CHAPTER I
INTRODUCTION

Plea Bargaining is as old concept as the human history. In India it is a new concept and is at the stage of infancy but in other countries it is practised. Plea bargaining is something more stringent than the provision provided in Criminal Procedure Code and is less stringent than the court is required to compound the cases. When a case is filed against an accused in the court of law, the accused can go to the court and say that he admits his guilt. This has further implications in different cases and in different circumstances. The court may allow him to plead so and reduce his sentence or frame a charge for an offence less serious than the actually committed offence or may allow him to go only by paying some fine. It all depends upon the facts and circumstances of each case and the antecedents of the accused.

1.1 Scope and Importance of The Thesis

This thesis examines plea bargaining process and argues that significant benefits flow from formalisation, in the form of statutory recognition and control. It identifies and analyses the different approaches of the states concerning plea bargaining and their justifications driving the formalisation of plea bargaining. It also aims to highlight the adversarial legal culture, the actions of counsel and the judiciary and the pre-trial process. It focuses on pre-trial hearings, facilitate a direct and engaged discussion of the policy implications. The intention of this
thesis is to stimulate debate about the scope of plea bargaining in India and its comparative study. The thesis object is to analyse whether the Indian criminal jurisprudence is adaptable to the concept of plea bargaining as the other states are so. During this analysis, concrete observations regarding the facts of plea bargaining being voluntary and role of the court and the prosecution are made. This thesis also aims to highlight the pros and cons of the Indian environment qua the concept and the successful environment of the concept in different states. This thesis responds to a significant gap in the literature and in legal policy, and offers a vital contribution to criminology with a detailed analysis of a highly under-examined area in the international context. Importantly, while this thesis examines plea bargaining in the comparative context, increasing movements towards court’s efficiency and transparency across common law systems, American system and the Indian system are dealt with. Furthermore, this thesis will inform broader discussions about plea bargaining, prosecutorial discretion, conflicts in adversarial traditions and efficiency-driven reform in a global context.

1.2 Object of Study:

The study aims at finding whether Plea Bargaining could be able to achieve its real purpose in Indian circumstances and legal set up or in other words, whether Plea Bargaining is suitable of Indian conditions in comparison to foreign countries. How Plea Bargaining can help the overburdened courts in India. Albeit the Criminal
Procedure Code (Amendment) Act, 2005, has introduced the concept of Plea Bargaining in Indian Courts. The success of Plea Bargaining in other commonwealth countries of the world has attracted the Indian Scholars, jurists and legislators to introduce this concept in India too. In such states, the disadvantages do not override the advantages, but in Indian social and legal set-up, to what extent Plea Bargaining will be able to provide its beneficial character. Nevertheless, the concept is not now to the Indian Courts, as the concept had been discussed 51 years back by the Apex Court of India, but what would be the effect of the introducing this concept a statutory law and giving it a legal force and sanction. Judiciary has been regularly defining the limits and scope of entertaining the concept, but after getting a statutory recognition how far it will be able to provide justice to the parties. Until it was codified, the Court were exercising their discretion equitably and justifiably, but now when the Courts have also been limited to the statutes, will the Courts be able to provide justice to the parties or it will be just a satisfaction of the Court and parties in black and white only.

Invariably, the object of the study is:-

1. To know whether the law of Plea Bargaining will survive in Indian socio-legal set up.
2. To review how far it will be able to achieve its object in Indian Courts.
3. To know whether introduction of Plea Bargaining provide justice to the party or coerce him to accept the charges.
4. To analyze whether Plea Bargaining affects the administration of justice adversely i.e. if accused is innocent or the prosecution has meagre chances of convicting the accused, in such situation Plea Bargaining will be harmful for justice.

5. To know the extent upto which Plea Bargaining by one accused will affect the other co-accused.

6. To know whether by introducing Plea Bargaining Courts would be relieved from overburden of cases or it will lead to another huge blog of cases of misuse of Plea Bargaining by use of coercion of fraud.

7. To conclude whether the Courts would be able to provide justice to the parties when its powers and discretion has been codified and thus limited to the extent or the position was better before the Amendment Act.

1.3 Thesis Structure: Chapters Overview

This thesis is divided into seven chapters and contains a methodology overview, literature review, and introductory and concluding chapters. The introductory chapter explores the motivations, purpose and scope of this research and provides an outline of the thesis structure. The introduction is immediately followed by the methodological overview, outlining the research design and approach.

Chapter One: Introduction examines a range of literature on plea bargaining issues. In particular India, United States and Australia. After defining plea bargaining, the review examines three key issues that emerge from the literature: (1) Plea of Voluntariness (2) Role of Judge and (3) Status of
Victim. The review incorporates literature discussing Victorian, US, Indian and International criminal jurisdictions, where plea bargaining or pre-trial reform has occurred.

**Chapter Two:** Plea Bargaining in India discusses the scope of the concept in India. The adaptability to the concept and the pros and the cons of the plea Bargaining formalisation in India. It further discuss the need of Plea Bargaining in India. The reason given by different proponents to incorporate the concept and why the Law Commission in its 142nd report stressed to incorporate this concept in criminal law. It also discusses in detail chapter XXIA of Criminal Procedure Code which has been added by way of Amendment Act 2005 and introduced Plea Bargaining in India.

**Chapter Three:** Indian judiciary and Plea Bargaining discusses in detail the judicial approach towards Plea Bargaining. The Courts were reluctant in adopting it and infact had held it unconstitutional before 2005. After 2005, the Amendment Act in Criminal Procedure Code has changed the overlook of the Courts towards the concept. Now the Courts are dealing with it positively. In order to study it in a better way, this Chapter is divided into two parts-Pre 2005 Amendment Act Period and Post 2005 Amendment Act Period. The Rationals of Supreme Court and High Courts are given in detail to reject and accept the concept.

**Chapter Four:** A Comparative Study of Plea Bargaining details the main justifications driving the formalisation of
plea bargaining in Canada Victoria, United States, Georgia, England, Scotland and other countries. This chapter explores the existing prosecutorial decision-making process and examines reasons for and against the formalisation of plea bargaining, with a particular focus on the principle of public and open justice.

**Chapter Five:** Controls-Legislative and Judicial extends upon the discussion of the enactments in the countries and the implications of the codified law in comparison to the uncodified law. Further, it focuses on the reviews of the courts in adopting the voluntariness standards and the role of the judges in India and the role of the prosecutors in foreign countries and India.

**Chapter Six:** Local survey on Plea-bargaining gives a brief overview of the views and options of the Judiciary and Prosecution. The Researcher has conducted a local survey in Courts at Kurukshetra and has given the brief analysis of the data collected.

**Chapter Seven:** Conclusions and Suggestions indicates the whole summary of the thesis and the suggestions by the researcher which the researcher has explored during the research.

### 1.4 Conceptual Framework & Research Design

In attempting to understand a social or political process such as justice, the process itself must be learned in intricate detail. The initial task then, when studying any aspect of court operations, is to penetrate this haze surrounding the bureaucracy and determine the essentials of the process. Two immediate problems arise in this
connection. The first relates to the setting of plea bargaining. Unlike appellate court hearings or trials no formally designated area is set aside for plea bargaining, nor is any formal record kept; Plea bargaining can take place in innumerable locations, at no specified time. Patterns of plea bargaining vary significantly across courts and actors. Compounding this problem is the oft-noted willingness of court actors to discuss these plea bargaining practices with outsiders. Thus it is likely that the highways and byways of plea bargaining remain untravelled by the researcher.¹

This empirical analysis employ the examination of primary source documents to scrutinise plea bargaining’s potential formalisation in India and the other countries. This research draws upon legislation, law and informal policies regulating legal conduct in criminal proceedings. This research does not embody a specific ideology or perspective, but recognises the main ideologies that govern diverse perceptions of law reform, with a particular focus on understandings of crime control and due process. It thus provides a contextualised understanding of plea bargaining’s potential formalisation through multifaceted perspectives and considerations.

1.5 **Comparative Study and Research : A Classification**

This method of research makes effort to examine different legal systems and tries to ascertain which system or set of rules are ideal for a given society. The process of comparing helps us to determine the suitability of particular researcher to determine the legal system of which countries

¹ (Heumann, 1978, p. 12)
shall be chosen for the purpose comparison. Apart from this, he also faces the uphill task of selecting relevant literature and materials as well as relevant portions thereof as each and every portion cannot be relevant for a researcher.

So far as the countries which may be chosen for the purpose of comparison, it must be kept in mind that most of our present day laws have been borrowed from the English Law and we are well acquainted with that system. Therefore, we can have recourse, very often, to the English Law. We can also have recourse to the law of the countries belonging to the British common wealth e.g. Australia, Canada, Newzeland etc. It is important that in matters of labour laws and Constitutional laws, we rely heavily on British Australian and Canadian laws. Recourse to the law of United States of America and continental countries e.g. France, Germany, Switzerland and Sweden can also be had. Here again it would not be out of context to refer that as regards interpretation of constitutional and administrative laws, we rely heavily on U.S., French and British practice. The material which should be accepted for comparison should be generally the codified law. But if there is no codified law, on a particular subject, the authoritative works of eminent persons, papers and articles may also be examined for the purposes of comparison. Efforts should always be made to have primary source for comparison. But if primary sources are not available only then recourse may be had to the secondary and teritary sources. But in case of
checked and re-checked. Two or more primary, secondary and tertiary sources may be checked with each other.

Difficulty however, is faced when the primary, secondary or tertiary sources of law of other countries are in the language not understood by the researcher. He can obtain and make use of only translation has not been the work of a specialist, then it cannot be relied upon as a suitable material for comparison.

If these handicaps are properly handled, this method of research is very useful for suggesting reform in law. However, in the name of reform, foreign law system should not be imported in this country blindly. Only such reforms are suggested as suits to the Indian Ethos and which is necessary for the progress and development of the country.

1.6 Meaning of Plea Bargaining

While searching for dictionary meaning one can get meanings only after connecting the two words together, that is, plea, meaning to bring forward one’s excuse, justification, defense, and bargaining, which means to arrive at agreement of favourable purchase. According to the Wikipedia Encyclopedia, a plea bargain (also plea agreement, plea deal or copping plea) is an agreement in a criminal case in which a prosecutor and a defendant arrange to settle the case against the defendant. The defendant agrees to plead guilty or not contest in exchange for some agreement from the prosecutor as to the punishment. A plea bargain can also include the prosecutor agreeing to charge a lesser crime (also called reducing the charges) and dismissing some of the charges against the
defendant, In most cases, a plea bargain is used to reduce jail sentence time or fitness associated to the crime being charged with.

A ‘plea bargain’ is a practice whereby the accused forgoes his right to plead not guilty and demand a full trial and instead uses a right to bargain for a benefit. In other words, plea bargaining means the accused’s plea of guilty has been bargained for and some consideration has been received for it. According to the **Advanced Law Lexicon**, plea bargain is a negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offence or to one of multiple charges in exchange for some concession by the prosecutor, usually a more lenient sentence or a dismissal of the other charges. It is also termed as plea agreement or negotiated plea.

According to **Nolo's Plain English Law Dictionary**, Plea Bargaining is a negotiation between the defense, prosecution and the judge that settles a criminal case short of trial. The defendant pleads guilty to a lesser crime or fewer charges than originally charged in exchange for a guaranteed sentence that is shorter than what the defendant would face if convicted at trial. The prosecution gets the certainty of a conviction and a known sentence and defendant avoids the risk of a higher sentence and the judge gets to move onto the other cases.

According to **Oxford Dictionary**: Plea Bargaining is an arrangement between prosecution and defendant whereby the defendant pleads guilty to a lesser charge in
exchange for a more lenient sentence or an arrangement to drop other charges.

The *Black's Law Dictionary* defines the term as "a negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offence or to one of multiple charges in exchange for some concession by the prosecutor, usu: a more lenient sentence or a dismissal of the other charges - also termed as plea agreement, or a negotiated plea."

Many economic offenders resort to practice the American call, ‘plea bargaining’ ‘plea negotiation’ ‘trading out’ and ‘compromise in criminal cases’ and the trial magistrate drowned by a docket burden nods assent to the *sub rosa ante-room settlement*. The businessmen culprit confronted by a sure prospect of the agony and ignominy of tenancy of a prison cell, ‘trades out’ of the situation, the bargain being a plea of guilt coupled with a promise of ‘no jail’.

The object of ‘plea bargaining’ is to reduce the risk of undesirable orders for either side. Also, most of the criminal Courts are over burdened and hence unable to dispose of the cases on merits. Criminal trial can take days, weeks, months and something years while guilty pleas can be arranged in minutes. In other words, ‘plea bargaining’ is a deal offered by the prosecutor to include the defendant to plead guilty.

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2 “Plea and Charge Bargaining Research Summary” prepared by Lindsy Devers (w.w.w. Csrincorporated.com)
1.7 Types of Plea Bargaining

(i) Charge Bargain:- Charge bargain happens when the prosecution allows a defendant to plead guilty to a lesser charge or to only some of the charges framed against him. Prosecution generally has vast discretion in charges and therefore they have the option to charge the defendant with the highest charges that are applicable. ‘Charge Bargain’ gives the accused an opportunity to negotiate with the prosecution and reduce the number of charges that may be framed against him.

(ii) Sentence Bargain:- It happens when an accused or defendant is told in advance what his sentence will be if he pleads guilty. A sentence bargain may allow a prosecutor to obtain a conviction in the most serious charge, while assuring the defendant of an acceptable sentence.

(iii) Prosecution Plea Bargaining:- Plea bargaining is sometimes used to describe discussions between the prosecution and an accused’s legal advisers concerning the charges upon which an accused will be presented for trial and including indications that the accused is prepared to plead guilty to certain offences. This may be described as prosecutorial plea bargaining.

(iv) Judicial Plea Bargaining:- The term plea bargaining also covers discussions in which the trial Judge takes part. In such an arrangement counsel for the accused and the prosecution attend the judge in his private chambers and discuss an arrangement whereby, upon the judge indicating the probable sentence, the accused through his counsel
indicates that he will plead guilty. This may be described as judicial plea bargaining.

1.8 Plea Bargaining in the United States:

It would be wrong to assume that the concept of ‘plea bargaining’ found favour of courts only in the recent past. Infact, it is used in the American Judiciary in the 19th century itself. The Bill of Rights makes no mention of the practice when establishing the fair trial principle in the sixth amendment but the constitutionality of plea bargaining had constantly been upheld there. In the year 1969, James pleaded guilty to assassinating Martin Luther King Jr. to avoid execution sentence. He finally got an imprisonment of 99 years.

Plea bargaining, perused with the aim of reducing caseload is something that has been immensely successful in the United States of America, so much so that it has now become the norm rather than the exception. It is a significant part of the criminal justice system; the vast majority of criminal cases in the United States are settled by plea bargain rather than by a jury trial. The majority of individuals accused of crime give up their constitutional rights and plead guilty. Every minute a criminal case is disposed off in an American Court by way of guilty plea or Nolo Contendere Plea. Plea bargains are subject to the approval of the Court, and different states 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 a landmark judgment **Bordenkircher v. Hayes**\(^3\), the US Supreme Court held that the constitutional rationale for plea bargaining is that no element of punishment or retaliation so long as the accused is free to accept or reject the prosecution offence. The Apex Court, however, upheld the life imprisonment of the accused because he rejected the ‘Plea Guilty’ offer of five years imprisonment. The Supreme Court in the same case, however in a different context, observed that it is always for the interest of the party under duress to choose the lesser of the two evils. The courts have employed similar reasoning in tort disputes between private parties also. In **Santbello v. New York**\(^4\) the United States Supreme Court formally accepted that plea bargaining was essential for the administration of justice and when properly managed, was to be encouraged. Under Federal Law, as of January 27, 2007, the maximum a plea bargains can reduce hail sentences and fines are 50%.

In countries such as England and Wales, Victoria, Australia, plea bargaining is allowed only to extent that the prosecutors and the defense can agree that the defendant will plead to some charges and the prosecutor shall drop the remainder. The European countries are also slowly legitimizing the concept of plea bargaining through the Scandinavian countries maintain prohibition against the practice.

### 1.9 Introduction of Plea Bargaining In India:

Enthused by the success of plea bargaining in the United States, India has made several attempts to introduce

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\(^3\) 434 US. 357 1978

\(^4\) 104 U.S. 257 1971
a similar formula. To reduce the delay in disposing of criminal cases, the 154th Report of the Law Commission, first recommend the introduction of 'plea bargaining' as an alternative method to deal with huge arrears of criminal cases. This recommendation of the Law Commission finally found support in Malimath Committee Report. The Committee on Criminal Justice Reforms, headed by former Chief Justice of Karnataka and Kerala High Courts and former member of the National Human Rights Commission of India, V.S. Malimath ("Malimath Committee") submitted its report to the Government of India's Ministry of Home Affairs in March 2003 in which a recommendation to introduce a system of plea bargaining into the criminal justice system of India to facilitate the earlier resolution of criminal cases and reduce the burden on the courts (Recommendation 106) was made.

A formal proposal for incorporating plea bargaining into the Indian criminal justice system was put forth in 2003 through the Criminal Law (Amendment) Bill 2005, which was passed by the Rajya Sabha on December 13, 2005 and by the Lok Sabha on December 22, 2005. The statement of objects and reasons, *inter alia*, mentions that the disposal of criminal trials in Courts takes considerable time and that in many cases trials do not commence for as long as three to five years after the accused was remitted to judicial custody. Though not recognised 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 recognised
and against public policy under our criminal justice system. The Supreme Court has also time and again blasted the concept of plea bargaining that negotiation in criminal cases is not permissible. In **State of Uttar Pradesh v. Chandrika**\(^5\), the Apex Court held that it 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 confess his guilt, appropriate sentence is required to be implemented. The Court further held in the same case that mere acceptance or admission of the guilt should not be a ground for reduction of the sentence. Nor can the accused 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 section 265-A to 265-L were added in the Criminal Procedure Code, 1973 so as to provide for rising the plea bargaining in certain types of criminal cases. The provisions were thus fully incorporated into the Code of Criminal Procedure, 1973 as Chapter XXI-A through the Criminal Law (Amendment) Act, 2005.

### 1.10 Salient Features of Plea Bargaining Under The Criminal Procedure Code:

Nomenclature “plea bargaining” is not defined in the amendment but meaning is expressed from the nomenclature itself, that is, someone is going to earn something on his own statement. Its salient features under Chapter XXI-A of the Code of Criminal Procedure are:

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\(^5\) 2000 CrLJ 384.
Plea bargaining is applicable only in respect of those offences for which punishment of imprisonment is up to a period of seven years.

It does not apply where such offences affects the socio-economic condition of the country or has been committed against a woman or a child below the age of fourteen years.

The application for plea bargaining should be filed by the accused voluntarily.

A person accused of an offence may file an application for plea bargaining in the Court in which such offence is pending for trial.

The complainant and the accused are given time to work out a mutually satisfactory disposition of the case, which may include giving to the victim by the accused, compensation and other expenses incurred during the case.

Where a satisfactory disposition of the case has been worked out, the Court should dispose of the case by sentencing the accused one-fourth of the punishment provided or extendable, as the case may be for such offence.

The statement or facts stated by an accused in an application for plea bargaining shall not be used for any purpose other than for plea bargaining.

The judgment delivered by the Court in the case of plea bargaining shall be final and no appeal shall lie in any court against such judgment (except Special Leave
Petition under Article 136 and writ petition under Articles 226 and 227 of the Constitution).

1.11 An Appraisal of the Concept of Plea Bargaining:

Plea-bargaining has become successful United States, Canada, Australia and some other countries meaning thereby, its characteristics overrides is weaknesses to appraise the same. The following may be discussed:-

(i) Management of Caseloads:- one of the key arguments in favour of plea bargaining is that it helps courts and prosecutors manage caseloads. The concept would help states like Orissa as it would curb the mounting of pending cases in lower courts. Currently there were over then lakh cases pending in lower courts of the State whereas about one lakh cases were pending disposal in State High Court alone.

(ii) Speedy:- Plea bargaining concept is a modern alternative dispute resolution system that would ensure speedy disposal of criminal cases and thereby lessen the burden of pending cases of Courts.”

(iii) Saving of Time and Money:- Another benefit of the system of plea bargaining is that it saves time and money. Union Minister of the State for Law and Justice, K. Venkatpathy opined that plea bargaining would save time and money of the Courts and there would be speedy disposal of cases Jothan Oberman points out in his frontline interview, “..... a plea bargain certainly is a good thing for someone who is guilty, someone who has factually done that which he or she is charged with doing, who is confronted with over-whelming evidence, and where the
State is inclined to make some kind of offer because they would not want to put the victim, or the families of the victim, or put the State, to the cost of proving the case at trial.”

(iv) **Reduction in uncertainty as to the outcome of the trial:** - pleading guilty instead of going to trial reduces uncertainty as to the outcome of a trial, in trying a case before a judge or judges, the defendant cannot predict what ultimately will happen. Outlining the merits of plea bargaining, the acting A.K. Ganguly J. of the Orissa High Court said that it would help both the accused and the victim to reduce litigation and anxiety costs. He added that there would be an end to the uncertainness of fate of the case. The accused and the complainant can avoid the unavoidable visit to the lawyer and court.

(v) **Active participation of the accused:** - Privileged accused is the soul of chapter XXI-A of the Code of Criminal Procedure. Without the participation of the accused this remedy/or practical use of this law is impossible. Plea bargains are also perceived as offering the accused a freedom of choice. It allows criminals who accept responsibility for their actions to receive consideration for their remorse and not causing limited resources to be expended in further investigating and litigating their case. In other words, it lets the justice system skip the making them feel sorry for what they have done' and get straight to the 'accepted punishment.

(vi) **Helpful in the event of lack of evidence:** - in still other cases, prosecutors may be certain of the guilt of the
defendant in a matter, but the admissible or available evidence might not be enough to convince a jury of the defendant's guilt. This could be the result of a witness or victim dying prior to trial or certain evidence being lost or ruled inadmissible. In those situations it can be of benefit to both the prosecutor and the defendant to arrange a plea bargain. The defendant avoids the chance that he or she could be found guilty of more serious charges or given a heavier punishment.

1.12 Critical Evaluation of the Concept of Plea Bargaining:

According to the Asian Human Rights Commission "while the purpose of the new provision is ostensibly to reduce the long waits for trials endured by most accused, the introduction of plea bargaining is similar to treating the symptoms of an illness rather than the actual ailment."

(i) Violation of the principles of criminal jurisprudence: Firstly, it is feared that plea bargaining may violate principles of criminal jurisprudence and deprive the accused of assured constitutional safeguards.

(ii) Failure to provide for an independent judicial authority: The failure to provide for an independent judicial authority for receiving and evaluating plea bargaining applications is a glaring error. A judge or magistrate may be biased against the accused, as in the event of the application being rejected. They may well oversee the trial knowing that the accused was previously prepared to plead guilty. This is clearly unfair to the accused.
(iii) Risk of prejudice against the accused:- The failure to make confidential any order passed by the court rejecting an application could also create prejudice against the accused.

(iv) Problem of coercion:- Another problem is coercion. The requirement of the plea being in a written format and accompanied by an affidavit allows scope for coercion by the police and the prosecution leading to the innocent pleading guilty.

(v) Risk of public cynicism and distrust:- The Court’s examination of the accused in camera as opposed to open court may lead to public cynicism and distrust for the plea bargaining system.

(vi) Risk of Innocent pleading guilty:- In India today an accused person may face the prospect of years in jail as an undertrial there is a significant risk that innocent people will plead guilty under a plea bargaining scheme. Stephen Schulhofer offers this general critique of the system: “The major problem with plea bargaining is that it forces the party into a situation where the defendants, even if they have strong defenses, and even if they are innocent, in fact face enormous pressure to play odds and to accept a plea. And the more likely they are to be innocent and stronger their defenses are, the bigger discount and the bigger benefits the prosecutor will offer them. Eventually at some point it becomes so tempting that it might be irresistible”. “So the results are that the system as a whole does not do what is counted on it to do, which is to sort out the guilty people from the innocent people. It does not do that because
the guilty people and the innocent people are all faced with the same pressure to plead guilty.

(vii) Probability of increase in the number of cases:- Plea bargaining will not solve the delays in India's courts and instead is likely to dramatically increase the number of cases where innocent persons find themselves imprisoned and with criminal records. With the introduction of plea bargaining, these persons will be getting pushed from one dark place to the next.

(viii) Chances of abuse by prosecutors:- Critics claim that the plea bargain system can encourage prosecutors to overcharge at the start of the case which leads to caseload pressures or unusually severe penalties.

(ix) In favour of the high handed and the rich:- The outcome of plea bargaining may depend strongly on the negotiating skills and personal demeanor of the defense lawyer, which puts persons who can offer good lawyers at an advantage,. Thus it will give force to people who are high handed and that will badly affect people who are poor, unsupported, meek and feeble.

(x) Problem of adequate legal representation for underprivileged unsolved:- Moreover such a system still does not solve the problem of acquiring adequate legal representation for those who are underprivileged. Thus, for the rich, plea bargaining will merely make crime affordable and will be anything but a deterrent.

(xi) Easy escape of criminals:- Criminals may escape with impunity and escape due punishment. The incidence of crime might increase due to criminals being let off.
(xii) Victimization of the poor:- In the existing situation where the acquittal rate is as high as 90% to 95% it is the poor who will be the victims of the concept and come forward to make confessions and suffer the consequent conviction.

(xiii) Risk of increase in human right abuse by state officials:- The plea bargaining provision may also have dramatic side effects in cases involving state officers accused of human rights abuse. An Indian police officer accused of torturing a person in his custody may instead only be tried for other offences under the Indian Penal Code for which the punishments as well within the limit prescribed for punishment under the new law on bargaining. This means that the new law may allow tortures to escape with even lighter penalties, despite the fact that their offences fall into the gravest categories under international law.

Even the Supreme Court in Kasambhai Abdul Rehmabhi Sheik v. State of Gujrat⁶ observed that the conviction of the appellant was based solely on the plea of guilty entered by him and his confession of guilt was the result of plea bargaining between the prosecution, the defense and the learned Magistrate. It is obvious that such conviction based on the plea of guilty entered by the appellant as a result of plea bargaining cannot be sustained. It is contrary to public policy to allow a conviction to be recorded against an accused by including him to confess a plea of guilty on an allurement being held.

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⁶ 1980 PLR 549.
out to him that if he enters a plea of guilty, he will be let off very lightly. Such a procedure would be clearly unreasonable, unfair and unjust and would be violative of the new activist dimension of Article 21 of the Constitution. It would have the effect of polluting the pure fount of justice, because it might induce an innocent accused to plead guilty to suffer a light and inconsequential punishment rather than go through a long and arduous criminal trial which, having regard to our cumbrous and unsatisfactory system of administration of justice, is not only long drawn out and ruinous in terms of time and money but also uncertain and unpredictable in its results and the judge might either convict an innocent accused by accepting the plea of guilty or let off a guilty accused with a long sentence, but subverting the process of law and frustrating the social objective and purpose of the anti-adulteration statute. This practice would also tend to encourage corruption and collusion and as a direct consequence, contribute to the lowering of the standard of justice. Conviction of an accused based on a plea of guilty entered by him as a result of plea bargaining with the prosecution and the magistrate must be held to be unconstitutional and illegal.

1.13 Critical Analysis of "Plea Bargaining" in The Code of Criminal Procedure:

Sections 265A to 265L is incorporated in the Code of Criminal Procedure(Cr.P.C.) by Amendment Act w.e.f. 5-7-2006 to give effect to the system of "Plea Bargaining". The salient features of "Plea Bargaining" are summarised thus:
1. The accused is entitled to avail the benefit of "plea bargaining" both in the cases instituted on police report as well as by way of private complaint under Section 200 Cr.P.C.

2. The benefit of "plea bargaining" is available to the accused who is not guilty of committing offence punishable with death or life sentence and not exceeding 7 years. The benefit also does not apply if the offence affects the socio-economic conditions of the society and also to the offences committed against woman or child below the age of 14 years. Plea bargaining is not applicable to juvenile offenders.

3. The accused should make an application. The court should conduct in camera enquiry to ascertain that the application is voluntary and without duress. The Court should notify the public prosecutor and the victim to arrive at final disposition.

4. On the admission of guilt the Court should impose 1/4 of the sentence prescribed for the offence. In case the offence is punishable for minimum imprisonment 1/2 of such imprisonment is to be imposed. In both the situations the Court can award compensation to the victim after effective negotiations with the accused and the victim.

5. The accused is entitled to the benefit of Probation of Offenders Act, benefit of let off u/s 428 Cr.P.C. and benefit of bail.

6. The accused convicted in the system of plea of bargaining has no right of appeal but the remedy of
writ jurisdiction under Articles 226 and 227 and Special Leave Petition under Article 136 of the Constitution of India is not barred.

**Anomalies in the Enacted Law:**

1. The expression "Socio-Economic offence affecting the society" is not precisely defined. It would lead to unnecessary long drawn legal debate and confusion until the Apex Court finally interprets the scope and connotation of the above expression.

2. The right and role of complainant in the proceedings for final disposition is not properly clarified in law. The intention of the law is to give right of audience to complainant only in respect of just compensation. The complainant has no right to prevent Court from recording the plea of guilt and to impose the sentence as prescribed. In the case of disagreement in the matter of compensation the verdict of the court would be final. The complainant can invoke the remedy of writ only when the compensation awarded is disproportionate and inadequate. The textual law is vague and likely to be misinterpreted by the complainant that he can scuttle the right of accused to avail the benefit of "plea bargaining" if he is not agreeable to the compensation proposed.

3. When there are several accused, some admit guilt under "plea bargaining" and others who contest the case are acquitted on merits, the persons convicted on plea bargaining seem to be discriminated in law in public perception.
4. The elaborate precautionary steps set down in law for the Court to make in-camera enquiry, notice to prosecutor and victim consultations for final disposition spread over in different hearing dates invariably result in delayed disposal. they very object of expeditious disposal to cut short the docket explosion gets defeated. On the other hand, the quick summary enquiry of the accused and the victim in the open court and immediate decision would be a desirable and ideal procedure.

5. Section 320 Cr.P.C. provides for compounding of offences by the accused and the complainant without intervention of the Court. Large number of cases, coming within the scope of "plea bargaining" are being settled under Section 320 Cr.P.C.

6. The benefit of Section 4 of the Probation of Offenders Act applies to all offenders punishable for life imprisonment or death. The benefit of the Act would apply to all the offenders and offences which are subject mater of plea bargaining. Therefore question of imposing 1/4 sentence may not arise if the provisions of section 4 of the Act are effectively implemented. Apart in majority of cases the victims and material witnesses turn hostile resulting in acquittal. If accused can pay compensation and suffer half the sentence he would rather pay the money outside the Court and secure acquittal by getting the witnesses hostile to avoid imprisonment.
1.14 Procedure Involved In Plea Bargaining:

1.14.1 United States:

Plea bargaining has over the year emerged as a prominent feature of the American Criminal Justice System where over 90% criminal cases are settled by plea bargain rather than by a jury trial. Thus, less than ten percent of criminal cases go to trial. The United States experiments shows that plea bargaining helps the disposal of the accumulated cases and expedites delivery of justice.

The concept of Plea Bargaining was not favoured in colonial America. In fact, Courts actively discouraged defendants from pleading guilty. As population increased and Courts became overcrowded, trial in every case became lengthier and impossible. Thus, the need was felt for such a strategy which could result in speedy disposal. Thereafter, in the 19th century, Courts gradually started accepting guilty pleas and by the 20th Century, the vast majority of criminal cases started being resolved with plea bargaining.

Presently, plea Bargaining is expressly authorized in statutes and in Court rules of the United States. The Federal Rules of Criminal Procedure, and in specific, Rule 11(e) recognize and codifies the concept of plea agreements. However, because of United States Sentencing Guideline (USSG) provisions, the leeway permitted is very restrictive. Under Rule 11(e) a prosecutor and defendant may enter into an agreement whereby the defendant plead guilty and the prosecutor offers either to move the dismissal of a charge or charges, or recommend to the Court a particular sentence or agree not to oppose the defendant’s request for a
particular sentence, or agree that a specific sentence is the appropriate disposition of the case. A prosecutor can agree to take any or all of these actions in a plea agreement. Under Rule 11 (e), Plea Bargaining must take place before trial unless the parties show good cause for the delay.

Simply put, it is contractual agreement between the prosecution and the defendant concerning the disposition of a criminal charge. Unlike most contractual agreements, it is not enforceable until a judge approves it. However, the judge does not participate in its discussion. Prosecution has been granted full discretion to offer a plea bargain to the defendant but has no authority to force Court to accept a plea agreement entered into by the parties. It may only recommend to the Court for the acceptance of a plea arrangement. Thereafter, a judge authorizes plea bargain and will take proofs to ensure that the following three components are satisfied and will then accept the recommendation of the prosecution:

(1) A knowing waiver of rights;
(2) A voluntary waiver; and
(3) A factual basis to support the charges to which the defendant is pleading guilty.

Generally a judge will authorize a Plea Bargain if the defendant makes a knowing and voluntary waiver of his or her right to a trial, the defendant understands the charges, the defendant understands the maximum sentence he or she would receive after pleading guilty, and the defendant make a voluntary confession, in Court, to the alleged crime. Even if a defendant agrees to plead guilty, a judge may
decline to accept the guilty plea and plea agreement if the charge or charges have no factual basis.

When a Court accepts a plea agreement, the guilty plea operates as a conviction, and the defendant can not be retried on the same offence. If the defendant breaches plea agreement, the prosecution may re-prosecute the defendant. If the government breaches a plea agreement, the defendant may seek to withdraw the guilty plea, ask the Court to enforce the agreement, or ask the Court for a favorable modification in the sentence. When a prosecutor or defendant revokes a plea agreement, the statements made during the bargaining period are not admissible against the defendant in subsequent trial. This rule is designed to foster free and open negotiations. Thus, it is a set of exchange relationships in which the prosecutor, the defense attorney, the defendant and sometimes the judge participate. All have specific goals, all try to use the situation to their own advantage, and all are likely to see the exchange as a success.

Aside from legal considerations as to the knowing or voluntary nature of a plea, there are other restrictions or prohibitions on the opportunity to plea bargain. In federal practice, U.S. attorneys may not make plea agreements which prejudice civil or tax liability without the express agreement of all affected divisions or agencies. Moreover, no attorney for the government may seek out, or threaten to seek, the death of penalty solely forth purpose of obtaining a more desirable negotiating passion for a plea arrangement. Attorneys are also instructed not to consent to
“Alford pleas” except in the most unusual circumstances and only with the recommendation of Assistant Attorneys General in the subject matter at issue. In any case where a defendant has tendered a plea of guilty but denies that he or she committed the offense, the attorney for the government should make an offer or proof of all facts known to the government to support the conclusion that he defendant is in fact guilty. Similarly, U.S. Attorney are instructed to require an explicit stipulation for all facts of a defendant’s fraud against United States when agreeing to plea bargain.

There have been numerous court decisions, at the highest levels, that discuss the rule on plea bargains. In People Vs. Griffin,\textsuperscript{7} Judhe Van Voorhis observed that the practice of accepting plea to lesser crimes is generally intended as a compromise in situations where conviction is uncertain of the crime charges. In United States Vs.Jackson\textsuperscript{8} the Court questioned the validity of the plea bargaining process if it burdened a defendant’s right to a jury trial. Issue in that case was a statute that imposed the death penalty only after a jury trial. Accordingly, to avoid the death penalty, defendants were waiving trials and eagerly pleading guilty to lesser charges two years later, the court actually defended plea bargaining in Brady Vs. United States\textsuperscript{9}, pointing out that the process actually benefited both sides of the adversary system. The Court noted that earlier opinion in Jackson merely required that

\begin{itemize}
\item \textsuperscript{7} 60 Cal 2d 182 [32 Cal. Rptr 24, 383 p. 2d 432] \\
\item \textsuperscript{8} 390 U.S. 570(1968) \\
\item \textsuperscript{9} 379, U.S. 742 (1970)
\end{itemize}
guilty pleas be intelligent and voluntary. Further, in Boykin v. Alabama, the U.S. Supreme Court ruled that defendants must state that the plea was made voluntarily before a judge may accept the plea. Judges have created standard forms with questions for the defendants to affirm in open Court before the plea is accepted. Trial judges also must learn whether the defendant understands the consequences of pleading guilty and ensure that the plea is not obtained through pressure or coercion.

1.14.2 India

In the United States, the accused has three options with respect to pleas; guilty, not guilty or plea of nolo contendere. In plea of nolo contendere, the defendant answers the charges made in the indictment by declining to dispute or admit the fact of his or her guilt. The defendant who pleads nolo contendere submits for a judgment fixing a fine or sentences the same as if he or she had pleaded guilty. The difference is that a plea of nolo contendere cannot later be used to prove wrongdoing in a civil suit for monetary damages, but a plea of guilty can.

The Indian concept of plea bargaining is inspired from the Doctrine of Nolo Contendere. It has been incorporated by the legislature after several Law Commission Recommendations. This doctrine has been considered and implemented in a manner that takes into account the social and economic conditions prevailing in our country. There are three types of plea bargaining; i) charge bargaining; ii) sentence bargaining; and iii) Fact bargaining. Negotiating

for dropping some charges in a case of multiple charge or settling for a less grave charge is called charge bargaining. Where the accused has an option of admitting guilt and settling for a lesser punishment it is sentence bargaining. Lastly, negotiation which involves an admission to certain facts in return for an agreement not to introduce certain other facts is fact bargaining.

To reduce the delay in disposing criminal cases, the 154th Report of the Law Commission first recommended the introduction of plea bargaining as an alternative method to deal with huge arrears of criminal cases. This recommendation of the Law Committee finally found a support in Malimath Committee Report. A committee, headed by the former Chief Justice of the Karnataka and Kerala High Courts, Justice V.S. Malimath to come up with some suggestions to tackle the ever-growing number of criminal cases was formed. 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\textsuperscript{11}, the Apex Court held that it 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 court further held in the same case that, 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 the sentence be reduced. Despite this huge hue and cry, the government found it acceptable and finally section 265-A TO 265-L are added in the Code of Criminal Procedure so as to provide for raising the plea bargaining in certain types of criminal cases. While commenting on this aspect, the Division Bench of the Gujarat High Court observed in State of Gujarat v. Natwar Harchanji Thakor\textsuperscript{12} that, the very object of law is to provide easy, cheap and expeditious justice by resolution of disputes, including the trial of criminal cases and considering the present realistic profile of the pendency and delay in disposal in the administration of law and justice, fundamental reforms are inevitable. There should not be

\textsuperscript{11} 2000 Cr.L.J. 384
\textsuperscript{12} (2005) Cr. L.J. 2957
anything static. It can thus be said that it is really a measure and redressal and it shall add a new dimension in the realm of judicial reforms.

Plea bargaining is undoubtedly, a disputed concept. Few people have welcomed it while others have abandoned it. It is true that plea bargaining speeds up caseload disposition. The criminal courts are too over burdened to allow each and every case to go on trial. In such situation, system is left with no other choice but to adopt this technique.

1.15 **Evolution and Foreign Experiences**:

Till the midst of 20th Century, most of the courts and scholars, all over the World, tended to ignore the importance of plea bargaining, and when discussions of the practice occurred, it usually was critical. A strong criticism against it was that plea bargaining is a lazy form of prosecution that resulted in undue leniency for offenders. However in later part, the significance of plea bargaining has improved to a larger extent and it became integral part of the criminal justice system.

Law on plea bargaining has strong variations in Common Law Countries and European Continent. Guilty pleas have been regarded as a sufficient basis for conviction from the earliest days of the common law. In treating a guilty plea as conclusive, Common Law Nations depart from the law of most nations on the European Continent. In serious cases, these nations do not treat any form of confession as an adequate basis for dispensing with the trial, even if trials are likely to be simpler and to focus
mostly on sentencing issues when accused do not contest their guilt.

A study indicates, compared to the long Anglo-American history of guilty pleas, the history of plea bargaining has only a recent origin. The criminal justice system long has been rewarded some forms of co-operation by the accused, notably, co-operation in procuring the conviction of other alleged offenders committed serious crimes and offences. Only occasional instances of plea bargaining have been reported prior to the nineteenth century and recorded in the judicial history of the West and East. For example, scholars who have studied eighteenth-century crimes and prosecutions in the Old Bailey in London report no instances of plea bargaining. Ordinarily, the judges of the Old Bailey urged the accused who offered to plead guilty to reconsider it, and face the trial.

History narrates that although plea bargaining in felony cases before the nineteenth century was rare, non-trial dispositions in minor misdemeanour cases may have been the subject of express or implicit bargains. Such Courts could permit a plea, which allowed an accused to submit to conviction and pay a fine without admitting guilt. Judges, however, did not allow such pleas in serious cases, and in the early nineteenth century in America, guilty pleas typically accounted for a minority of felony convictions. When occasional cases of plea bargaining began to appear in reported decisions in the second half of the century, appellate judges voiced strong disapproval of the practice. Despite this disapproval, plea bargaining became routine in
many places before the end of the century. Plea bargaining is common in England, Canada, and most of the other nations of the British Commonwealth. Earlier Germany was a "land without plea bargaining". The formal plea of guilty was well-known in judicial proceedings in Germany, but prosecutors and judges did not promise or negotiate for in-court confessions. Subsequently, as trials in Germany and elsewhere became longer and more adversarial, as complex prosecutions for white-collar crime came before the courts in greater numbers, and as case loads increased, German prosecutors offered concessions to the accused not to contest their guilt. Italy, in fact, formally instituted a system of plea bargaining by statute. Plea bargaining remains less frequent in Continental Europe than in England and America. In Germany, now it is claimed that some kind of bargaining takes place in roughly twenty to thirty percent of all cases.

In United States of America, plea bargaining has a vital role in disposal of criminal cases as it is popular than Jury Trials, while settling the cases of criminal nature. In 1967, in the midst of high criticism of laziness of prosecutors, however, both the American Bar Association and the President's Commission on Law Enforcement and Administration of Justice approved the concept of plea bargaining. The American courts and most of the Jurist have tended to approve plea negotiation, at least in broad outline. However in 1973 report of the National Advisory Commission on Criminal Justice Standards and Goals, recommended the abolition of all forms of plea bargaining. Among the
historical developments there are many other factors which gave major contributions in the growth of plea bargaining. Some of those factors are the increasing complexity of the trial process, which may have led to the greater use of nontrial procedures both for economic reasons and because officials sought to avoid the technicalities of trial, expansion of the substantive criminal law, particularly the enactment of liquor-prohibition statutes, increasing crime rates; larger case loads, the frequent political corruption of urban criminal courts, at and after the turn of the twentieth century; the greater use of professionals in the administration of criminal justice, by police, prosecutors, and defense lawyers and the increasing statutory powers of state controlled prosecutors.

1.16 Three Main characteristics of Plea-bargaining:

1.16.1 The requirement of voluntariness:

In the American context, a voluntary plea can be one made either in the absence of coercion or in the absence of unjustifiable coercion. Strictly no coercion Would to a certain extent rule out plea agreements because some form of coercion is needed even to reach a consensus. One must determine the level of coercion that would be fatal to the plea agreement, especially because the bargaining power of the parties involved is not always equal. In considering the plea agreement, the Court must acquaint itself with the circumstances leading to the plea, the nature and the background of the defendant and any other factors that could have motivated him to plead guilty. Though the act does not envisage such far-reaching involvement of the judge, one
way to inform the Court may be to make these details a mandatory part of the brief description of the case relating to which the application is filed under section 265, B(2).

Further, a perusal of the Act shows that there seems to be no provision for the accused to withdraw his application. Analogy can be drawn from section 306 of the Code of Criminal Procedure, 1973 which provides for an accomplice to be pardoned if he consents to fully disclose the information he possess. Though the provision is silent on whether the approver can renege on this promise, it does not mean that he is barred from doing so. In fact, once the approver has accepted a tender of pardon, he becomes a witness for the prosecution and a refusal to make full disclosure necessarily implies a forfeit of his pardon. Action can then be taken against him by virtue of Section 308. Similarly, just because the Act in this case is silent on the issue of withdrawal, it cannot be assumed that withdrawal is prohibited. It may be argued that the accused is entitled to withdraw his application and the case would then be subject to trial. However, the matter is open to a contrary interpretation.

1.16.2 Degree of involvement of the Judge:

The extent of involvement of the judge in the plea-bargaining process is debatable because excessive intervention could compromise his position as a neutral arbiter while no intervention could lead to an unjust result. It appears that the Act gives the judge limited freedom in awarding compensation to the victim as the compensation is to be in accordance with the disposition. In Mithu Vs. State
of Punjab\textsuperscript{13} Section 303 of the Indian Penal Code was struck down as unconstitutional because it excluded judicial discretion. Though section 303 refers to the death penalty, the logic of the unconstitutionality of excluding judicial discretion with respect to serious matter can be extended to this situation. Therefore, the intention of the legislature may not have been to completely exclude judicial discretion because that would involve the risk of the provision being struck down as unconstitutional.

Also, though the Court does not have to entertain an application if it is ascertained at the very outset that the accused did not file it voluntarily, the Act has no provision for the Court to reject the settlement arrived at. It is true that in an adversarial set-up, if the opposing parties reach a settlement, then the deciding authority should not be allowed to disturb it. However, in a scenario where there may be serious inadequacies in the capabilities of the accused, a risk of prosecutorial coercion and the probability of corruption at various levels, a reasonable level of discretion on the party of the deciding authority is needed. Relegating the judge to the sidelines will result in a status quo in the inequality of the bargaining power of the prosecution and the defence, if not an increase. This imbalance will work in the favour of the accused if he is either well off or well connected, or both.

1.16.3 Status of the Victim:

Another problem is that of the status of the victim. The Committee on Reforms of Criminal Justice System, 2003 recommended giving a role to the victim in the negotiation

\textsuperscript{13} AIR 1983 SC 473.
leading to settlement of criminal cases either through Courts, Lok Adalats or plea-bargaining. Prior to the Act, the law only envisaged the prosecutor appointed by the State to be the proper authority to plead on behalf of the victim. However, the Act has provided for some degree of participation by the victim, which similar to some parts of the United States, effectively provides for consultation with the prosecutor whose interests in disposing off the case may differ significantly from those of the victim. In fact, the mutually satisfactory disposition to be worked out by the Public Prosecutor or the complainant and the accused may include compensating the victim. Furthermore, victim participation in the negotiation with his lawyer is expressly provided for in cases instituted otherwise than on a police report while there is no such provision for cases instituted otherwise than on a police report. Further, because of the limited involvement of the judge, there is no mechanism to verify whether the wishes of the victim have been satisfactorily fulfilled. Under the new system, prima facie it seems that the judge has discretion only with respect to sentencing and not with the quantum of compensation. It follows that the victim’s interest in restitution may not be served even if he is allowed to consult with the judge.

1.17 International Divergence with Regard to Plea Bargaining:

The United States does not restrict the use of plea bargaining. France, until recently, has not permitted defendants to plead guilty to indictments\(^\text{14}\). In a reform from March 9, 2004 France introduced a version of guilty pleas

\(^{14}\) (Kritzer 2002, p. 383)
and bargaining, but this new procedure is limited only to crimes punishable with no more than five years in prison, and allows the prosecutor to propose a sentence not exceeding one year in prison. Reflecting the different restrictions on the use of plea bargaining, in 2005 only 4% of French decisions by correctional courts were made using the new guilty plea procedure. In contrast, in the same year in the United States 86% of all criminal cases were closed as a result of a guilty plea. The legal literature on plea bargaining has been dominated by the debate over the desirability of plea bargaining, with some scholars fiercely opposing the use of plea bargaining and others defending it. Although it is widely acknowledged that different countries adopt varying plea bargaining policies, each side of the debate assumes that there is only one correct policy, and does not probe the underlying reasons behind this national divergence. The economics literature on plea bargaining, which originated with Landes (1971) and Grossman and Katz (1983), takes the existence of plea bargaining as given, and focuses on analyzing its effect or discussing certain adjustments that could improve it.

1.18 Statistics of Plea Bargaining:

Table details the plea bargaining index for different countries and years are given below. Countries that do not have plea bargaining (or a similar procedure), or that have

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15 (Bradley 2007, p.227)
16 (French Ministry of Justice 2006)
17 (Federal Justice Statistics Resource Center)
19 (Church 1979, Easterbrook 1983 and Scott and Stuntz 1992)
plea bargaining that is restricted to minor crimes where a prison sentence may not be imposed, were coded with 1. Countries that use plea bargaining but do not allow its use for severe crimes with a prison sentence over a certain length were coded with 2. Countries that place no restrictions on the use of plea bargaining (except for death penalty in certain countries) were coded with 3.

Table 1: Plea Bargaining Level

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The three main sources that are used to code the legal situation with respect to plea bargaining in different countries were---The World Factbook of Criminal Justice Systems (Bureau of Justice Statistics 1993, 2002), Euro Justice (European Commission 2004) for European Union members and Bradley (2007). Where the legal situation could not be found in these sources other country specific sources were used including the legal codes of the countries.
For Philippines Bautista (2003, pp. 88-91) for Taiwan Lo (2006, pp. 233-234), for South Africa Skeen (2004, pp. 524-525), for Switzerland Trechse and Killias (2004, pp. 276-277, 283) were used. Bulgaria, Croatia, the Dominican Republic and Chile their criminal procedure code was consulted. For South Korea a South Korean Judge was consulted Bárd (2007, pp. 230-232) for Hungary, Dean (2002, p. 37) for Japan, and Kyprianou (2009, p. 170) for Cyprus were also relied upon.