PREFACE

Since Criminal Law (Amendment) Act, 2005 has been passed introducing chapter XXIA in Code of Criminal Procedure, 1973, Plea Bargaining has been made a part of our criminal jurisprudence. The Code of Criminal Procedure Code (Amendment) Act 2005 that received the assent of the President on 23rd June 2005 was kept in abeyance by the Central Government. Plea Bargaining was one of the major amendments done by the Amendment Act. Nevertheless, Plea Bargaining was enforced on 5 July 2006 by the Central Government Order.

A Plea bargain is an agreement in a criminal case whereby the prosecutor offers the accused an opportunity to plead guilty, usually to a lesser charge or to the original criminal charge with a recommendation of a lighter than the maximum sentence. A plea bargain gives accused an opportunity to avoid sitting through a trial risking conviction on the original more serious charge. For example, an accused charged with House Trespass, the conviction of which would require imprisonment of one year, may be offered the opportunity to plead guilty to Criminal Tresspass which may carry 3 months imprisonment.

Plea bargaining is a significant part of the criminal justice system in the United States. The vast majority of
criminal cases in the United States are settled by plea bargain rather than by a jury trial. Plea bargains are subject to the approval of the court, and different countries and jurisdictions have different rules. The Federal Sentencing Guidelines are followed in federal cases and have been created to ensure a standard of uniformity in all cases decided in the federal courts. In USA for a century, where over 95% of Criminal cases never go to the trial because of bargaining struck between the prosecution and accused’s attorney. In USA plea bargaining is a norm rather than an exception.

Following the same pattern to reduce the delay in disposing criminal cases, the 142nd Report of the Law Commission first recommended the introduction of ‘Plea Bargaining’ as an alternative method to deal with huge arrears of criminal cases. Then in 154th Report of Law Commission it was strongly recommended which finally found a support in Malimath Committee Report. In its report, the Malimath Committee recommended that a system of plea bargaining be introduced in the Indian Criminal Justice System to facilitate the earlier disposal of criminal cases and to reduce the burden of the courts. To strengthen its case, the Malimath Committee also pointed out the success of plea bargaining system in USA. Accordingly, the draft Criminal law (Amendment) Bill, 2003
was introduced in the Parliament. The statement of objects and reasons, inter alia, mentions that-

“The disposal of criminal trials in the courts takes considerable time and that in many cases trial do not commence for as long as 3 to 5 years after the accused was remitted to judicial custody... though not recognized by the criminal jurisprudence, it is seen as an alternative method to deal with the huge arrears of criminal cases.”

The bill attracted enormous public debate. Critics said it is not recognized and against public policy under our criminal justice system. The Supreme Court has also time and again blasted the concept of plea bargaining saying that negotiation in criminal cases is not permissible. In State of Uttar Pradesh v. Chandrika (2000) CRLJ 384 the Apex Court held that is settled law that on the basis of plea bargaining court cannot dispose of the criminal cases. The court has to decide it on merits. If the accused confesses its guilt, appropriate sentence is required to be implemented. The accused can't bargain with the court that as he is pleading guilty the sentence be reduced. Despite this huge hue and cry, the government found it acceptable and finally sections 265-A TO 265-L were added in the Code of Criminal Procedure so as to provide for raising the plea bargaining in certain types of criminal cases. The US and
Canada based theory of Plea Bargain has been discussed with its pros and cons. Similarly, the Indian approach is also discussed in detail and has been compared to the US, Canada and Victorian Laws.

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ABBREVIATIONS

A.I.R.  All India Reporter
A.L.  Appeal Cases
A.L.J.  Allahabad law Journal
A.P.  Andhra Pradesh
A.S.I.L.  Annual Survey of Indian Law
ABA  American Bar Association
Ack  Acknowledgement
ADJ.  Adjudication
All.  Allahabad
Amt.  Amount
Art.  Article
Ass.  Assam
Bom.  Bombay
C.A.D.  Constituent Assembly Debates
C.J.  Chief Justice
C.W.N.  Calcutta Weekly Lotes
CAO  Crown Attorneys Office
Chap.  Chapter
Col.  Column
Cr.L.J.  Criminal law Journal
Cr.P.C.  Criminal Procedure Code
D.L.T.  Delhi Law Times
Divn.  Division
DPP  Director of Public Prosecution
Dt.  Date
E.R.  English Reports
Ed. or Edn.  Edition
Ed.  Editor
Eg.  Example Gratia/for example
Encl.  Enclosure
Ency.  Encyclopedia
etc.  et. Cetera (and the rest)/etcetera
FCRP  Federal Rules of Criminal Procedure
Fig.  Figure
Fwd.  Forward
G.L.R.  Gujrat Law Report
Govt./G.O.I.  Government of India
Gzt.  Gazette
H.L.J.  Harvard Law Journal
H.L.R.  Harvard Law Review
H.P.  Himachal Pardesh
H.R.C.E.  Hindu Religions Charitable Endowment Act
HC  High Court
I.L.R.  Indian Law Report
ibid  same reference
illus  illustrated
ILR  Indian Law Review
J  Judge
J.  Justice
J.B.C.I.  Journal of the Bar Council of India
J.C.P.S.  Journal of Constitutional and Parliamentary Studies
J.I.L.I.  Journal of Indian Law Institute Justices
JJ  Justices
K.B.  King Bench
Ker.  Kerala
L.J.  Lord's Journal
v. Versus
Vide See
VLCR Victorian Law Reforms Commissioner
Vol. Volume
w.e.f. With effect from
W.R. Weekly Reporter