(1) A Metropolitan Magistrate shall record the following particulars while giving a judgment:

(a) the serial number of the case;

(b) the date of the commission of the offence;

(c) the name of complainant (if any);

(d) the name of the accused persons, and his parentage and residence;

(e) the offence complained of or proved;

(f) the plea of the accused and his examination (if any);

(g) the final order;

(h) the date of such order;

(i) in all cases in which an appeal lies from the final order either under Section 373 or under Section 374(3), a brief statement of the reasons for the decision. [Section 355]

So a Metropolitan Magistrate is required to give a brief statement of reasons for his decision in all cases in which an appeal lies.

(2) Judgment in summary trials are not required to be recorded in the manner mentioned in Section 354 as discussed above. The record and judgment in summary trials must be in the specified abridged form as provided by Section 263 to 265.

The terms of Section 355 are not abrogated by Section 404, which merely allows a Metropolitan Magistrate to supplement the reasons which have been already recorded under this Section. If the statement submitted under Section 404 discloses sufficient grounds for the decision, the defect in not recording reasons under this Section may be excused under Section 465, provided no substantial failure of justice has occurred.

# CHAPTER 9A

# MEANS OF DISPOSAL OF CASES (Plea Bargaining; Sections 265A to 265L, Cr.P.C.)

## IMPORTANT POINTS / ISSUES & CASE LAWS

(1) **1991:** 142nd Report of the Law Commission on Concessional Treatment of Offenders.

(2) **1996:** 154th Report of the Law Commission on the CrPC.

(3) **2005:** Chapter XXIA, Containing Sections 265A to 265L, inserted by the Criminal Law (Amendment) Act, 2005.

(4) Distinction between the Concept of Plea bargaining and of Compounding of Offences under Section 320, CrPC.

(5) **Leading Case Laws**

**2000: SC: State of UP v. Chandrika,** AIR 2000 SC 164.

**2005: (Guj-DB): State of Gujarat v. Natwar Thakor.**

## BACKGROUND OF THE LAW ON PLEA BARGAINING[Q. 1, Q. 2]

The arrears of criminal cases awaiting trial are assuming menacing proportions. Grievances have been vented in public that the disposal of criminal trials in the Courts takes considerable time and that in many cases trials do not commence for as long a period as three to four years after the accused was remitted to judicial custody. **Large number of persons accused of criminal offences have not been able to secure bail for one reason or the other and have to languish in jails as undertrial prisoners for years.** It is also a matter of common knowledge that majority of the case ultimately end in acquittal. The accused have to undergo mental torture and also have to spend considerable amount by way of legal expenses and the public exchequer has

**Q. 1.** Write notes on Plea bargaining. *[D.U., LL.B., 2013]*

**Q. 1. Short Notes :** Justification of Plea bargaining in Criminal Trials. *[D.U., LL.B., 2009]*

to bear the resultant economic burden. During the course of detention as undertrial prisoners, the accused persons are exposed to the influence of hardcore criminals. Quite apart from this the accused have to remain in a state of uncertainty and are unable to settle down in life for a number of years awaiting the completion of trial. Huge arrears of criminal cases are a common feature in almost all the criminal Courts. It is in this background that the Law Commission felt that **there must be some remedial legislative measures** to reduce the delays in the disposal of criminal trials and appeals and also to alleviate the suffering of undertrial prisoners.

### The 12th Law Commission 142nd Report (1991) on Concessional Treatment of Offenders

The Law Commission in its 142nd Report on Concessional Treatment of Offenders who on their own initiative choose to plead guilty without any bargaining **considered the question of** introduction of the concept of concessional treatment for those who choose to plead guilty by way of plea-bargaining. The Law Commission, having considered the concept as is being practiced in other countries and also considered the views in favour of the concept as well as against it, **recommended that** the scheme for concessional treatment to offenders who plead guilty on their own volition in lieu of a promise to reduce the charge, to drop some of the charges or getting lesser punishment be **statutorily introduced** by adding a Chapter in the CrPC. The justification for introducing plea bargaining are as follows:

(1) It is not just and fair that an accused who feels contrite and wants to make amends or an accused who is honest and candid enough to plea guilty in the hope that the community will enable him to pay the penalty for the crime with a degree of compassion and consideration should be treated on par with an accused who claims to be tried at considerable time-cost and money-cost to the community.

(2) It is desirable to infuse life in the reformative provisions embodied in Section 360 CrPC and in the Probation of Offenders Act which remain practically unutilized as of now.

(3) It will help the accused who have to remain as undertrial prisoners awaiting the trial as also other accused on whom the sword of Damocles of an impending trial remains hanging for years to obtain speedy trial with attendant benefits such as:

(a) end of uncertainty.

(b) saving in litigation-cost.



(c) saving in anxiety-cost.

(d) being able to know his or her fate and to start of fresh life without fear of having to undergo a possible prison sentence at a future date disrupting his life or career.

(e) saving avoidable visits to lawyer's office and to court on every date or adjournment.

(4) It will, without detriment to public interest, reduce the back-breaking burden of the court cases which have already assumed menacing proportions.

(5) It will reduce congestion in jails.

(6) In the USA nearly 75% of the total convictions are secured as a result of plea-bargaining.

(7) Under the present system 75% to 90% of the criminal cases if not more, result in acquittals.

### The Law Commission 154th Report (1996) on the CrPC[Q. 3]

The concept and practice of plea bargaining in USA dates back to a century and is widely popular and successful. The role of the judge under plea-bargaining is relatively insignificant and is limited to the observance of constitutional procedures. **The Prosecuting Agency has a leading role** in this process as it has the discretion to reduce or dismiss some of the charges against the accused and also to make recommendations to the Court about the sentences in exchange for a guilty plea. The Supreme Court of USA upheld the Constitutional validity and the significant role the concept of plea bargaining plays in the disposal of criminal cases. It has approved the practice mainly on premise that the accused who are convicted on the basis of negotiated pleas of guilt would ordinarily have been convicted had they been subjected to trial processes. One of the main arguments advanced in favour of plea bargaining is that it helps the disposal of accumulated cases and will expedite delivery of criminal justice.

However, such a liberal approach towards the crimes and criminals is not a blessing in all the cases as it does make the correctional goal of punishment meaningless and promotes the tendency to overcharge in the hope of strengthening the prosecution side during the negotiations and has been criticised by several jurists as *purchased pleas of* guilt. The Supreme Court of India **did not approve** of the procedure of plea bargaining on the basis of informal inducement. In **Kasambhai v. State of Gujarat**, AIR 1980 SC 854 the Court squarely observed that conviction based on the plea of guilty entered

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**Q. 3.** What is the justification and applicability of the concept of "plea bargaining" in the Indian context? Is it different from "Compounding of Offences"? ***[D.U., LL.B., 2015]***

by the accused as a result of plea bargaining could not be sustained and that it was opposed to public policy to convict the accused by inducing him to confess to a plea of guilty "on allurement being held out to him that if he enters a plea of guilty he will be let off very lightly."

The concept of plea bargaining has not been recognized so far by the criminal jurisprudence of India. However, plea bargaining is considered to be one of the alternatives to deal with the huge arrears of criminal cases. The Law Commission in its **142nd Report** recommended that the scheme for concessional treatment to offenders who plead guilty on their own volition in lieu of a promise to reduce the charge, to drop some of the charges or getting lesser punishment be statutorily introduced by adding a Chapter in the CrPC.

After examining the cases decided in USA as well as by Supreme Court of India in respect of this concept and the 142nd Report of the Law Commission, it can be said that plea bargaining can be made an essential component of administration of criminal justice provided it is properly administered. For that purpose, certain guidelines and procedure have to be incorporated in the CrPC. This concept may be made applicable as an experimental measure, to offences which are liable for punishment with imprisonment of less than seven years and/or fine including the offences covered by Section 320, CrPC. Plea bargaining can also be in respect of the nature and gravity of offences and the quantum of punishment. **However, plea bargaining should not be available to habitual offenders, those who are accused of socio-economic offences of a grave nature and offences against women and children.** We recommend that a separate Chapter on plea bargaining be incorporated in the CrPC.

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 were 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:

**1.** *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.



**2.** *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.

**3.** *In the existing situation where the acquittal rate is as high as 90% to 95%, it is the poor who will be 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 undertrial 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.

**4.** *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.

**5.** *Criminals may escape with impunity and escape due punishment.* The Commission stated that the scheme provides for concessional treatment and not for no punishment and the stigma of conviction would persist.

## MEANING AND TYPES OF PLEA BARGAINING[Q]

"Plea bargaining" means pre-trial negotiations between the accused and prosecution during which the accused agreed to plea guilty in exchange for certain concessions by the prosecution.

Plea bargaining can be of three types:

**(1) Charge Bargaining:** Where the accused has the option of admitting guilt and setting for a less grave charge or where the prosecution allows the accused to plea guilty to only some of the charges framed against him. Thus charge bargain gives the accused an opportunity to negotiate with the prosecution and reduce the number of charges against him.

**(2) Sentence Bargaining:** It 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.

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**Q.** What is 'Plea bargaining'? In which cases is plea bargaining not available? *[D.U., LL.B., 2017]*

(3) **Fact Bargaining:** Here the accused has the option of admitting guilt and settling for a less incriminating presentation of facts.

Plea bargaining may take the form of **(i) Explicit bargaining:** Where prosecutor makes a specific recommendation on sentence and the judge indicates the sentence he is minded to impose. **(ii) implicit bargaining:** here the accused pleads guilty considering the availability of sentence discounts. **(iii) Negotiated diversion:** Where the judge warns or reprimands in return for some restitution.

The "Plea Agreement" follows several patterns. In its best known form it is an arrangement between the prosecutor and the accused whereby the accused pleads guilty to a charge less serious than could be proven at trial. "Less Serious" in the context usually means an offence which carries a lower maximum sentence.

Plea bargaining involves an active negotiation process by which the defendant offers to exchange a plea of guilty, thereby waiving his right to trial, for some concessions in charges or for a sentence recommendation from the prosecutor. Depending upon the crime charged and the sentencing structure of the jurisdiction, defendant seeks one or more of the following concessions:

(i) a charge reduction to some lesser offence with a corresponding shorter or minimum sentence;

(ii) prosecution on only one or two multiple charges with other counts dismissed;

(iii) alteration from a charge carrying a particular damaging label which implies depravity on the part of the defendant to a charge with less negative connotations, for example, rape to assault; or

(iv) a promise from the prosecutor to recommend probation at the time of sentencing.

## STATUTORY PROVISIONS REGARDING PLEA BARGAINING
### [Chapter XXIA: Sections 265A to 265L]

To reform the criminal justice dispensation mechanism in the country, the Parliament amended the CrPC 1973, incorporating a few major recommendations suggested by the Malimath Committee. One of the highlights of the amendment was the introduction of plea bargaining or mutually satisfactory disposition in all criminal cases other than those which are punishable with death or imprisonment for life or imprisonment for a term of 7 year or exceeding. The idea is to save the courts from conducting needless trials for every crime that is committed.

### Section 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.

### Section 265B: Application for Plea Bargaining

(1) A person accused of an offence may file 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).

**Section 265C: Guidelines for Mutually Satisfactory Disposition**

In working out a mutually satisfactory disposition under Section 265B(4)(a), 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 desire, he may participate in such meeting with his pleader engaged in the case.

**Section 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 Section 265B(1) has been filed in such case.

**Section 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 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 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.

**Section 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.

**Section 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.

**Section 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.

**Section 265I: 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.

**Section 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.

**Section 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.

**Section 265L: Non-application of the Chapter:** Nothing in this Chapter shall apply to any Juvenile or Child as defined in Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000.

## SALIENT FEATURES OF PLEA-BARGAINING

(1) The plea-bargaining is applicable only in respect of those offences for which punishment of imprisonment is up to a period of 7 years.

(2) It does not apply where offences that affect the socio-economic condition of the country or has been committed against a woman or a child below the age of 14 years.

(3) The application for plea-bargaining should be filed by the accused voluntarily.

(4) A person accused of an offence may file an application for plea-bargaining in the court in which such offence is pending for trial.

(5) Any court had not previously convicted the accused in any case, in which he has been charged with the same offence.

(6) Once the court is convinced that the accused is participating in the plea-bargain voluntarily, it will allow to both parties to reach mutually satisfactory disposition, which may include giving to the victim by the accused, compensation and other expenses incurred during the case.



(7) 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 and 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.

(8) The statement of facts stated by an accused in an application for plea-bargaining **shall not be used for any other purpose** other than for plea-bargaining.

(9) The benefit under Section 428 CrPC of setting off the period of detention undergone by the accused against the sentence of imprisonment is permissible in plea bargained settlements as well.

(10) The court must deliver judgement in open court according to the terms of the mutually agreed disposition and formulas prescribed for sentencing including victim compensation.

(11) The judgement delivered by the court in the case of plea-bargaining shall be final and no appeal [except under Article 136 and writ petitions under Articles 226 and 227 of the Constitution of India] shall lie in any court against such judgement.

## PROCESS OR FUNCTIONING OF PLEA BARGAINING[Q. 4]

The disposal of cases by method of plea-bargaining is an alternative method to deal with the huge arrears of criminal cases. To reduce the delay in the disposal of criminal trials as also to alleviate the suffering of under trial prisoners, as well as their dependents and keeping in mind the real purpose of victimology, the present new Chapter has been added in the Code.

Plea bargaining is not as simple as it may first appear. In effectively negotiating a criminal plea arrangement, the attorney must have the technical knowledge of every "element" of a crime or charge, an understanding of the actual or potential evidence that exists or could be developed, a technical knowledge of "lesser included offences" versus separate counts or crimes, and a reasonable understanding of sentencing guidelines.

The Prosecuting attorney has **no authority to force a Court** to accept a plea agreement entered into by the parties. **Prosecutors may only "recommend"** to the Court the acceptance of a plea arrangement. The validity of a plea bargain is dependent upon three essential components:

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**Q. 4. Short Notes :** Concept of "plea bargaining" as incorporated in the CrPC, 1973. ***[D.U., LL.B., 2011]***

(i) a knowing waiver of right to trial,

(ii) a voluntary waiver and

(iii) a factual basis to support the charges to which the defendant is pleading guilty.

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

**Process of Plea Bargaining**

(1) The process of Plea bargaining shall be set in motion after issue of process and when the accused appears, either on a written application by the accused to the Court or **suo motu by the Court** to ascertain the willingness of the accused. On ascertainment of the willingness of the accused, the Court shall require him to make an application accordingly.

(2) Upon the institution of an application a date for preliminary hearing is fixed. On the date so fixed for the hearing, the Court shall ascertain from the accused whether the application was made by him **voluntarily without any inducement or pressure from any quarters, particularly from Public Prosecutors or Police.** The Court shall ensure that neither the public prosecutor not police is present at the time of making the preliminary examination of the accused. If the Court is not satisfied about voluntariness, the application will be rejected.

(3) Once the Court is satisfied about the voluntary nature of the application, the Court shall fix a date for hearing the public prosecutor and the aggrieved party and the accused applicant for final hearing and passing of final order. If the Court finds that the application has been made under duress or pressure, or that the applicant after realizing the consequences is not prepared to proceed with the application, the Court may reject the application.

(4) Such an application may be rejected either at the initial stage or after hearing the public prosecutor and the aggrieved party. If the Court finds that, having regard to the gravity of the offence or any other circumstances which may be brought to its notice by the public prosecutor or the aggrieved party, the case is not a fit one for exercise of its powers of plea-bargaining, the Court may reject the application supported by reasons therefor.

(5) The order passed by the Court on the application of the accused shall be confidential and will be given only to the accused if he so desires. The



making of such application by the accused shall not create any prejudice against the accused at the ensuing trial.

(6) A plea bargaining can be availed of by the accused at any stage after the charge sheet is filed by the investigating agency in police cases and in respect of private complaints at any stage after the cognizance is taken. An order passed by the Court on such a plea shall be final and no appeal shall lie against such an order passed by the Court accepting the plea.

(7) The Court shall provide time to the parties concerned for working out a mutually satisfactory disposition which may include compensation to the victim from the accused.

(8) The Court shall on such a plea of guilty being taken explain to the accused that it may record a conviction for such an offence and it may after hearing the accused proceed to hear the Public Prosecutor or the aggrieved person as the case may be:

(i) impose a suspended sentence and release him on probation;

(ii) order him to pay compensation to the aggrieved party; or

(iii) impose a sentence which commensurate with the plea bargaining, or

(iv) convict him for an offence of lesser gravity than that for which the accused has been charged if permissible in the facts and circumstances of the case.

(9) In cases where the provisions of Probation of Offenders Act, 1958 and/or Section 360 CrPC are applicable to an accused applicant, he would be entitled to make an application that he is desirous of pleading guilty with a prayer for availing of the benefit under the legislative provisions referred to above. In such cases, the Court after hearing the public prosecutor and the aggrieved party, may pass appropriate order conferring the benefit of those legislative provisions. The Court may be empowered to dispense with the necessity of calling a report from the probation officer in appropriate cases.

(10) While disposing the case the Court will direct the accused to pay compensation to the Victim. Subsequently, a recommendation imposing a suspended sentence and release on probation or some quantum of sentence and release on probation may be made.

(11) If an accused enters a plea of guilty in respect of an offence for which minimum sentence is provided, the Court may instead of rejecting the application in limine, after hearing the Public prosecutor and the aggrieved party accept the plea of guilt and pass an order of conviction and sentence to the tune of half of the minimum term of sentence provided by the Statute for the offence concerned.

**Breach or Revocation of Plea Agreement**

When a court accepts a plea agreement, the guilty plea operates as a conviction, and the defendant cannot be retried for the same offence. If the defendant breaches a plea agreement, the prosecution may re-prosecute the defendant. For example, assume that Defendant A, as part of the plea agreement, must testify against Defendant B. If Defendant A pleads guilty pursuant to this agreement but later refuses to testify against Defendant B, the prosecutor may seek a revocation of the plea agreement and guilty plea.

If the government breaches a plea agreement, the defendant may seek to withdraw the guilty plea, ask the court to enforce the agreement, or for a favorable modification in the sentence. The government breaches a plea agreement when it fails to deliver its part of the plea agreement. Eg., if a prosecutor agrees to dismiss a certain charge but later reneges on this promise, the defendant may withdraw her guilty plea. An unenthusiastic sentence recommendation by a prosecutor is not a breach of a plea agreement.

When a prosecutor or defendant revokes a plea agreement, the statements made during the bargaining period are not admissible against the defendant in a subsequent trial. This rule is designed to foster free/open negotiations. There are, however, notable exceptions. The rule applies only to prosecutors: a defendant's statement to government agents are admissible. Furthermore, a prosecutor may use statements made by the defendant during plea negotiations at a subsequent trial to impeach the defendant's credibility after the defendant testifies.

## JUDICIAL OBSERVATIONS ON PLEA BARGAINING[Q. 5]

The concept of "Plea bargaining" has been recognized as an alternative measure of redressal to deal with huge arrears of criminal cases. The history of plea bargaining in America goes back to a century or more. It is America's very well endorsed and established criminal jurisprudence that inspired India to experiment with the concept of plea bargaining. Delay in administering Criminal law is seen as a hindrance in crime prevention. The crime loses its gravity with the increase in the gap between the incidence of crime and the punishment of the offender. Plea bargaining has, thus, been introduced in the realm of the criminal jurisprudence of India owing to the result of the prolonged trials and the umpteen cases that pile over the years.

In spite of the fact that out of every 100 criminal convictions in the US, nearly 90 comes from negotiation pleas, the concept of plea bargaining has been graded as "**bribed testimony**" by many critics. Even in India, the Supreme Court in **State of UP v. Chandrika**, AIR 2000 SC 164 observed: "It is settled

Q. 5. **Critically Evaluate** : "Western Concept of Plea Bargaining is best suited to Indian Conditions." ***[D.U., LL.B., 2008]***



law that on the basis of plea bargaining Court cannot dispose of the Criminal cases. The Court has to decide it on merits. If accused confesses his guilt, appropriate sentence is required to be imposed. Mere 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 sentence be reduced."

**Possibility of innocent defendants pleading guilty**

In a country like India, where there are lengthy pre-trial delays, guilty pleas may be entered upon the promise that the plea will be accepted swiftly, and the sentence will be for no more than the amount of time already served. In such cases, the sentence discount is extremely appealing and the pressure on innocent defendants to plead guilty may be tremendous. 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.

**Gradual Acceptance of the Process with in-built safeguards**

In **State of Gujarat v. Natwar Thakor**, 2005 CrLJ 2957 (Guj-DB), a Division Bench delaing with the concept of plea bargaining observed: "Change is the only constant thing in the world. If the individual, society or for the purpose, nation feels allergic to the change for the reforms and remains oblivious to the realism and prevalent situations, the very existence may be in jeopardy. All must have an open mind, as mind is like a parachute; it starts working when it is open. Plea bargaining has not been recognized, so far, in our system and criminal jurisprudence. However, keeping in mind the huge arrears and long time spent in trials and resultant hardship to parties and particularly, the accused and the victims of the crimes, the benefit of 'plea bargaining' as an alternative method to deal with the dispute or question of offence requires serious consideration which would not be admissible and available to the habitual offenders."

The provisions of the present Chapter can be invoked by the accused in the following cases:

(1) Where in police case Charge Sheet/Completion Report has been filed against the accused that an offence, 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 appears to have been committed by such an accused; or

(2) Where in a complaint case, a Magistrate has taken cognizance, 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 complaint and witnesses under Section 200, has issued the process under Section 204;

**(3) The provisions of this Chapter shall not apply:**

(i) Where such offence affects the socio-economic condition of the country; or

(ii) Where such offence has been committed against a woman, or a child below the age of 14 years (Section 265L)

(iii) Where the accused is a previous convict of such an offence; or

(iv) Where the accused is a habitual offender.

### Degree of Involvement of the Judge

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

## CONCLUSIONS

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. However, this introduction is unlikely to succeed, for the practice had existed in the USA long before it received any legislative backing and was thus, merely given recognition. Therefore, the success of plea-bargaining in the USA cannot be looked at in isolation of its origin, **a supporting American culture and radically different roles for entities like the prosecutor, etc.** Additionally, the nature and extent of plea-bargaining in England indicates that plea-bargaining cannot simply be transplanted from the USA. There is thus, no reason to believe that the practice will achieve the same scale and magnitude of success in India it has in the USA. Further, the scheme incorporated by the Criminal Law (Amendment) Act, 2005, is grossly inadequate because many factors crucial to the functioning of such a system in India have not been taken into consideration.



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 USA was the nature of jury trials, the experience of some jurisdictions suggested that the problem could be solved by shortening the trial period. **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 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).

Nevertheless, if a system akin to plea-bargaining has to be implemented in India, then 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. It cannot be denied that the scheme ignores the fact that many lack the resources for proper legal representation and is more a formalisation of the unwritten rule of showing leniency to those who plead guilty rather than plea-bargaining. Nonetheless, given that reformation of the present system is unlikely to occur in the near future, the proposal outlined by the 142nd Report should not have been overlooked and may have proved to be a far more practicable solution to the problem.