CHAPTER II

PLEA BARGAINING IN INDIA

Introduction

The chapter of Plea Bargaining added by Criminal Procedure Code Amendment Act of 2005\(^1\) under chapter XXIA in Criminal Procedure Code, 1973 incorporates the concept of Plea Bargaining. The practice which earlier was not in use has now been opened for the use of Court to shake the model scheme of deciding the matters by settlement between the parties including the complainant and the accused, however, the same has been restricted by chapter XXIA of the Criminal Procedure Code wherein it has been mentioned that the concept of plea bargaining shall be restricted to the accused against whom report has been forwarded by the office in-charge of the jurisdiction under Section 173 Criminal Procedure Code alleging therein that an offence other than offence for which the punishment is death or imprisonment for life or imprisonment for a terms exceeding seven years has been provided under the law for the time being in force or where the Magistrate has taken cognizance of an offence on complaint other than the offence above mentioned has been provided under the law and after examining the complainant and the witnesses under Section 200 of Criminal Procedure Code issued the process under Section 204 of Criminal Procedure Code.

\(^1\) The Amendment Act was introduced in 2005 and it was implemented in 2006
The above said law was implemented by the Amendment Act 2005. When the same was produced in Lok Sabha for debate on 22 December 2005 it was categorically stated that plea bargaining is more stringent than the provision provided in the Criminal Procedure Code for compounding the offence but is less stringent than the provisions for sentencing and punishing the accused persons. Plea Bargaining is followed in between these two extreme positions. Under Section 320 of Criminal Procedure Code if the offence is compounded the accused is treated as acquitted. That means to say that the accused is without any blame and he can go scot-free. However, on the introduction of the concept of plea bargaining the accused can come to the Court and say that he admits the guilt and he subjects himself to the Court. After completion of the formalities under Section 265 (B) the court can allow to discuss the matter outside the Court to reach to a mutually satisfactory disposition. On the kind of compromise that could be arrived at the accused, the complainant, the prosecutor and the defence lawyer could talk to each other outside the Court. When the matter is presented to the Court, the Court could accept the agreement while taking into consideration that everything is being done of free volition without subject to any kind of pressure. The other consideration of providing the punishment in view of Section 265 (E) is to be looked on. At the time of this debate the first impression of the advantages of the plea bargaining which were in the mind of law makers were the compensatory terms with the victim. This concept was
earlier unknown to the criminal jurisprudence as the object of the criminal law in India in practical terms is deterrent than re-formation. The concept was to punish the offender but this new concept to compensate the victim is objected or motivated to give substantial relief to the victim. At the time the debate took place another cup of law on communal harmony was to be introduced. The victim of the communal violence were to be compensated. Plea Bargaining was looked from that corner also.

It was further argued and debated that in the civil law there is mechanism of alternative dispute redressal. In Civil Court outside compromise is allowed and it helps in speedy disposal of the cases. Similarly this amendment will help to minimize or help the disposal of the cases. It was understood that the three components in criminal justice system i.e. the police, the prosecution and the justice delivery system are not up to the mark for the reason that investigation is not proper and therefore the prosecution fails. System of Directorate of Prosecution was impressed upon. The 142nd Report of Law Commission headed by Mr. Thakker recommended inclusion of plea bargaining and gave five reasons to include plea bargaining:

1. When most of the people who are arrested are guilty any way, then why should one bother for the trial.
2. Public money should not be wasted.
3. It is a way of compromise. Both sides give a little and gain a little.
4. Trial consumes time and cost.

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2 Section 89 of Civil Procedure Code 1980.
5. It is best (for both sides) to avail it since on the one hand there is always a chance that even if the defendant is guilty and the evidence is adequate there is a chance of a slip up. On the other hand, the defendant saves time and money and earns a concession in the form of a less serious offence or sentence.

2.1 Recommendations of 142\textsuperscript{nd} Law Commission of India

2.1.1 Need of Plea Bargaining in India

Before the concept of plea bargaining was introduced in India, the Law Commission of India read the concept in detail not through the books only, but it also had a look at the concepts being adhered by the different countries in the world. It came out with the report that the basic reason for which the concept of plea bargaining should be introduced in India is that the Indian courts are burdened with the backlog of cases which are pending for the last many years and even in some of the cases the accused are in prison for such a long period than they would have received for the offences committed by them if they would have pleaded guilty. This is the most important factor for early disposal of the cases in the foreign countries.

The Law Commission of India in its 142\textsuperscript{nd} Report has stated that the magnitude of the problem of delays in the criminal cases is the major issue which was focused by the Commission.
2.1.2 Magnitude of the Problem of Delay in Criminal Cases:

Grievances have been vented in public that the disposal of criminal trials in the courts of the Magistrates and District and Session Judges takes considerable time. It is said that the criminal trials do not commence for as long a period as three to four years after the accused is remitted to judicial custody. In the meantime, the accused languish in jails. It was further represented that the conditions prevailing in the jails are appealing and the accused are obliged to live in sub-human conditions mixed up with hard-core criminals. In several cases the time spent by the accused in jails before the commencement of trials exceeds the maximum punishment which can be awarded to them even if they are found guilty of offences charged against them.

An appeal is generally carried against the Order of the trial court, especially in Sessions cases. Experience has shown that in the High Courts, (barring exceptions) it would take at least five to eight years for a criminal appeal to be decided. In High Courts like Allahabad and Bombay, the Commission gathered the period of waiting for the disposal of the Appeals is as long as ten years. If the matter should be carried on further appeal to the Supreme Court, it would be another 10 years by the time the Supreme Court decides the matter. As on that date, the Commission found, the Supreme Court was dealing with criminal Appeals relating to the year 1979. This enormous delay in the disposal of

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3 Chapter II of the 142nd Law Commission Report of India.
criminal matters in courts which should normally receive speedy attention is the result of docket explosion.

The Supreme Court also took cognizance of the matter. The facts stated in the immediately preceding paragraph came to the notice of the Supreme Court in a number of cases, most important among which is that of Hussainara Khatoon V. State of Bihar\(^4\) dealing with the above case originating from the State of Bihar.

The Supreme Court passed a number of Orders in this connection commencing from 1979. It was brought to the notice of the Supreme Court that an alarmingly large number of men and women (children including) are behind bars for years awaiting trials in courts of law. It was observed by the Supreme Court that-

"The offences with which some of them are charged are trivial, which, even proved, would not warrant punishment for more than a few months, perhaps for a year or two, and yet these unfortunate forgotten specimen of humanity are in jail deprived of their freedom for periods ranging from three to ten years without even as much as their trial having commenced".

The Supreme Court noticed that several under-trial prisoners have been in jails for as many as five, seven or nine years and a few of them even more than ten years without their trial having begun. The Supreme Court lamented that these lost souls have lost faith in the judicial

\(^4\) AIR 1979 SC 1360
system which denied them a bare trial for so many years and kept them behind bars, not because they were guilty, but because they were too poor to afford bail and the courts had no time to try them. It had been a travesty of justice that many poor accused, little Indians, are forced into long cellular servitude for little offences because the bail procedure is beyond their meagre means and trials don’t commence and, even if they do, they never conclude.

The Supreme Court had further held that there is also one other infirmity of the legal and judicial system which is responsible for this gross denial of justice to the under-trial prisoners and that is the notorious delay in disposal of cases. It is a sad reduction on the legal and judicial system that the trial of an accused should not even commence for a long number of years. Even a delay of one year in the commencement of the trial is bad enough; how much worse could it be when the delay is as long as 3 or 5 or 7 or even 10 years. Speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice.

The Law Commission noticed that over the years the situation has not improved. Long delays continue to occur in the disposal of trials and appeals. In the state of affairs as now existing it is extremely difficult to expedite the process of criminal trials in the subordinate courts and the disposal of appeals in the appellate courts. Extent and duration of cross examination cannot be curtailed without creating other problems. Nor can arguments be curtailed for the same reason. There is, therefore, little scope for
streamlining the system to achieve more expeditious disposal. Besides, the Commission has reasons to believe that the increase in the number of courts and the Judges would not necessarily result in eliminating the delays in the disposal of trials and appeals mitigating the hardships suffered by the under-trial prisoners. In spite of the stern warning administered by the Supreme Court bail procedures continue to be as unsatisfactory as they were. It is not reported that there is any improvement in the duration of the time spent by the under-trial prisoners in jails awaiting their trials to commence. The Law Commission felt that perhaps the conditions have further deteriorated calling for immediate reform in the matter.

2.1.3 Reasoning of Proponents for Introduction of Plea Bargaining

A sizeable section of public opinion favours the practise.

A survey was conducted by the Law Commission in various states of Andhra Pradesh, Karnataka, Maharashtra, Uttar Pradesh, the Union Territory of Delhi, Punjab and Haryana, Kerala, Himachal Pradesh and West Bengal.

An analysis was made of the views recorded from persons from various States and also of the views expressed by the judicial officers in the response. Out of the persons whose views were recorded personally, 65 Persons expressed the view that it would be appropriate and beneficial to introduce the concept of "plea-bargaining" whereas 32 Persons indicated their mind against the introduction of the

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5. Point no. 3.4 of 142nd Report of Law Commission of India
6. See Supra 2.1
concept. Out of the 65 persons who reacted favourably to the concept, 27 persons were of the view that the scheme could be applied to all offences without any discrimination. The remaining 38 persons qualified their view by adding a rider. According to them, the scheme could be applied to only specified offences. Particularly speaking these persons hold the view that the scheme should not be extended to major offences and economic offences. There is again wide divergence in the concept of major offences. Some were of the view that the exclusion should be only of offences which are liable to be punished by death sentence or life imprisonment. Some put it as offences for which imprisonment is more than 10 years; yet others put it as offences punishable with imprisonment for 7 years and more. Such are the views of those persons favourably deposed towards the concept being introduced in our criminal jurisprudence.

The survey thus, reinforces the view that an improved version of the practise suitable to law and legal ethos of India needs to be considered with seriousness and with a sense of urgency.

2.1.4 Objections Raised and views of Commission in Relation Thereto

The Law Commission of India in its 142nd report dealt with the objections that were raised when the survey was conducted by the Commission for the introduction of the concept of Plea Bargaining. The objections mentioned in the report are follows:

7. Para 7.2 to 7.17 of the Report
(a) **Country's social conditions do not justify the introduction of the concept** - Several respondents pointed out that the scheme of "plea bargaining" might have succeeded in America and a few other European countries because of the social conditions existing in those countries. Literacy, it is pointed out, is of a high order and people in those countries, by and large, realize the consequences of invoking the scheme involving a confession to the commission of crime. It is said that the position is not the same in our country where literacy is very low.

(b) **Even illiterate persons with their robust common sense are capable of** realizing the consequences of making recourse to the scheme. The legal aid apparatus is also available for consultation if they cannot afford legal counsel.

(c) **Accused are generally advised by their trusted lawyers and there are no** grounds to think that an accused, except in very rare cases and circumstances, would make confession of guilt entailing personal and social consequences to him notwithstanding his innocence. Besides, the scheme which is being proposed takes care of this objection in as much as a judicial officer acting as a plea judge or a committee of two retired High Court judges would be explaining to the accused persons the consequences of pleading guilty under the scheme.

(d) **Pressures from prosecuting agencies may result in convictions of the innocents** - One of the fears
expressed is as regards the likelihood of pressure being exercised by the prosecuting agencies and even innocent persons are yielding to such pressures. This fear can be allayed if a judicial officer explains the implications and satisfies himself in the absence of any police officer that no coercion is exercised by the police and if the application is made at the initiative of the accused himself as is being provided in the scheme being evolved by us.

(e) **The poor will be the ultimate victims of the concept.** It is forcefully contended by some that acquittals in criminal trials are as high as 90 to 95 percent and consequently an accused and his counsel generally hope to secure acquittal in the course of a regular trial. It is claimed that a wrongdoer will not come forward to make a confession if there is the slightest possibility of acquittal. It is, further claimed that a person will be willing to spend any length of time in jails as an under-trial prisoner in the hope that he will secure an acquittal when regular trial is taken up. In any event, it is pointed out that the rich, influential and well-informed accused would seldom undertake the risk of social and personal consequences of a confession as they look forward to a clean acquittal in course of time. It is eventually the poor who may come forward to making confessions and suffer the consequential conviction.

(f) It does appear that the **rate of acquittals in our criminal trials is very high.** The principal reason for
the acquittals, which was rightly advanced by several Session Judges is the long delay involved in taking up the trials. It was brought to the notice of the Commission that during the interrogation when accused are awaiting trials, many manipulations take place. Witnesses who were initially willing to speak truth back out because of the temptations offered on behalf of the accused to retract from the original testimony. Passage of time also affects the veracity of the evidence tendered by the witnesses who are subjected to critical cross-examination. Memories fade during the long time taken for conducting the trial and the witnesses confuse themselves of the actual course of events when they are put to severe cross-examination. It would be wrong to say that most of the trial result in acquittals because the defendants did not actually commit the crimes. The defendants escape convictions because of the aforesaid factors. Be that as it may, the argument that the scheme may not succeed is merely a conjecture and a matter of opinion which is not subscribed. It is not a good reason to Oppose the scheme.

(g) It is also not possible to proceed on the assumption that persons would be willing to spend three to eight years in jails as under-trial prisoners if there is a possibility of their release from the jail much earlier. Most people know that long periods of stay in jail bring about economic and social ruin. It is reasonable to think that such accused will look forward to
rehabilitate themselves as quickly as possible if there is a possibility of their being convicted for similar periods and released from jail.

(h) **Counsel representing the accused would be unwilling to advise confession invoking scheme** - This was a point forcefully put forward by the counsel in Allahabad High Court. It was claimed by them that the counsel representing the accused are not likely to advise the clients to make recourse to the scheme. Firstly, it is said that the moment any such advice is given the accused loses faith in the counsel representing him and will engage another counsel. Secondly, after release a person who suffered conviction may be told that he would not have undergone the sentence had it not gone with the advice given by his counsel. He would be told that as in several cases his case would also have resulted in acquittal. This objection also does not appear to be sound. Nor does it provide a good ground for abandoning the idea. Counsel will doubtless give such advice as is considered to be in the interest of their clients. And the likelihood of failure of the scheme, as expressed by some, cannot justify inaction on the part of the law makers.

(i) **Plea-bargaining may increase the incidence of crime** - It was suggested by some that adoption of the scheme may increase the incidence of crime in the country. It was claimed that because of the expectation that a person may be let off lightly by reason of
pleading guilty, offences may be committed by persons so minded. There may also be temptations to repeat the commission of offences. In the first place, the scheme does not envisage that an application, if made, shall be necessarily accepted. The authority considering the acceptance or otherwise of the request for concessional treatment would weigh all pros and cons and, more particularly, look into the nature of offences broadly and exercise discretion to accept or reject the request. Secondly, scheme may be restricted to a first offender. Even in the present state of law, a first offender is entitled to be enlarged on probation in respect of many offences. The fear is thus ill-founded.

(j) **Criminals may slip through the net with impunity.**—Equally untenable is the apprehension that by resorting to the scheme criminals may slip through the net with impunity and escape due punishment. The scheme being evolved ensures that in regard to serious offences a minimum substantive sentence of imprisonment is imposed. The scheme is for "concessional treatment" not for 'no punishment'. The deterrent effect of a jail term operates with equal force whether the stigma is associated with a term of 6 months or 18 months. Besides, in the present scenario even after a protracted trial more than 75 per cent of the cases result in acquittals as discussed elsewhere. This point of criticism is, therefore devoid of merit.

(l) **No social benefits accrue**– This criticism is unwarranted. There are numerous advantages e.g.
(1) Saving of time, cost and resources cost to courts which are already over loaded.

(2) Saving of money cost to the community as also to the accused.

(3) The faith in honesty is reinforced.

(4) Rehabilitation and reformation of the offender commences early and he can start a fresh life without loss of time.

(5) When the offender pleads guilty he feels cleansed of the feeling of guilt.

When an offender is punished after a trial consequent to his "plea of not guilty" he is lowered in his own eyes. The society by implication conveys to him that his protestation of innocence is found to be untrue. In the eyes of the society also he is lowered. If on the other hand he himself feels contrite and enforces his guilt the burden of guilt carried by him becomes lighter.

Atonement by the offender satisfies his conscience and sets him free of the feeling of guilt in the inner-most recesses of his heart. It thus becomes the most important pathway on the ascent to moral heights and strengthens his resolve to lead a blemish free and pro-social life. If the attonement is deep and sincere, the offender is likely to have an abiding awareness that he has been morally reinstated. It also results in the object of protecting society being achieved alongwith attainment of the object of moral and social regeneration of the criminal.

Thus on weighing the pros and cons of the matter it was felt by the Commission that scheme for concessional
treatment in respect of those offenders who on their own volition invoke the scheme which takes care of appropriate safeguards may prove beneficial. It will also make the provisions relating to release on probation which are already on the statute book really effective. For, it is of little use to invoke these provisions, at the conclusion of a full-fledged and full-dressed trial "after" investing time, effort and money in recording evidence and recording a finding of guilt. If the scheme is invoked an offender can seek the benevolent provisions relating to probation without having to undergo the rigorous of a trial. The idea, therefore, was not abandoned. In fact, the crying need to evolve a suitable scheme is satisfied.”

2.2 Indian Law and Plea Bargaining

In India, the system of plea bargaining is in its experimental stage. The system was introduced as a result of criminal law reforms introduced in the Criminal Law (Amendment) Act, 2005 (Act 2 of 2006). Section 4 of the Amendment Act introduced Chapter XXIA to the Code having sections 265 A to 265 L. Though the Act was passed on 11th January, 2006, the provisions were notified and came into effect from 5th July, 2006 only.

2.2.1 Applicability

Section 265 A deals with applicability of the Chapter XXIA of Criminal Procedure Code. Benefit of Plea bargaining can be extended in two circumstances. One is, if a report is forwarded by a Station House Officer of a Police Station after the completion of investigation to the Magistrate. The other is, if the Magistrate has taken cognizance of an offence on a
complaint under S. 190 (a) followed by examination of a complainant and witness under S. 200 or S. 202 and issuance of process under Section 204. Thus, it means, after commencement of proceedings upon a private complaint under S. 190 (a) of the Code.

However, if the accused is involved in an offence, which is punishable to death, life imprisonment or of imprisonment more than 7 years, benefit cannot be extended. Apart from that for offences affect socio-economic conditions of the country, which are notified by the Central Government or offences against woman or offences against a child below the age of fourteen years, benefit of plea bargaining is not available. Under S. 265 L the provisions of plea bargaining is not applicable to any Juvenile or Child as defined under Juvenile Justice (Care and Protection of Children) Act, 2000. The Savings provisions under S. 265J has extended an independent existence to the Chapter, in case of inconsistency with other provisions of the Code.

The application of plea bargaining is confined to certain cases.\(^8\) It has been made clear that plea bargaining shall apply in respect of an accused against whom a charge sheet has been filed under Section 173 accusing him of an offence punishable with imprisonment upto seven years. The same conditions apply in a complaint after examining the complainant and witnesses under Section 200 and issuing process under Section 204.

Plea bargaining shall not apply in connection with offences affecting the socio-economic condition of the

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\(^8\) Under Section 265 A (1) of Cr.P.C.
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.\(^9\) A notification of the Ministry of Home Affairs dated 11th July 2006 exists which has been issued under sub-Section (2) of Section 265A of the Code. Under the said notification, offences, affecting the socio-economic conditions of the country have been notified, which are outside the purview of plea bargaining. These notified offences are:-


\(^9\) Under Section 265 A (2) of Cr.P.C.
ix). Offences with respect to animals that find place in Schedule I and Part II of the Scheduled II as well as offences related to altering of boundaries of protected areas under wildlife (Protection), Act 1972.


xvii). The Explosives Act, 1884.

xviii). Offences specified in Section 11 to 18 of the Cable Television Networks (Regulation Act, 1952).

2.2.2 Procedure

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 date of hearing of application.

2.2.3 Examination of Accused

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.\textsuperscript{11} 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.

2.2.4 Mutually satisfactory deposition:

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.\textsuperscript{12} 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

\textsuperscript{11} Section 265 B(4) of Cr.P.C.

\textsuperscript{12} Section 265B(4) (Q) of Cr.P.C.
Prosecutor, investigating 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 out, 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.

2.2.5 Disposal of Case on the basis of report

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

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13. Defined under S 2(u) as explained in S. 25 of the Code
14. Under Section 265 D of Cr.P.C.
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.\textsuperscript{15}

\textbf{2.2.6 Judgment :}

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.\textsuperscript{16} 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 Procedure Code in respect of granting and rejecting bail, trial of offences and other general matters.

\textsuperscript{15} Under Section 265E of Cr.P.C.

\textsuperscript{16} Under Section 265F of Cr.P.C.
relating to disposal of case, particularly under provisions in Chapter XXIV of the Code.

An accused, while disposal of his application under plea bargaining, is entitled for setting off the period of detention from the sentence of imprisonment imposed under S. 265E. He is entitled to a set off the period of detention, he had already undergone in the same case, during the investigation, inquiry or trial, but before the date of conviction, in compliance of the provisions of S. 428 only. This provision enables early release of under trial prisoners, who are the real victims of our delayed judicial process. Thus the provisions of Chapter XXIA extends the scheme of plea bargaining in the Indian Criminal Jurisprudence, to a limited extend only, by giving discretion to the Court, restricting excess power to the prosecution, as seen from International jurisprudence, by giving sufficient measures to prevent the abuse of process. Though S. 265C does not state about the nature of bargaining, it is a consolidation of Charge, Sentence and Fact plea-bargaining, as the provision says about the mutual satisfactory disposition, which has wider connotation to canvass the characteristics of these kinds of plea bargaining.

2.3 The Standard of Voluntariness and Proper Procedure of Law

A check list has been provided to ascertain the factors of voluntariness and proper procedure of law to be adopted. This checklist defers in different kinds of cases.

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17. As formulated by Justice A.K. Sikri, Judge, High Court of Delhi as stated in his Article published on the “Regional Policy Dialogue of Judges” in the meeting of NALSA in Cuttack.
2.3.1 On a Case Instituted on Police Report-

A). Where the report under Section 173 of the Code has been forwarded by the officer-in-charge of the police station alleging an offence for which the maximum punishment is seven years.

1. As formulated by A.K. Sikn, Judge, High Court of Delhi as stated in his article published on the “Regional Policy Dialogues of Judges” in the meeting of NLSA in Cuttack.

2.3.2 On Case Instituted on complaint-

i) Whether the complainant and the witnesses have been examined under Section 200 of the Code and the process under Section 204 has been ordered to be issued?

ii) Whether the Magistrate has taken cognizance of the offence?

iii) Whether prescribed punishment is for a term not exceeding seven years?

B). Whether the alleged offence affects the socio-economic condition of the country as notified or has been committed against a woman or a child below the age of fourteen years?

C). i) Whether the application for plea bargaining containing the brief description of the case relating to the offences for which the accused is charged has been filed by the accused?

ii). Whether the application is supported by an affidavit by the accused stating that he has voluntarily filed by the application after understanding the nature and extent of punishment provided for the offence?
iii). Whether the accused is a previous convict for the same offence?

D). Whether, after receipt of application, notice to the Public Prosecutor or the complainant of the case and to the accused for appearance on the fixed date has been issued?

E). i). The accused has to be examined in camera.

ii) The Public Prosecutor or the complainant shall not be present at the time of examination of accused.

iii) Whether the accused has filed the application voluntarily.

In order to ascertain the voluntariness of the accused in the filing of the application for plea bargaining, the following questions may be asked:-

2.3.3 Model Set of Questions to be put to accused pleading guilty:

Q.1 What is your name?

Q2. What are your education qualifications?

Q3. To which place do you belong?

Q.4 Whether any other criminal case is pending against you?

Q.5 Are you a previous convict?

Q.6 Do you know the contents of application as well as affidavit?

Q7. Who has advised you to file application for plea bargaining?

Q.8 Have you filed the application on your own? Whether any members of your family, advocates or friends have compelled you to file the application?
Q.9 Do you know that by filing this application you may lose your right to a regular trial?
Q.10 Do you know that you are not bound to file the application for plea bargaining?
Q.11 Do you know if your application is allowed, you will be convicted and fine may also be imposed upon you?
Q.12 Do you think if you are convicted, that will be a stigma?
Q.13 Do you know that if you proceed with the trial you may be acquitted?
Q.14 Do you know the nature of offences alleged against you?
Q.15 Do you know if you are convicted in plea bargaining, you may be sentenced to rigorous imprisonment?
Q.16 Do you understand that you may be liable to pay the compensation including other expenses to the victim?
Q.17 Do you know if the alleged offence is punishable with minimum punishment then you may be awarded half of the punishment?
Q.18 Do you know if no minimum of punishment is prescribed then you may be sentenced to 1/4th of the punishment?
Q.19 Do you say that you have pleaded guilty voluntarily on your application for plea bargaining and without any coercion or duress from any one and one after understanding the consequences of your application?
2.4 Difference between Plea Bargaining and Pleading Guilty:

After the introduction of Plea Bargaining day by day, partakers in criminal justice system are either in confusion or in an intellectual debate on the innovative changes in sentencing system under the Indian Criminal jurisprudence\textsuperscript{18}. Strictly speaking plea bargaining is a wider connotation, but pleading guilty is having a narrow sphere. While moving for a plea bargaining there is implied conduct of pleading of guilty but not in vice versa. Law on pleading guilty is an area having clarity and certainty. But the sphere of plea bargaining is quite sticky to explain, understand and execute.

Wikipedia, an internet dictionary, defines the term as “a plea bargain (also plea agreement, plea deal or copping a 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 no contest (and often allocate) 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.” Thus when analyse with this general meaning, there can be two kind of plea bargaining, one is of bargaining as to the charge and other is as to the punishment. When an offender is charged with aggravated assault/ battery, on his alleged conduct in a public street by associating a street fight, the

\textsuperscript{18} "Bargaining-New Horizon in Criminal Jurisprudence" Article by K.A. Pardeep, Advocate High Court of Kerala.
offender before the Trial Court may voluntarily opt for a lesser charge of simple assault/battery or for a disorderly conduct in Public Street and the Court can award punishment for the lesser charge. This kind of bargaining is plea bargaining as to charges. In other kind of plea bargaining, such as bargaining as to punishment, the offender agrees to plead guilty to the original charge of aggravated assault/battery, without bargaining for a lesser charge, but bargaining for a lesser punishment, in exchange for a severe sentence that he would likely to receive if a Trial Court found him guilty at trial. Bargaining for a reduction in either the number, or severity of criminal charges is referred to as charge bargaining. Bargaining for a favourable sentence, recommendation by the prosecutor, or bargaining directly with a trial judge for a favourable sentence is referred to as sentence bargaining. In cases of sentence bargaining, trial judges, ordinarily, opt to impose sentences not more severe than those recommended by prosecutors or else afford accused an opportunity to withdraw their guilty pleas.

Although charge bargaining and sentence bargaining are the most common forms of plea bargaining, they are not the only ones. Other kind is fact bargaining. In fact bargaining, a prosecutor agrees not to contest an accused's version of the facts or agrees not to reveal aggravating factual circumstances to the court. This form of bargaining is likely to occur when proof of an aggravating circumstance would lead to a mandatory minimum sentence or to a more severe sentence under sentencing guidelines. A prosecutor
also may agree to provide leniency to an accused’s accomplices, withhold damaging information from the court, influence the date of the accused’s sentencing, arrange for the accused to be sent to a particular correctional institution, request that an accused receive credit on the sentence for time served in jail awaiting trial, agree to support the accused’s application for parole, attempt to have charges in other jurisdictions dismissed, arrange for sentencing in a particular court by a particular judge, provide immunity for crimes not yet charged, or simply remain silent when a recommendation otherwise might be unfavourable.

Apart from this, taking into consideration of the other aspects, there are two kinds of plea bargaining, as endorsed in International jurisprudence. i.e., Express and implicit plea bargaining. Express bargaining occurs when an accused or his lawyer negotiates directly with a prosecutor or a trial judge concerning the benefits that may follow the entry of a plea of guilty. Implicit bargaining, on the other hand, occurs without face-to-face negotiations. In Implicit bargainings, the trial judges especially, establish a pattern of treating accused who plead guilty more leniently than those who exercise the right to trial, and the accused therefore come to expect that the entry of guilty pleas will be rewarded.

2.5 Advantages of Plea Bargaining

Significant feature of method of plea bargaining is that it helps the Courts and State to manage the case loads. It reduces the work load of the prosecutors enabling them to
prepare for gravest case by leaving the effortless and petty offences to settle through plea bargaining. It is also a factor in reforming the offender by accepting the responsibility for their actions and by submitting them voluntarily before the law, without having an expensive and time consuming trial. In cases wherein the prosecution is weak, if trial is concluded, for want of proper witnesses or evidences and the ultimate result may be an acquittal, the prosecution will have a chance to find the accused as guilty, by cooperating with the accused for a plea bargaining.

An intelligent prosecutor may agree for a plea bargaining of an insignificant accused to collect evidence against other graver accused. Normally, in cases wherein aged or women witnesses have the vital role to prove a charge against the accused, their death or non co-operation, may be a real cause for adverse conclusion of the case. Here the prosecution avoids a chance of acquittal and the accused avoids a chance of conviction for more serious charges with higher punishment. From the angle of victim also, plea bargaining is a better substitute for his ultimate relief, as he can avoid a lengthy court process to see the accused, be convicted. The system gives a greater relief to a large number of under trials lodged in various jails of the country and helps reduce the long pendency in the courts.

There are some other supporting factors of plea bargaining which fall into three main categories. First, some jurists maintain that it is appropriate as a matter of sentencing policy to reward defendants who acknowledge
their guilt. They advance several arguments in support of this position, notably, that a bargained guilty plea may manifest an acceptance of responsibility or a **willingness to enter the correctional system in a frame of mind** that may afford hope for rehabilitation over a shorter period of time than otherwise would be necessary.

A second view treats plea bargaining, not primarily as a sentencing device, but as a form of **dispute resolution**. Some plea bargaining advocates maintain that it is desirable to afford the accused and the state the option of compromising factual and legal disputes. They observe that if a plea agreement did not improve the positions of both the accused and the state, one party or the other would insist upon a trial.

Finally, some observers supports plea bargaining on grounds of **economy or necessity**. Viewing plea negotiation less as a sentencing device or a form of dispute resolution than as an administrative practice, they argue that society cannot afford to provide trials to all the accused who would demand them if guilty pleas were unrewarded.

At least, there are more appropriate uses for the additional resources that an effective plea bargaining could save.

### 2.6 Disadvantages of Plea Bargaining

Plea bargaining is problematic for at least some reasons. First, the prosecution has the power to **present accused with unconscionable pressures**. Though, in procedure pleas as voluntary, there are every chances of being practically coerced. The prosecution has the incentive
to maximize the benefit of pleading guilty in the weakest cases. The more likely an acquittal at trial, the more attractive a guilty plea is to the prosecution. But in a borderline case that does go forward, the prosecution may very well threaten the most serious consequences to those accused who may very well be innocent.

The defense lawyers who represent accused do not have the resources to independently investigate every case. Plea bargaining undercuts the requirement of proof beyond reasonable doubt and that plea negotiation is substantially more likely than trial to result in the conviction of innocent. Plea bargaining results in unjust sentencing. This practice turns the accused’s fate on a single tactical decision, which, they say, is irrelevant to desert, deterrence, or any other proper objective of criminal proceedings. Some critics maintain that plea bargaining results in unwarranted leniency for offenders and that it promotes a cynical view of the legal process.

Critics of plea bargaining, from their foreign experiences, object to the shift of power to prosecutors that plea bargaining has effected, noting that sentencing judges often do little more than ratify prosecutorial plea bargaining decisions. They maintain that, even more clearly, plea bargaining makes figureheads of the probation officers who prepare reports after the effective determination of sentence through prosecutorial negotiations. Plea negotiation, they say, very frequently results in the imposition of sentences on the basis of incomplete information. In the light of the conflict of
interests prosecutors, defense lawyers, and trial judges, the
critics sometimes contend that plea negotiation
subordinates both the public's interest and the accused's
to the interests of criminal justice administrators. In their
view, the practice also warps both the initial formulation of
criminal charges and, as accused plead guilty of crimes less
serious than those that they apparently committed, the final
judicial labeling of offences. Critics suggest that plea
bargaining deprecates human liberty and the purposes of
the criminal sanction by "commodifying" these things, that
is, treating them as instrumental economic goods.

As per the foreign thinkers, plea negotiation raises
substantial legal and constitutional issues. For one thing,
common law courts traditionally treated a confession as
involuntary when it had been induced by a promise of
leniency from a person in authority. Moreover, a guilty plea
waives the constitutional right to trial and subordinates
trial rights. Under the "doctrine of unconstitutional
conditions," waivers of constitutional rights are invalid when
they have been required as a condition for receiving
favourable governmental treatment. Despite these negative
dimensions, plea bargaining is the central feature of the
adjudicatory process.

Defence Lawyer, Trial Judge and Prosecutor are the
fundamental elements in the working of plea bargaining.
Prosecutors plainly are influenced by the equities of
individual cases, the seriousness of the accused's alleged
crime, their prior criminal record, and so on. At times,
prosecutors are influenced as well by their personal views of
the law without a roving enquiry. In western experiences, although the victim of the crime has been called the “forgotten person” in plea bargaining, many prosecutors give substantial weight to the desires of victims.

Through plea bargaining, a prosecutor can avoid much of the hard work of preparing cases for trial and of trying them. In addition, prosecutors can use plea bargaining to create seemingly impressive conviction rates. The personal bias with the defence lawyers also may influence plea bargaining practices. So there may be desires for professional advancement either within a prosecutor’s office or after leaving it. Although most prosecutors probably do not deliberately sacrifice the public interest to their personal goals, the bargaining process may be influenced by conflict of interests, and prosecutors may rationalize decisions that serve primarily their own interests.

Private defense lawyers commonly are paid in advance, and their fees do not vary with the pleas their clients enter. Once a lawyer has pocketed the fee, his personal interest may lie in disposing of a client’s case as rapidly as possible, that is, by entering a plea of guilty. Cop-out lawyers who plead virtually all of their clients guilty sometimes represent large number of accused for relatively low fees. Some of these lawyers have been known to deceive their clients in the effort to induce them to plead guilty. Engaged State briefs lawyers may suffer a similar conflict of interest. The relatively small amount of remuneration that he is likely to receive for representing an indigent accused may seem
inadequate compensation for a trial, but this amount may seem adequate as a fee for negotiating a plea of guilty.

In theory, the decision to enter a plea of guilty is of the accused rather than the lawyer. Nevertheless, many defense lawyers speak of client control as an important part of the plea negotiation process. When clients are reluctant to follow their advice, these lawyers may use various forms of persuasion, including threats to discontinue their representation, in an effort to lead the clients to what the lawyers regard as the appropriate course of conduct.

Although prosecutors and defense lawyers are the principal actors in the plea bargaining process, judicial participation in this process is far from rare. This participation may take various forms. In some courts, trial judges conduct in-chambers conferences and offer to impose specified sentences when accused plead guilty. In others, judges offer suggestions to prosecutors and defense lawyers, describe how they have treated certain cases in the past, or indicate a probable range of sentences. Judges who do not participate in any form of explicit bargaining may engage in implicit bargaining by treating an accused's guilty plea as a reason for substantially reducing the penalty imposed. Primarily, the theory that judicial plea bargaining is more coercive than prosecutorial bargaining, some authorities are in an argument that judges should be prohibited from engaging in this practice. Personal presence of Judges in the consultation process may amount to a prejudicial attitude, in the later course of trial, if no compromise is arrived between the prosecution and defense.
2.7 **Assessment of The Code of Criminal Procedure**

Plea bargaining is introduced to provide a speedy alternative for those who know they are guilty and are ready to plead guilty, in such a case they deserve expeditious trial and some concession in their punishment.

Now, when our system suffers from inefficiency, the only remedy available is to look forward to the system of justice practiced in other developed nations. That has been always done in India, the entire legal structure in India has been contributed partially or wholly by the western countries. To enhance the speed of the courts in disposing cases, the United States, European Union and various other countries have adopted the system of 'plea bargaining' in their respective criminal justice systems so as to relieve the courts from the increasing number of files and to promote expeditiousness in adjudicating criminal cases. It is estimated that more than 90 per cent of the cases in America, are settled by plea bargaining. The history of plea bargaining is extremely old, and in contemporary generation it has a wide amplitude to settle cases with efficiency.

On various occasions the legitimacy of the system of plea bargaining has been put to controversies, but without going into the facts of such criticisms it is worth noting that, in 1970, the constitutional validity of plea bargaining was upheld in the leading case of, *Brady v United States*\(^1\) where it was stated that "it was not unconstitutional to extend a benefit to a defendant who in turn extends a benefit to the state". One year later, in *Santobello v New*

\(^{19}\) 379 US 742 1970.
York the United States\textsuperscript{20} Supreme Court formally accepted that plea-bargaining was essential for the administration of justice and when properly managed, was to be encouraged.

Plea bargaining has been introduced as a prescription to the problem of over crowded jails, over burdened courts and abnormal delays. It cannot be denied that the practice should result in faster disposal of cases, because delayed trials are problematic in many aspects, the proposal may seem appealing.

The reasons that are cited for the introduction of plea bargaining is for the tremendous over crowding of jails, high rates of acquittal, torture undergone by petitioners/accused awaiting trial, etc can all be traced back to one major factor, that is, delay in the trial process. In India, the reason behind delay in trials can be traced to the delays of the investigating agencies as well as the over burdened judiciary. The Supreme Court suggested in the year 2004 that above every 40,000 people there should be one judicial authority and this parameter is far beyond acceptability till date. The population is multiplying every passing day but the number of courts are static, all this adds to the misery of the judicial system. Therefore the system of plea bargain was required in our system since guilty pleas can be disposed off in minutes, but disputed pleas require a lot of examination and trial procedure, etc which consumes a lot of time.

In India, plea bargaining was firstly recommended in the 154\textsuperscript{th} Report of the Law Commission of India and

\textsuperscript{20} 104 US 257 1971.
subsequently in the 177th Report, there were concerns regarding this growing delay latch in the judicial system, a committee comprising the former Chief Justice of Kerala & Karnataka High Court, Justice V S Malimath was requested to prepare a report on the reformation measures and in this report the system of plea bargaining was suggested as an efficient remedy. Thereafter, numerous proposals were made to introduce plea bargaining in the Criminal Procedure Code, but all of them failed, and they were reintroduced with slight moderations through the Criminal Law (Amendment) Bill, 2005, and thereon we have this system recognized in our criminal justice system which has also sparked off a controversy in the legal community.

Irrespective of the ongoing controversies, the system has been result-oriented to a great extent. The enacted proviso is absolutely simple and speedy. It enables an accused to file an application for plea bargaining in the trial court. The court, on receiving the application, examines the accused in camera to ascertain the voluntary will of the accused. The court issues a notice to the public prosecutor or the complainant to work out a mutually satisfactory disposition of the case. The negotiation of such a mutually acceptable settlement is left to the prosecution and the victim and the accused. On reaching a settlement, the court can award compensation based on it to the victim and then hear the parties on the issue of punishment.

Concerning the punishment, the court may release the accused on probation if the law allows for it; if a minimum sentence is provided for the offence, the accused may be
sentenced to half of such minimum punishment; if the offence committed does not fall within the scope of the above, then the accused may be sentenced to one-fourth of the punishment provided or extendable for such offence.

The accused may also avail of the benefit under Section 428 of the Code of Criminal Procedure, 1973 which allows setting off the period of detention undergone by the accused against the sentence of imprisonment in plea bargained settlements. The court delivers the judgment in open court according to the terms of the mutually agreed disposition and the formula prescribed for sentencing including compensation for the victim. Since this decision is a mutual agreement of the accused, this decision is final and no appeal lies to any higher court henceforth, the expeditiousness and transparency of the procedure is crystal clear, in view of the given procedure and it stands true to the fact that it will certainly reduce the backlog in the criminal courts in India.

The procedure is far better in many other ways for the reason that 'plea bargaining' may be applicable only in limited cases, it does not apply to cases where the offence committed is a socio-economic offence or where the offence is committed against a woman or a child below the age of 14 years. Simply speaking, it is applicable in respect of those offences for which punishment is upto a period of seven years.

Plea bargaining has come not only as a boon for the over burdened judiciary but renders benefits to many

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21 Articles 226, 227, and 136 of the Constitution of India are exceptions to this.
others. The principal benefit to the accused is that the accused is entitled to a lighter punishment than usual punishment prescribed after a regular trial. Secondly, the defendant saves an enormous amount of money which he could have lavishly spent around his advocates as their professional fee, documentation, clerical and miscellaneous expenses, etc. Thirdly, it saves a lot of time (of the court, defendant, public prosecutor) which was obviously required for the trial procedure, and the duration is never estimated, it could stretch to weeks or years. Fourthly, there are more chances that the guilty plea will be accepted by the court, the court wouldn’t be skeptic to reject the plea on menial issues and that is far more profitable for the accused. Finally, it also benefits the public prosecutors by reducing their workload and obviously relieves the court off the growing number of cases.

Considering the procedure overall, one can rightly contend that it is a justified system since it has a synchronized balance between the principles of justice and the law. The Gujarat High Court appreciated this procedure and observed in State of Gujarat v Natwar Harchanji Thakor22 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 anything static. It can thus be said that it is really a

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22 2005 CRLJ 2957.
measure and redressal and it shall add a new dimension in the realm of judicial reforms."

There are many merits to this procedure as compared to the usual system of trial. The said scheme is available only in limited cases and not in all kinds of criminal cases as discussed earlier. The judges aren't ostracized from the scene, they exercise complete supervision over the procedure and have the discretion to reject the plea or take other substantial measures. Plea bargaining shall not benefit the habitual offenders, or established criminals, it is meant to benefit only the freshers! The accused should have a voluntary motive to plead guilty, if the intention isn't voluntary then the plea is liable to be dismissed ab initio. 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.

There is no doubt that plea bargaining has been introduced as an alternative measure to relieve the court of the growing number of cases and not with a motive to strengthen the judicial system. Plea bargaining is nothing but a cover up of the inadequacies of the Government in dealing with each and every case that comes before it. It indirectly shows the incompetence of the traditional procedural laws. The Supreme Court condemned the introduction of plea bargaining in State of Uttar Pradesh v. Chandrika\textsuperscript{23}, The Apex Court held that on the basis of plea

\textsuperscript{23} 2004 CRLJ 384.
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. 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.

The bargaining (or negotiation) procedure makes it vital for the prosecutor to consult the police for matters of evidence and other factors (just like the court depends upon the charge-sheet filed by the police), and in a country like India, the very term police would bring with itself a lot of corruption, coercion, threats etc to the accused or the victim. And through the medium of police, all anti-social elements, rich dominating class can gain control of the negotiations. The scope of plea bargaining isn't secured in privacy, it needs to be checked and the interference of the police has to be eliminated to a reasonable extent.

The fact that for a majority of the Indians, pleading before a court of justice is a symbol of torture and zeal should also be considered and the 142nd Law Commission Report states, "Prosecution pressures may cause innocent people to yield and forego their right to trial". Therefore, it is more likely that innocent people might plead guilty in order to escape the horrifying trial sessions, or even the prosecutors might pressurize the accused. At the same time, it is hard to see how the prosecution can derive more than a purely statistical benefit from the conviction so obtained.
The court is also a participant in the negotiation process. The impartial nature of the court gets depreciated since the judges will be more keen to get rid of such cases. This is a rising problem in America where the judges are pre-determined to settle away such cases since 90 per cent of the cases are settled by plea bargaining. The courts won't presume the innocence of the accused anymore and the age-old standard of proving the accused beyond reasonable doubt gets worn out with the increasing addiction to plea bargaining.

Some of the flagrant errors pointed out by the 142nd Report of the Law Commission of India include that the system is widely successful in America for the high rate of literacy. India isn't blessed with a high literacy rate and as such plea bargain may not be a success Indian system since the major part of the population might not be aware of the pros & cons of the system. The report further points out that, the incidence of crime might increase due to criminals being let-off easily. Since the bargaining plea would be acceptable to all courts, that would be enough to promote crime in the state., and that Criminals may escape with impunity and escape due punishment. The punishment applicable is certainly lower than the punishment prescribed as in due course of the usual trials.

This system has a wide amplitude to benefit the rich for they will be able to influence the prosecutors and the victims and the police during the bargaining procedure, and will dominate the poor who have no cognizance in our society. The best way to eliminate this obstacle is by conducting the negotiations before the court itself or in the
presence of certain commissioners appointed by the court. The government can also design special forums to take up such bargaining sessions.

Although, the concept of plea bargaining has been introduced to reduce the growing number of cases in the criminal courts and to catalyze the delayed system prevalent for ages, it is enacted, to provide a speedy alternative for those who know they are guilty and are ready to plead guilty, in such a case they deserve expeditious trial and some concession in their punishment. But this concept undoubtedly undermines the public's confidence in the criminal justice system and as a result of this it will lead to the conviction of innocent, inconsistent penalties form similar crimes and lighter penalties for the rich. The legislature and the executive pose a challenge to strike a proper balance between the merits and the flaws discussed above.

**Conclusion:**

To conclude, 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 case load disposition, but it takes place in an unsatisfied and in a translucent manner. Perhaps there is no other choice but to adopt this technique. The criminal courts are too over burdened to allow each and every case to go on trial, and Courts have somehow cooperate with this compromised mockery, irrespective of its dark flaws for the moment.