discretion to reject the plea. It is impossible to define the circumstances in which it is appropriate for such discretion to be exercised more closely than by saying it is to be exercised where the interests of justice so require. This decision was upheld in the Victorian Supreme Court of Criminal Appeal in R v Duong\textsuperscript{33}.

In United States, the Federal Rules of Criminal procedure and in specific rule 11(e) and the United States Sentencing Guidelines are followed in federal cases of plea bargaining. Rule 11 reads as under-
“(a) Entering a Plea.

(1) *In General.* A defendant may plead not guilty, guilty, or (with the court’s consent) nolo contendere.

(2) *Conditional Plea.* With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.

(3) *Nolo Contendere Plea.* Before accepting a plea of nolo contendere, the court must consider the parties’ views and the public interest in the effective administration of justice.

(4) *Failure to Enter a Plea.* If a defendant refuses to enter a plea or if a defendant organization fails to appear, the court must enter a plea of not guilty.

(b) Considering and Accepting a Guilty or Nolo Contendere Plea.

(1) *Advising and Questioning the Defendant.* Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

(A) the government’s right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath;

(B) the right to plead not guilty, or having already so pleaded, to persist in that plea;

(C) the right to a jury trial;

(D) the right to be represented by counsel—and if necessary have the court appoint counsel—at trial and at every other stage of the proceeding;

(E) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to
testify and present evidence, and to compel the attendance of witnesses;

(F) the defendant's waiver of these trial rights if the court accepts a plea of guilty or nolo contendere;

(G) the nature of each charge to which the defendant is pleading;

(H) any maximum possible penalty, including imprisonment, fine, and term of supervised release;

(I) any mandatory minimum penalty;

(J) any applicable forfeiture;

(K) the court's authority to order restitution;

(L) the court's obligation to impose a special assessment;

(M) in determining a sentence, the court's obligation to calculate the applicable sentencing-guideline range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. §3553(a); and

(N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence.

(2) **Ensuring That a Plea Is Voluntary.** Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).

(3) **Determining the Factual Basis for a Plea.** Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.

(c) **Plea Agreement Procedure.**

(1) **In General.** An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will:
(A) not bring, or will move to dismiss, other charges;
(B) recommend, or agree not to oppose the defendant’s request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court); or
(C) agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).

(2) Disclosing a Plea Agreement. The parties must disclose the plea agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the plea agreement in camera.

(3) Judicial Consideration of a Plea Agreement.
(A) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the court may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report.
(B) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(B), the court must advise the defendant that the defendant has no right to withdraw the plea if the court does not follow the recommendation or request.

(4) Accepting a Plea Agreement. If the court accepts the plea agreement, it must inform the defendant that to the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the agreed disposition will be included in the judgment.

(5) Rejecting a Plea Agreement. If the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the court must do the following on the record and in open court (or, for good cause, in camera):
(A) inform the parties that the court rejects the plea agreement;
(B) advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and
(C) advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

(d) Withdrawing a Guilty or Nolo Contendere Plea. A defendant may withdraw a plea of guilty or nolo contendere:
(1) before the court accepts the plea, for any reason or no reason; or
(2) after the court accepts the plea, but before it imposes sentence if:
   (A) the court rejects a plea agreement under 11(c)(5); or
   (B) the defendant can show a fair and just reason for requesting the withdrawal.

(e) Finality of a Guilty or Nolo Contendere Plea. After the court imposes sentence, the defendant may not withdraw a plea of guilty or nolo contendere, and the plea may be set aside only on direct appeal or collateral attack.

(f) Admissibility or Inadmissibility of a Plea, Plea Discussions, and Related Statements. The admissibility or inadmissibility of a plea, a plea discussion, and any related statement is governed by Federal Rule of Evidence 410.

(g) Recording the Proceedings. The proceedings during which the defendant enters a plea must be recorded by a court reporter or by a suitable recording device. If there is a guilty plea or a nolo contendere plea, the record must include the inquiries and advice to the defendant required under Rule 11(b) and (c).

(h) Harmless Error. A variance from the requirements of this rule is harmless error if it does not affect substantial rights.”

In Chapter six, Researcher has concluded that plea Bargaining
has been introduced in the Criminal procedure Code, but whether the same is being followed as a part of procedural law or the Courts are still reluctant to follow the same. To plead, actually, its not only the judicial officers whose efforts are required to bring this concept in regular Courts but the State agency through the public Prosecutors is also required to put same efforts in making this concept a successful procedure.

The Researcher conducted a survey at Kurukshetra Courts. The Researcher prepared two forms which were filled up the Court agencies. Form no. 1 was meant to be filled up the Public Prosecutors and Assistant Public Prosecutors and Form No. 2 was to be filled by the Judges. The same were filled up and after analysing the views and opinions of the court agencies the researcher has concluded that plea bargaining will be a successful procedure to be adopted by the courts.

In Chapter VII the whole thesis has been concluded and the relevant suggestions which the researcher has thought fit to be made are given.

Hence, it can be said that 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. It is hoped 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.