Plea Bargaining

Meaning of Plea Bargaining

In the most traditional and general sense “Plea bargaining” may be defined as an agreement in a criminal case between the prosecution and the defense by which the accused changes his plea from not guilty to guilty in return for an offer by the prosecution or when the judge has informally let it be known that he will minimize the sentence if the accused pleads guilty. It is an instrument of criminal procedure which reduces enforcement costs (for both parties) and allows the prosecutor to concentrate on more meritorious cases. Plea bargaining allows the accused to bargain with the court on the sentence that will be awarded. A key aspect is that the facts stated in an application for plea bargaining are not meant to be used for any other purposes. It is generally seen in these days that most of the criminal defendants are offered plea bargain because of the fact that it gives an opportunity to the criminal to reduce his/her punishment by honestly accepting his own guilt.

The practice of what has come to be known as ‘plea bargaining’ has been the subject of considerable debate over the last few decades. In Canada, the discussion has centered on the exact nature of the practice and on the term by which it should be known. In 1975, the Law Reform Commission of Canada defined ‘plea bargaining’ as ‘any agreement by the accused to plead guilty in return for the promise of some benefit’. But over the years, considerable objections grew against designating the practice in any way that implied that justice could be purchased at the bargaining table. Consequently, there was a movement away from the use of the term ‘plea bargaining’ and toward more neutral expressions such as ‘plea discussions’, ‘resolution discussions’, ‘plea negotiations’ and ‘plea agreements’. The use of such expressions marked an evolution in the practice itself, since they implicitly acknowledged it to be much more wide ranging than simple bargaining and to involve the consideration of issues beyond merely that of an accused pleading guilty in exchange for a reduced penalty.

Delay in providing law to the citizens has become a hindrance in crime prevention. What is seen today is that the crime rate increases at a greater rate than the punishment of those offenders. So the requirement of today is that there needs to be some mechanism which can bring equilibrium between the commitment of crime as well as punishment of those offenders. Plea Bargaining is one of the methods which can be used to reduce the burden of the courts. The move has been announced by the government as part of a process to reform the country's archaic criminal code with many of its laws dating back to colonial times.

The government believes that plea bargaining will affect more than 50,000 prisoners who are currently in jail. Lawyers say "it as a progressive piece of legislation and will lead to speedy disposal of a lot of cases and ease pressure on trial courts," At the moment, India has 10 judges for every million people because of which the average length of a trial is about 15 years. However, the move will only be applied to crimes which attract a maximum sentence of seven years and does not cover more serious felonies such as

murder or crimes against women and children. "It is a good beginning but in the future it should be extended to cover those crimes as well."

Types of Plea Bargaining

Charge Bargaining

“Charge Bargaining” refers to a promise by the prosecutor to reduce or dismiss some of the charges brought against the defendant in exchange for a guilty plea. This can be further classified into multiple charge and unique charge. In multiple charges some charges are dropped in return for a plea guilty to one of them. In a unique charge, a serious charge is dropped in exchange for a plea of guilty to a less serious charge.

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. There is an agreement for a selective presentation of facts in return for a plea of guilty.

Specific Fact Bargaining

In this type of bargaining there is an acceptance of sanction without pleading guilty which is known as the nolo contendere pleas. Another category of pleas in this category is known as the Alford pleas where there is acceptance of sanction but the defendant asserts innocence.

Sentence Bargaining

“Sentence Bargaining” refers to a promise by the prosecutor to recommend a specific sentence or to refrain from making any sentence recommendation in exchange for a guilty plea. 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.

Plea Bargaining in US and Other Countries

“When one’s own legal system flounders, one naturally looks towards practices in other countries, which seem to provide the solution. In a criminal trial in the United States, the accused has three options as far as pleas are concerned guilty, not guilty or a plea of ‘nolo contendere’. A plea-bargain is a contractual agreement between the prosecution and the accused concerning the disposition of a criminal charge. However, unlike most contractual agreements, it is not enforceable until a judge approves it. Plea-bargaining thus refers to pre-trial negotiations between the defence and the prosecution, in which the accused agrees to plead guilty in exchange for certain concessions guaranteed by the prosecutor.

Plea-bargaining has, over the years, emerged as a prominent feature of the American criminal justice system. While courts were initially skeptical towards the practice4, the 1920s witnessed the rise of plea-bargaining making its correlation with the increasing complexity in the American criminal trial process apparent. In the United States, the criminal trial is an elaborate exercise with extended voir dire and peremptory challenges during jury selection, numerous evidentiary objections, complex jury instructions, motions for exclusion, etc. and though it provides the accused with every means to dispute the charges against him, it has become the most expensive and time-consuming in the world. Mechanisms to evade this complex process gained popularity and the most prominent was of course, plea bargaining.

In the US, plea bargaining is a significant part of the criminal justice system; the vast majority of criminal cases is settled by plea bargain rather than by a jury trial. But plea bargains are subject to the approval of the court, and different states and jurisdictions have different rules. In 1967, both the American Bar Association and the President's Commission on Law Enforcement and Administration of Justice approved the concept of plea bargaining. In 1970, the constitutional validity of plea-bargaining was upheld in Brady v. United States (297 US 742 ; 25 L.Ed. 2d 747) where it was stated that it was not unconstitutional to extend a benefit to an accused that in turn extends a benefit to the State. In Santobello v New York (404 US 257), the US Supreme Court has recognized plea bargaining as both an essential and desirable element of the criminal justice system. Around 95% of all convictions in the US are secured with guilty plea. The courts are of the view that the justice system is benefited from plea bargaining as it reduces the court congestion, alleviation of the risks and uncertainties of the trial. (People v Glendenning, 127 Misc.2d 880, 1985)
Plea bargaining in Pakistan was introduced by the National Accountability Ordinance, 1999, an anti-corruption law. The accused applies for it accepting his guilt and offers to return the proceeds of corruption as determined by the investigators / prosecutors. After endorsement by the chairman of the National Accountability Bureau, the request is presented before a court. In case the court accepts the request for plea bargain, the accused stands convicted but is not sentenced if in trial, nor does he undergo a sentence previously pronounced by a lower court if in appeal. However, the accused is disqualified from taking part in elections, holding public office and obtaining a bank loan, besides being dismissed from service if he is a government officer.
In Italy, the procedure of ‘pentito’ (literally, he who has repented) was introduced for counter-terrorism purposes, and generalized during the Maxi trial against the mafia in 1986-1987. The procedure has been contested, as the pentiti received lighter sentences as long as they supplied information to the magistrates. Many of them have been accused of deliberately misleading the justice system. [(2006) 2 SCC (Cri) J-12]

Recommendations of Law Commission of India

The subject of the 142nd Report of the Law Commission of India (1991) and the subsequent conclusions and recommendations were motivated by the abnormal delays in the disposal of criminal trials and appeals. In this context the system of plea-bargaining in the United States drew attention to itself and the Law Commission outlined a scheme of

plea-bargaining for India. The Commission noted that because no improvement had been made in the situation and there was little scope for streamlining the system, the problem was a grave one and clamored for urgent attention.

Based on an analysis of plea bargaining as it exists in the United States, the report stated that the practice was not inconsistent either with the Constitution or the fairness principle and was, on the whole, worthy of emulation with appropriate safeguards. The Commission conducted a survey to ascertain whether the legal community was in support of plea-bargaining and also to gather opinions on the applicability of the practice if the earlier response was in the affirmative. Of those surveyed, a high percentage was in favour of the introduction of the scheme; additionally, most were in favour of introducing the concept only to specified offences. The report concluded that an improved version of the scheme suitable to the law and legal ethos of India should be considered with seriousness and with a sense of urgency.

The report also attempted to address some reservations that were expressed as regards the introduction of plea-bargaining. The scheme would not be successful in India due to illiteracy, which is comparatively much higher than in the United States and thus people would not adequately understand the consequences of pleading guilty. The Commission was of the opinion that because the contention fails to distinguish between literacy and common sense, it does not hold ground. Further, the proposed scheme accounts for this objection by providing for judicial officers to be plea judges, who would explain to the accused persons, the consequences of pleading guilty under the scheme.

Prosecution pressures may cause innocent people to yield and forego their right to trial. The Commission opined that such concerns could be dispelled if the judicial officer explained the implications of the scheme and was satisfied that the application was made by the accused of his own volition and not as a result of coercion or duress.

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. The Commission stated that the argument that the scheme may not succeed was merely a matter of opinion and was not good enough a reason to oppose the scheme. Also, in the trade-off between languishing in jail as an under trial prisoner and suffering imprisonment for a lesser or similar period, the latter would be the rational choice as long periods in jail brought about economic and social ruin.

The incidence of crime might increase due to criminals being let-off easily. The Commission regarded this concern as unfounded as the authority considering the acceptance or otherwise of the request for concessional treatment would weigh all pros and cons and look into the nature of the offence and exercise its discretion in granting or rejecting the request.

Criminals may escape with impunity and escape due punishment. The Commission stated that the scheme provides for concessional treatment and not for any punishment and the stigma of conviction would persist.

As additional justifications, the Commission stated that considerable resources would be saved and that the rehabilitation process of the offender would be initiated early. The Commission concluded that the scheme for concessional treatment in respect of those offenders, who on their own volition invoked the scheme, which incorporated appropriate safeguards, might prove beneficial.

The Commission envisaged that in due time, the scheme would encompass all offences, but proposed that initially the scheme should be extended only to offences that provide for imprisonment for a period of less than seven years. The extension of the scheme would then be considered after a scrutiny of the results and in the light of public opinion. The Commission also suggested further subdivision for a more effective and phased application.

In its 154th Report, the Law Commission (1996) reiterated the need for remedial legislative measures to reduce the delays in the disposal of criminal trials and appeals and also to alleviate the suffering of under trial prisoners. The 177th Report of the Law Commission, 2001 also sought to incorporate the concept of plea-bargaining. The Report of the Committee on Reforms of the Criminal Justice System, 2003 stated that the experience of the United States was an evidence of plea-bargaining being a means for the disposal of accumulated cases and expediting the delivery of criminal justice; the Committee thus affirmed the recommendations of the Law Commission of India in its 142ndth Reports. and 154

The 154th Report of the Law Commission points out that an order accepting the plea passed by the competent authority on such a plea shall be final and no appeal shall lie against the same.

As regards the procedure to be followed in cases where a minimum sentence is provided for the offence, the competent authority may, after following the aforementioned procedure, accept the plea of guilty and record an order of conviction and impose a sentence to the tune of half of the minimum term of jail provided by the statute for the offence concerned. A statutory provision empowering the competent authority would have to be made so that the provision prescribing the minimum sentence is not violated.

The competent authority shall have the power to record a conviction for an offence of lesser gravity than that for which the offender has been charged in the charge-sheet or if the facts and materials constitute an offence of lesser gravity.

The Law Commission was of the opinion that bargaining with the prosecutor which provides the offender with an attraction to avail of the scheme is hazardous in the Indian context, and that a just, fair, proper and acceptable scheme would be that the competent authority can impose such punishment as may seem appropriate as regards the facts and circumstances of the case subject to a limit of one-half of the maximum term provided by the statute for the offence concerned.

The scheme also bars habitual offenders, that is, persons convicted for an offence under the same provision from invoking the scheme. There is, therefore, no merit in the apprehension that those who secure concessional treatment may indulge in the same activity again in the hope of being let off lightly once more. Persons charged with offences against women and children are also excluded from the purview of the scheme.

The scheme allows for no negotiation between the accused and the State or the prosecutor or with the court itself, which is a fundamental difference the scheme maintains from the practice, as it exists in the United States. The scheme does not mention any provision or procedure for withdrawal of pleas. These include subsequent withdrawal of the nature of stating that the plea was not taken voluntarily. The scheme however maintains a difference between the courts examining the case on merits and a totally separate institution i.e. the competent authority for the purposes of the plea bargaining proceedings. It is important to note that this separation ensures that the right to fair trial is not eroded.

Since the competent authority is an autonomous body to decide the fate of the accused over the application made by him voluntarily and knowingly which has the effect of eliminating the possibility of the prosecuting agency obtaining the plea through fraud, misrepresentation or coercion.

As regards determination of the quantum of substantive punishment, it needs to be noted that in the American system, an offender would approach the court in a situation where the prosecution is agreeable to a concessional treatment as well as the extent of the same. Thus, in the United States, the offender is assured as to the extent of the concession that is likely to be secured in the event of the court agreeing to the bargain. In India, the offender would be facing an unknown hazard, and may prompt him to avoid availing of the scheme.

However, this is qualified to the extent that the competent authority, upon acceptance of the plea of guilty, is more or less limited in terms of the sentence that can be awarded and the accused can be assured as to a substantial level of leniency on most occasions. Such a situation creates an undue level of pressure on the accused to plead guilty so as to avail of the scheme. The trade-off for an innocent accused with a strong case against him amounts to a choice between the expected difference between sentence at trial and sentence subsequent to availing of the scheme which would become an increasingly safe prediction in time; and the risk of continuing with the trial and maintaining his innocence.

This situation will result in the innocent pleading guilty unless the equilibrium situation is corrected by reducing the difference between sentences at trial and sentences awarded by the competent authority. The unpredictability of the trial is also a factor that should also be taken into account. The innocent will plead guilty due to the feeling of hopelessness at attempting to rebut the evidence of the police, the severity of the sentence anticipated, and the weariness of the case dragging on and the attractiveness of the existent scheme.

It should be noted that no programme of rehabilitation can be effective on a prisoner who is convinced in his own mind that he is in prison because he is the victim of a mindless, undirected, and corrupt system of justice and in this manner the very basis of a criminal justice system will be undermined. Understandably, the entire scheme owes its existence to the severe pressure on the resources of the court. However, the scheme fails to make the distinction between efficiency at the level of inception and the same being the motivation for guilty pleas from the accused. The motivation for leniency is acknowledgement of error and a desire to reform, not the conservation of resources. The failure to take into account this basic distinction is a fallacy that needs to be addressed.

Also, accused will inevitably assume some level of leniency in an implicit manner. In a natural state that is, in the absence of plea bargaining, 50% to 75% of accused plead guilty. Increase in case pressure may affect plea-bargaining but it would be fallacious to assume that plea-bargaining is caused by caseload. This is however, the reason for introducing the scheme under the 142nd Report of the Law Commission. In fact, prosecutors are the main propagators of plea-bargaining. It is contended that plea-bargaining went hand-in-hand with the imposition of mandatory sentencing, which implies that prosecutors will plea-bargain when judicial discretion is bound.

Thus, it may be inferred that even the scheme proposed by the Law Commission of India may not be advantageous. At this juncture, it may be helpful to examine compounding of offences under Section 320 of the Code of Criminal Procedure, 1973. The issue is whether expanding the list of compoundable offences will be an effective solution for the problem of overcrowded courts and whether this can then serve as an alternative to the introduction of plea-bargaining. Since a crime is essentially a wrong against society, a compromise between the accused and the victim does not ideally serve to absolve the accused from criminal responsibility. However, offences, which are essentially of a private nature, are recognized as compoundable offences while some others are compoundable with the permission of the court. Compounding of offences has the effect of an acquittal and there is no admission of guilt envisaged in the process.

The extension of the list of compoundable offences seems to be inconsistent with the logic underlying the same, which is that the offence is essentially a private one. Also, the compounding of offences has the effect of an acquittal, which certainly cannot be maintained for serious offences. The scope for consideration being involved in the transaction is prima facie against public policy especially for more serious offences and the same would operate to the detriment of the financially weaker classes. The compounding of offences does not require the admission of guilt, which is an essential requirement of commencing the rehabilitation and reformation of the accused. It is on this basis that the argument for extending compoundable offences so as to allow courts to function expeditiously is misplaced, as the scope of any such expansion will be severely restricted due to the aforementioned reasons.

The 154th report of the Law Commission (1996) recommended that plea bargaining should be included as a separate chapter in the Indian criminal jurisprudence. In the 12th Law Commission Report (1991) the conception of idea behind incorporating the idea of

plea bargaining was mentioned wherein it was stated that there needs to be some remedial legislative measures to reduce the delays in the disposal of criminal trials and appeals and also to alleviate the sufferings of under trial prisoners awaiting the commencement of trials. The NDA government formed a committee, headed by the former Chief Justice of the Karnataka and Kerala High Courts, where Justice V.S.Malimath came up with some suggestions to tackle the ever-growing number of criminal cases. 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. 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 it could not be 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 say that it should not be recognized as it would go against the public policy under our criminal justice system. The Supreme Court has also time and again reiterated the concept of plea bargaining saying that negotiation in criminal cases is not permissible.

Plea Bargaining in India

The Indian concept of Plea Bargaining is inspired from the Doctrine of Nolo Contendere. The doctrine has been under consideration by India for introduction and employment in the Criminal Justice System. Indian Criminal Justice System has been ineffective in providing speedy and economical justice. Because Courts are flooded with astronomical arrears, the trial life span is inordinately long and the expenditure is very high. Subsequently majority of cases are arising from criminal jurisdiction and the rate of conviction is very low.

The fact that courts resources would have to be significantly increased to provide a trial for every charge has been cited as both justification and reason for the inevitability of plea-bargaining. Proponents of plea-bargaining argued that it would remove the risks and uncertainties involved in a trial, thus introducing flexibility into a rigid, often-erratic system of justice. It would also enable the court to avoid dealing with cases that involve no real dispute and try only those where there is a real basis for dispute. Victims would be spared the ordeal of giving evidence in court, which could be a distressing experience depending on the nature of the case.

Recently the Government of India has accepted the Doctrine of Nolo Contendere or Plea Bargaining, on the Recommendations of the Law Commission. Doctrine of Nolo Contendere has been considered in a manner according to social and economical conditions prevailing in the country. Appropriate amendment has been incorporated in the Criminal Procedure Code, 1973. The new concept of Plea Bargaining will be fruitful in resolving pending criminal cases and under trial in jails for years.

Plea bargaining has been inserted through Chapter XXI A in the Criminal Procedure Code. It provides for pre - trail negotiations between the defence and the prosecution during which an accused might plead guilty in exchange for certain concessions by the prosecution.

Objectives of Plea Bargaining in India

Statistics as regards the criminal justice system in India are startling in 2001; the number of inmates housed in Indian jails was almost 1, 00,000 more than their capacity. It was estimated that 70.5% of all inmates were under trials and of these 0.6% had been detained in jail for more than 5 years at the end of 2001."

The reasons that are cited for the introduction of plea-bargaining include the tremendous overcrowding of jails, high rates of acquittal, torture undergone by prisoners awaiting trial, etc. can all be traced back to one major factor, and that is delay in the trial process. Since one reason for overburdened dockets in the United States was the nature of jury trials, the experience of some jurisdictions suggested that shortening the trial period could solve the problem. In India, the reason behind delay in trials can be traced to the operation of the investigative agencies as well as the judiciary. Expanding the list of compoundable offences is not a wise option and what is actually needed is not a substitute for trial but an overhaul of the system, in terms of structure, composition as well as work culture to ensure reasonably swift trials. If then the trial procedure itself proves to be too long drawn out and unmanageable, then one may think of launching an alternative to trial. Therefore reformation of the existing system may be a more prudent approach rather than introducing a parallel arrangement (as recommended by the Law Commission) or supplementing the present arrangement (as suggested by the Act).

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

Plea Bargaining

Chapter XXI A inserted by Cr. P.C. Amendment Act, 2005

Plea Bargaining was introduced in India by the Criminal Law (Amendment) Act, 2005 by the Parliament in the winter session of 2005, which amended the Code of Criminal Procedure and introduced a new chapter XXI (A) in the code containing sections 265A to 265L which came into effect from July 5, 2006. It was due to the inspiration that has been gained from America which made Indian to experiment the concept of plea bargaining in the country. Provisions are as follows-

265A. Application of the Chapter.-(1) This Chapter shall apply in respect of an accused against whom-

(a) the report has been forwarded by the officer in charge of the police station under

section 173 alleging therein that an offence appears to have been committed by him other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force; or

(b) a Magistrate has taken cognizance of an offence on complaint, other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years, has been provided under the law for the time being in force, and after examining complainant and witnesses under section 200, issued the process under section 204, but does not apply where such offence affects the socio-economic condition of the country or has been committed against a woman, or a child below the age of fourteen years.

(2) For the purposes of sub-section (1), the Central Government shall, by notification, determine the offences under the law for the time being in force which shall be the offences affecting the socio-economic condition of the country.

265B. Application for plea bargaining.-(1) A person accused of an offence may file an application for plea bargaining in the Court in which such offence is pending for trial.

(2) The application under sub-section (1) shall contain a brief description of the case relating to which the application is filed including the offence to which the case relates and shall be accompanied by an affidavit sworn by the accused stating therein that he has voluntarily preferred, after understanding the nature and extent of punishment provided under the law for the offence, the plea bargaining in his case and that he has not previously been convicted by a Court in a case in which he had been charged with the same offence.

(3) After receiving the application under sub-section (1), the Court shall issue notice to the Public Prosecutor or the complainant of the case, as the case may be, and to the accused to appear on the date fixed for the case.

(4) When the Public Prosecutor or the complainant of the case, as the case may be, and the accused appear on the date fixed under sub-section (3), the Court shall examine the accused in camera, where the other party in the case shall not be present, to satisfy itself that the accused has filed the application voluntarily and where-

(a) the Court is satisfied that the application has been filed by the accused voluntarily, it shall provide time to the Public Prosecutor or the complainant of the case, as the case may be, and the accused to work out a mutually satisfactory disposition of the case which may include giving to the victim by the accused the compensation and other expenses during the case and thereafter fix the date for further hearing of the case;

(b) the Court finds that the application has been filed involuntarily by the accused or he has previously been convicted by a Court in a case in which he had been charged with the same offence, it shall proceed further in accordance with the provisions of

this Code from the stage such application has been filed under sub section (1).

265C. Guidelines for mutually satisfactory disposition.-In working out a mutually satisfactory disposition under clause (a) of sub-section (4) of section 265B, the Court shall follow the following procedure, namely:-

(a) in a case instituted on a police report, the Court shall issue notice to the Public Prosecutor, the police officer who has investigated the case, the accused and the victim of the case to participate in the meeting to work out a satisfactory disposition of the case:
Provided that throughout such process of working out a satisfactory disposition of the case, it shall be the duty of the Court to ensure that the entire process is completed voluntarily by the parties participating in the meeting:
Provided further that the accused may, if he so desires, participate in such meeting with his pleader, if any, engaged in the case;

(b) in a case instituted otherwise than on police report, the Court shall issue notice to the accused and the victim of the case to participate in a meeting to work out a satisfactory disposition of the case:
Provided that it shall be the duty of the Court to ensure, throughout such process of working out a satisfactory disposition of the case, that it is completed voluntarily by the parties participating in the meeting:
Provided further that if the victim of the case or the accused, as the case may be, so desires, he may participate in such meeting with his pleader engaged in the case.

265D. Report of the mutually satisfactory disposition to be submitted before the Court.-Where in a meeting under section 265C, a satisfactory disposition of the case has been worked out, the Court shall prepare a report of such disposition which shall be signed by the presiding officer of the Court and all other persons who participated in the meeting and if no such disposition has been worked out, the Court shall record such observation and proceed further in accordance with the provisions of this Code from the stage the application under sub-section (1) of section 265B has been filed in such case.

265E. Disposal of the case.-Where a satisfactory disposition of the case has been worked out under section 265D, the Court shall dispose of the case in the following manner, namely:-
(a) the Court shall award the compensation to the victim in accordance with the disposition under section 265D and hear the parties on the quantum of the punishment, releasing of the accused on probation of good conduct or after admonition under section 360 or for dealing with the accused under the provisions of the Probation of Offenders Act, 1958 (20 of 1958) or any other law for the time being in force and follow the procedure specified in the succeeding clauses for imposing the punishment on the accused;

(b) after hearing the parties under clause (a), if the Court is of the view that section 360 or the provisions of the Probation of Offenders Act, 1958 (20 of 1958) or any other law for the time being in force are attracted in the case of the accused, it may

release the accused on probation or provide the benefit of any such law, as the case may be;

(c) after hearing the parties under clause (b), if the Court finds that minimum punishment has been provided under the law for the offence committed by the accused, it may sentence the accused to half of such minimum punishment;

(d) in case after hearing the parties under clause (b), the Court finds that the offence committed by the accused is not covered under clause (b) or clause (c), then, it may sentence the accused to one-fourth of the punishment provided or extendable, as the case may be, for such offence.

265F. Judgment of the Court.-The Court shall deliver its judgment in terms of section 265E in the open Court and the same shall be signed by the presiding officer of the Court.

265G. Finality of the judgment.-The judgment delivered by the Court under section 265G shall be final and no appeal (except the special leave petition under article 136 and writ petition under articles 226 and 227 of the Constitution) shall lie in any Court against such judgment.

265H. Power of the Court in plea bargaining.-A Court shall have, for the purposes of discharging its functions under this Chapter, all the powers vested in respect of bail, trial of offences and other matters relating to the disposal of a case in such Court under this Code.

265-I. Period of detention undergone by the accused to be set off against the sentence of imprisonment.-The provisions of section 428 shall apply, for setting off the period of detention undergone by the accused against the sentence of imprisonment imposed under this Chapter, in the same manner as they apply in respect of the imprisonment under other provisions of this Code.

265J. Savings.-The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of this Code and nothing in such other provisions shall be construed to constrain the meaning of any provision of this Chapter.
Explanation.-For the purposes of this Chapter, the expression "Public Prosecutor" has the meaning assigned to it under clause (u) of section 2 and includes an Assistant Public Prosecutor appointed under section 25.

265K. Statements of accused not to be used.-Notwithstanding anything contained in any law for the time being in force, the statements or facts stated by an accused in an application for plea bargaining filed under section 265B shall not be used for any other purpose except for the purpose of this Chapter.

265L. Non-application of the Chapter.-Nothing in this Chapter shall apply to any juvenile or child as defined in clause (k) of section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2000.".

The salient features of the Plea Bargaining are as follows:-

Section 265A of Chapter XXIA of the Criminal Procedure Code deals with applicability of the Plea bargaining. 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.

The Plea Bargaining is applicable only in respect of those offences for which punishment of imprisonment is up to a period of 7 years. It does not apply where such offence affects the socio- economic condition of the country (like offences under Food Adulteration Act etc) or has been committed against a woman or a child below the age of 14 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 court, on receiving the application, must examine the accused in camera to ascertain whether the application has been filed voluntarily. The court must then issue 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 free will of the prosecution (including the victim) and the accused. If a settlement is reached, the court can award compensation based on it to the victim and then hear the parties on the issue of punishment. The court may release the accused on probation if the law allows for it; if a minimum sentence is provided for the offence committed, 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 must deliver the judgment in open court according to the terms of the mutually agreed disposition and the formula prescribed for sentencing including victim compensation. It may be noted that this judgment is final and no appeal lies apart from a writ petition to the State High Court under Articles 226 and 227 of the Constitution or a special leave petition to the Supreme Court under Article 136 of the Constitution. The judge would decide if the plea bargaining was resorted to with malafide or bonafide intention. The statement or facts stated by an accused in an application for plea bargaining shall not be used for any other purpose other than for plea bargaining.

The positive aspect of the Act is that the offences in which a mutually satisfactory agreement can be reached are limited. Secondly, the judge is not completely excluded from the process and exerts supervisory control. Therefore at least theoretically, administrative control of the process of granting concessions to those who plead guilty is ensured. Thirdly, the Act ensures that such an opportunity will not be available to habitual offenders. Fourthly, the fact that the Act does not provide for an ordinary appeal from the judgment in such a case is a step towards expediting the disposal of cases. At the same time, a process for reviewing illegal or unethical bargains does exist though it may be noted that Article 136 of the Constitution does not confer a right of appeal on a party as such but confers a wide discretionary power on the Supreme Court to grant special leave. Also, though the remedy under Articles 226 and 227 of the Constitution can be made use of, it is unclear whether the victim of the offence can utilize this remedy.

Judicial Pronouncements on Plea Bargaining

1) For the first time in Mumbai, an application for plea bargaining was made before a sessions court recently when a former Reserve Bank of India clerk—accused in a cheating case—sought a lesser punishment in return for confessing to his crime. In the present case, Sakha-ram Bandekar, a grade I employee, was accused of siphoning off Rs 1.48 crore from the RBI by issuing vouchers against fictitious names from 1993 to 1997 and transferring the money to his personal account. He was arrested by the CBI on October 24, 1997, and released on bail in November the same year. The case came up before special CBI judge A R Joshi and charges were framed on March 2 this year.

The accused then moved an application before the court on August 18 stating that he was 58 years old and would seek plea bargaining. The court directed the prosecution to file its reply. The judgment delivered in a case of plea bargaining is final and no appeals are allowed against such verdicts. The accused may also be released on probation if he is a first-time offender. The CBI, while opposing the application, said, "The accused is facing serious charges and plea bargaining should not be allowed in such cases.'' It continued, "Corruption is a serious disease like cancer. It is so severe that it maligns the quality of the country, leading to disastrous consequences. Plea bargaining may please everyone except the distant victims and the silent society.'' Based on these submissions, the court rejected Bandekar's application. Although Bandekar's plea was not accepted, the case is an indicator to an emerging legal trend. According to experts, plea bargaining could reduce the heavy backlog of cases in Indian courts. As it requires the accused to confess to a crime and does away with a lengthy trial, the time currently spent by courts on dealing with lakhs of cases could be reduced drastically. (http://www.legalserviceindia.com/articles/plea_bar.htm)

2) In the case of ***Pradeep Gupta v. State***, (Judgment delivered on September 03, 2007) where a bail application was filed by the petitioner for plea bargaining, the court said that prayer of plea bargaining can be made by an accused against whom a report under section 173 CrPC has been filed for offences punishable for seven years or less than seven years. Also the request can be considered taking into account the role of the accused, and the nature of offence etc. The court also supported the view of the trial court saying that the

application for plea bargaining cannot be rejected on the ground that he was involved in Section 120B IPC and therefore the request for plea bargaining was not available to him.

3) In another case of ***State of Uttar Pradesh v. Chandrika***, (AIR 1999 SC 164) the court held that the practice of plea bargaining is unconstitutional, illegal and would tend to encourage corruption, collusion and pollute 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 result and the judge also might be likely to be deflected from the path of duty to do justice and he might either convict an innocent accused by accepting the plea of guilty or let of a guilty accused with a light sentence, thus, 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.

4) Further in the case of ***Kasambhai Abdulrehmanbhai Sheik etc. v. State of Gujarat and another*** AIR 1980 SC 854 where the accused was convicted for the crime of adulteration, the court held that plea bargaining is unconstitutional and illegal and would subvert the process of law and frustrate social objective and purpose of anti-adulteration statute.

5) In another landmark judgment ***Bordenkircher v. Hayes***, 434 U.S. 357 (1978) 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 prosecutions offer. The Apex Court however upheld the life imprisonment of the accused because he rejected the Plea Guilty offer of 5 years imprisonment.

6) In a significant case of copyright infringement under the concept of plea bargaining, the Indian Music Industry (IMI) won a compensation amount of Rs 12 lakhs in a copyright case. According to Savio D'souza, Secretary General, IMI, "Intellectual property for artists is their bread and butter and people like the accused are stealing the huge chunk of potential revenue from Indian artists. Plea bargaining is an important way to amicably settle cases instead of dragging them forever. Here, for instance, we asked for a compensation of Rs 100 per CD, but the accused moved another application admitting his guilt and settling for negotiation. So we agreed to settle the case at Rs 60 per CD seized. When the applications were presented at the specialised intellectual property court in Delhi for hearing, the matter was negotiated with the company's owner and it was settled at Rs 12 lakhs (Two lakh on behalf of the company - Siddartha Optical and 10 lakhs on the owner's behalf). Besides, the court ordered the company to pay Rs 2 lakhs to the state for violating the copyright act. This is India's biggest plea bargaining case as no other victim has ever been paid Rs 12 lakhs."

During a raid carried out at the Siddartha Optical Disc (CD plant), 22,000 CDs including large numbers of mp3 CDs, porno CDs (10,600), 2 CD recording machines, printers, computers, etc. were seized, of which mp3 CDs / master stampers belonged to music

companies which were members of IMI. Cases U/Ss 63, 65, 68A CR Act and 292 IPC were registered against Surendra Wadhwa, owner and managing director of Siddartha Optical Disc as well as against the company, following which IMI claimed Rs 100 per CD seized as compensation.

Established on February 28, 1936, IMI today represents almost 75 per cent of the legitimate recording industry in India. This non-profit and non-commercial organization is the second oldest music association in the world. Registered under the West Bengal Societies Registration Act in 1936, IMI primarily intends to resuscitate the lost stature of Indian music industry. IMI has over 142 music companies as members including several prominent regional and national labels such as SAREGAMA, Universal Music, Tips, Venus, BMG Crescendo, Sangeetha, Sony Music, Virgin, Aditya Music. IMI has filed 19,385 cases so far, of which 3000 cases have been settled, while the rest are pending.(Source: Business Standard, 29/10/2009)

Advantages and Disadvantages of Plea Bargaining

Plea bargaining is a concept having both sides of the same coin. It can be used as a beneficial tool as well as can be used as a method of ruining the justice delivery system. When we look into the conceptual aspect of plea bargaining, we feel that, now the back logging in courts will be reduced and justice can be delivered quickly and efficiently. The most beneficial part of this system is that the under trial prisoners who have to remain for more time than that of the punishment term can go for plea bargaining and reduce their punishment. Karnataka was the first state to introduce the concept of plea bargaining in India. According to Karnatakas Law Minister HK Patil the concept of plea bargaining will help in clearing the backlog from the courts. Even Arvind Narrain, a lawyer with the Alternative Law Forum opined that this is one of the ways of clearing the backlog.

When we look at the other side of the coin we feel that it is going to benefit the accused persons at large. If we analyse the reason as to why the criminals go for plea bargaining, then it comes to the fact that because they are able to reduce their punishment, which if they would not do quickly will make them stay in arrest for more time through litigation. Moreover, it is presumed that when an accused pleads guilty, the punishment of the accused gets reduced. Also the benefit which the guilty gets by plea bargaining is the reduction of the costs and time consuming trial of his case. It is also presumed that the accused gains responsibility in his favour to enter the correctional system in a frame of mind that may afford hope for rehabilitation over a shorter period of time.

Plea bargaining may be effective mechanism for removing the back log in courts. But the problem arises afterwards when it is seen that the innocents are unnecessarily punished in this speedy disposal of cases. Although it may be a method of reducing cost and allows the prosecutor to allocate resources more effectively but it may not reduce the amount of risk to which the criminals are made to face.

The disadvantageous part of plea bargaining is that sometimes the prosecutor forces the accused to admit his guilt with unconscionable pressures. Even the accused may go escape with less punishment by pleading his guilt and thereby diverting a little favourable

decision in his favour. But most of the times it happens that the accused do not have the required amount of resources available at their disposal to minutely investigate each and every case. 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. It is also apprehended that it would encourage corruption and collusion and as a direct consequence, contribute to the lowering of the standard of justice. It may happen that judiciary might either convict an innocent accused by accepting the plea of guilty or let off a guilty accused with a light sentence, thus subverting the process of law and frustrating the social objective. (142nd Report of Law Commission of India, 1991)

Another disadvantage is that it can very well be mis-used by the police asking the criminals to accept their crime and reduce the punishment rather than suffering the painful merciless powerful hits of the police.

The effective implementation of the plea bargaining requires that the judges be given a lot of discretion and integrity along with some safeguards. If law provides for entering a voluntary plea of guilty and a concessional treatment is accorded in the light of statutory authority of law in accordance with the prescribed guidelines by judicial authority, it would not be possible to say that the conviction based on the plea of guilty is erroneous.

For better implementation of plea-bargaining in India, the deciding authority must be independent from the trial court and instead of the Public Prosecutor retaining most of the power, the deciding authority must be given a greater role in the process. If the deciding authority is the sole arbiter, the risk of coercion into pleading guilty and of underhand dealings can be eliminated substantially. Therefore not only will the victims needs be addressed but also the susceptibility of the system of being misused by the Public Prosecutor, the police and even the affluent will be considerably reduced. In this respect, the scheme proposed by the 142nd Report of the Law Commission of India is prudent, as it does not seek to carelessly replicate the American model of plea-bargaining. ((2006) 2 SCC (Cri) J-12)

It cannot be denied that the scheme ignores the fact that many lack the resources for proper legal representation and is more a formalization of the unwritten rule of showing leniency to those who plead guilty rather than plea-bargaining. Plea bargaining is mainly a contract between two parties so what can be expected from it is that it will enhance the social welfare on the condition that it is voluntarily performed. But to what extent will it succeed will depend upon the law and order of the prevailing circumstance with the decision of the judges from case to case.