



Plea Bargaining In India: Scope And Challenges

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Abstract

Plea bargaining, a process through which an accused voluntarily pleads guilty in exchange for a lesser sentence or reduced charges, was introduced in India to address the chronic delay and burden on the criminal justice system. Initially incorporated through the Criminal Law (Amendment) Act, 2005 by inserting Chapter XXIA (Sections 265A–265L) into the Code of Criminal Procedure, 1973, the concept has now been retained in the Bhartiya Nagarik Suraksha Sanhita¹, 2023 under **Chapter XXIII (Sections 289 to 303)**. The objective remains to promote judicial efficiency and reduce case pendency. However, the limited scope of applicability, excluding offences affecting the socio-economic fabric or carrying severe punishments, along with concerns over coercion, lack of awareness, and procedural inadequacies, continues to challenge its practical impact. This paper critically evaluates the current scope, effectiveness, and challenges of plea bargaining under the new legal regime and proposes reforms for its fair and effective implementation.

Keywords: Plea Bargaining, Bhartiya Nagarik Suraksha Sanhita, Criminal Justice, Judicial Efficiency, Legal Reform

Introduction

Plea bargaining is a pre-trial process whereby the accused voluntarily agrees to plead guilty to a lesser charge or accept a reduced sentence in exchange for some concession from the prosecution. The concept emerged as a pragmatic solution to overloaded court dockets and limited prosecutorial resources. It gained prominence in the **United States**, where over **90%** of criminal convictions are now obtained through plea deals, making it the backbone of their criminal justice system.² The primary aim is to expedite criminal proceedings, avoid lengthy trials, and offer mutually beneficial outcomes for both prosecution and defense.

¹ Bhartiya Nagarik Suraksha Sanhita, No. 45 of 2023, §§ 289–303, India Code (2023).

² William Ortman, *When Plea Bargaining Became Normal*, 100 B.U. L. Rev. 1435, 1437 (2020).

Historically, India's criminal justice system was modeled on the colonial adversarial framework, emphasizing a full trial to determine guilt or innocence. However, as judicial delays became endemic and prison overcrowding worsened, concerns arose about the system's efficiency and effectiveness. In response, the **154th Report of the Law Commission of India (1996)** advocated for the introduction of plea bargaining in India, citing it to resolve less serious criminal cases more swiftly and economically.³ These recommendations were later endorsed by the **Malimath Committee on Reforms of Criminal Justice System (2003)**, which emphasized the need for victim-oriented justice and decongestion of courts.⁴

Following these recommendations, the Indian Parliament enacted the **Criminal Law (Amendment) Act, 2005**, which inserted **Chapter XXIA (Sections 265A–265L)** into the **Code of Criminal Procedure, 1973 (CrPC)**. The new chapter introduced plea bargaining as a formal statutory mechanism, limited to offences punishable with imprisonment of up to seven years, and excluded offences affecting the socio-economic condition of the country or those involving children and women.⁵ The intention was to introduce an element of compromise into the rigid criminal justice structure, ensuring a balance between judicial efficiency and the rights of the accused.

With the advent of criminal law reforms in 2023, India repealed the CrPC and replaced it with the **Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS)**. The BNSS retains the plea bargaining provisions under **Chapter XXIII (Sections 289 to 303)**, with some refinements aimed at procedural clarity and transparency.⁶ The continuity of these provisions reflects legislative recognition of plea bargaining as a valuable tool in streamlining criminal justice administration.

Despite its promise, the implementation of plea bargaining in India has been uneven, marked by underutilization, lack of awareness, and concerns over voluntariness and fairness. This paper examines the legal scope, practical challenges, and judicial perspectives surrounding plea bargaining in the Indian context, especially under the new legal framework of the BNSS.

Legislative Framework under the Bhartiya Nagarik Suraksha Sanhita, 2023

The **Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS)**⁷, which replaced the Code of Criminal Procedure, 1973, has retained the legal mechanism of plea bargaining under **Chapter XXIII (Sections 289 to 303)**. These provisions aim to ensure **speedy and efficient disposal** of criminal cases involving less serious offences by allowing the accused to voluntarily plead guilty in exchange for a reduced sentence or mutually agreeable outcome.

³ Law Commission of India, **154th Report on the Code of Criminal Procedure, 1973** (1996).

⁴ Ministry of Home Affairs, Government of India, **Committee on Reforms of Criminal Justice System (Malimath Committee Report)**, at 82–83 (2003).

⁵ Criminal Law (Amendment) Act, No. 2 of 2006, § 5, *inserting* Code Crim. Proc. §§ 265A–265L (1973), *India Code* (2006).

⁶ Bhartiya Nagarik Suraksha Sanhita, No. 45 of 2023, §§ 289–303, *India Code* (2023).

⁷ Bhartiya Nagarik Suraksha Sanhita, No. 45 of 2023, § 289, *India Code* (2023).

1. Statutory Provisions under BNSS

- **Section 289:** Lays down the **eligibility criteria** for plea bargaining. It applies to offences not punishable with death, life imprisonment, or imprisonment exceeding seven years, and excludes offences committed against women and children, and those affecting the socio-economic condition of the country.
- **Section 290:** Allows an **accused to file an application** for plea bargaining in the court where the trial is pending, supported by an affidavit declaring voluntariness and understanding of consequences.
- **Section 291:** Provides for a **preliminary inquiry** by the court to ensure the application is made voluntarily and without undue influence.
- **Section 292:** Mandates the court to **issue notice** to the Public Prosecutor, investigating officer, and the victim to participate in a meeting for a **mutually satisfactory disposition** of the case.
- **Section 293:** Covers the **disposal of the case** based on the outcome of the meeting. If successful, the court awards a lesser sentence; if not, the trial proceeds as per regular procedure.
- **Sections 294–295:** Relate to the **victim's role and compensation**, ensuring victims are informed and involved in the settlement, particularly regarding compensation.
- **Section 297:** Ensures that **statements made during plea bargaining are confidential** and cannot be used against the accused if the process fails.
- **Sections 298–303:** Provide **miscellaneous provisions**, including the court's powers, execution of the judgment, and treatment of repeat offenders.

2. Eligibility for Plea Bargaining

Only offences that meet the following conditions are eligible:

- Punishable with **imprisonment of less than seven years**,
- Not offences against **women or children**,
- Not offences that **affect the socio-economic condition** of the country (as notified by the government),
- Not cases involving **habitual offenders**.

3. Procedure Under BNSS

- **Application:** Accused submits an application under Section 290.
- **Verification:** Court verifies voluntariness under Section 291.
- **Negotiation Meeting:** Arranged under Section 292 with the victim and prosecutor.

- **Settlement Outcome:** If agreed, sentence is reduced (Section 293); if not, trial resumes.

4. Confidentiality & Fairness Safeguards

- **Confidentiality:** Statements made during the process are protected (Section 297).
- **No coercion:** Court must ensure the process is entirely voluntary.
- **Victim's Participation:** Integral to a just resolution (Section 294).

Objectives and Merits of Plea Bargaining under the BNSS

Plea bargaining, as codified under **Chapter XXIII (Sections 289 to 303)** of the **Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS)**, represents a significant shift toward a more efficient and participatory criminal justice system. It introduces a system of negotiated justice that balances the interests of the accused, the victim, and the state.

1. Reducing the Pendency of Cases

One of the primary goals of plea bargaining is to address the massive backlog of criminal cases in Indian courts. By allowing accused persons to plead guilty voluntarily in exchange for a reduced sentence or other concessions, the judiciary can swiftly dispose of minor cases without undergoing lengthy trials. Under **Section 289**, eligible offences are limited to those punishable with less than seven years, enabling courts to focus their time and resources on more serious offences.

2. Faster and Cost-Effective Delivery of Justice

The process laid out in **Sections 290 to 293** allows for quick resolution of criminal cases. The preliminary inquiry, notice to parties, and the mutually satisfactory disposition procedure ensure that justice is not delayed. It reduces the time and legal costs incurred by the state and the accused, thus promoting judicial economy. Since the trial stage is bypassed upon agreement, this also helps avoid delays due to adjournments, procedural complexities, or evidentiary burdens.

3. Reducing the Burden on Jails and Courts

India's prison system faces chronic overcrowding, with a large percentage of undertrial prisoners. By offering a mechanism for early resolution and sentencing through **Section 293**, plea bargaining contributes to reducing pre-trial detention and helps alleviate prison overcrowding. At the same time, the reduced court burden allows for more efficient use of judicial resources in complex and serious criminal matters.

4. Promoting Restorative Justice and Victim Compensation

The BNSS framework, particularly **Sections 292 to 295**, incorporates the role of victims in the plea-bargaining process. Victims are invited to participate in the meeting for a mutually satisfactory disposition and may receive compensation as part of the agreement. This approach strengthens restorative justice principles, shifting the focus from mere punishment to meaningful resolution that involves the harmed party.

5. International Comparisons and Lessons

Globally, plea bargaining has been an effective tool in criminal justice systems. For instance:

- In the **United States**, over **90%** of criminal cases are settled through plea bargaining, significantly reducing court congestion.
- In **South Africa** and **Italy**, plea bargaining has been adopted with procedural safeguards to protect rights.
- Unlike some jurisdictions that allow **charge and fact bargaining**, India's model focuses largely on **sentence bargaining**, as outlined in **Section 293** of the BNSS.

The Indian model emphasizes judicial oversight, voluntariness, and victim participation, aligning with international human rights standards while adapting to domestic needs.

The BNSS provisions on plea bargaining reflect a conscious effort to modernize criminal procedure by combining efficiency with fairness. Its objectives go beyond mere case disposal and strive to make justice delivery quicker, less adversarial, and more inclusive of victims' interests.

Judicial Approach and Interpretation

Though plea bargaining was formally codified in India only in 2005 through the Criminal Law (Amendment) Act and later retained under the **Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS)**, the Indian judiciary had already dealt with the idea in principle through earlier case law. The courts, while initially cautious and even critical, gradually acknowledged the practicality of negotiated settlements in criminal cases, provided they did not compromise fairness and voluntariness.

1. **State of Gujarat v. Natwar Harchandji Thakor**⁸

In this pre-legislative case, the Supreme Court recognized the potential utility of plea bargaining in the Indian context. It observed that "criminal trial is a long-drawn-out affair" and acknowledged the need for alternate methods of disposal, especially in less serious offences. The Court cautiously welcomed the introduction of plea bargaining, emphasizing that any such process must not violate constitutional principles or fundamental rights.

2. **Kachhia Patel Shantilal Koderlal v. State of Gujarat**⁹

In this case, the Supreme Court rejected a plea-bargained settlement that had occurred informally. The Court stated that **plea bargaining, as it stood then, was contrary to public policy** and amounted to an impermissible compromise on criminal liability. It warned against allowing accused persons to negotiate their punishment without legal sanction, thereby compromising the integrity of the judicial process.

⁸ *State of Gujarat v. Natwar Harchandji Thakor*, (2005) 13 S.C.C. 477.[1]

⁹ *Kachhia Patel Shantilal Koderlal v. State of Gujarat*, (1980) 3 S.C.C. 499.

3. Murlidhar Meghraj Loya v. State of Maharashtra¹⁰

In this early case, the Court emphasized that **confessions or guilty pleas must be made voluntarily**, without any pressure, inducement, or bargaining. While the term “plea bargaining” was not used explicitly, the judgment showed judicial discomfort with informal negotiations that resembled modern plea deals. The Court cautioned that sentencing must be based on established principles of justice, not private bargains.

4. Judicial Mistrust and Caution

Indian courts have shown **judicial mistrust** toward plea bargaining, particularly due to:

- **Concerns about voluntariness:** Whether the accused truly understands the consequences or is coerced into pleading guilty due to legal illiteracy or custodial pressure.
- **Possibility of misuse:** Fears that the process could be manipulated by powerful accused or used to evade stricter punishment.
- **Undermining trial safeguards:** A concern that plea bargaining could dilute procedural protections and the truth-seeking function of a criminal trial.

These concerns are reflected in the structure of **BNSS Sections 291 and 297**, which mandate judicial inquiry into voluntariness and confidentiality of the process.

While the judiciary has come to accept plea bargaining as a practical tool, its implementation is strictly monitored to ensure it aligns with constitutional values of **fairness, due process, and justice**.

Judicial decisions have played a critical role in shaping how plea bargaining is perceived and applied in India. The courts have consistently stressed the importance of **safeguards against coercion**, the **rights of the victim**, and the **need for judicial oversight**, all of which are reflected in the statutory provisions under the **BNSS**.

Challenges and Criticisms of Plea Bargaining in India

While plea bargaining under **Chapter XXIII (Sections 289–303)** of the **Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS)** is intended to deliver swift justice and reduce the burden on courts, its implementation in India has been met with several criticisms and practical obstacles. These challenges raise serious concerns regarding **fairness, equality, voluntariness, and effectiveness**.

1. Exclusion of Serious Offences Limits Its Utility

Under **Section 289**, plea bargaining is restricted to offences punishable with imprisonment of less than seven years. This **excludes a vast number of cases**, including white-collar crimes, economic offences, and serious bodily offences, limiting its impact on the overall case backlog. Moreover, cases involving women, children,

¹⁰ Murlidhar Meghraj Loya v. State of Maharashtra, (1976) 3 S.C.C. 684.

or socio-economic offences are also excluded, narrowing the scope of its applicability and reducing its practical utility in relieving the justice system's burden.

2. Risks of Coercion, Inequality, and Wrongful Confessions

Although **Section 291** requires the court to verify the voluntariness of the accused's plea, there remains a **risk of indirect coercion**, especially in the case of poor or illiterate accused persons. Many undertrial prisoners may choose to plead guilty simply to avoid prolonged detention, even if they are innocent. The unequal bargaining power between the state and the accused, and the lack of effective legal aid, make the process vulnerable to abuse, leading to **wrongful convictions** or miscarriages of justice.

3. Undermining the Principle of Fair Trial and Due Process

Plea bargaining introduces an element of negotiation into criminal justice, which some scholars argue may **undermine the principle of a fair trial**. By encouraging guilty pleas without a full trial, the system may prioritize efficiency over truth and justice. There is concern that **Section 293**, which allows courts to dispose of cases based on negotiated settlements, could dilute the constitutional guarantees under **Article 21** of the Constitution, especially the right to a fair and public hearing.

4. Lack of Public Awareness and Institutional Readiness

Despite its codification, plea bargaining has seen **limited use in Indian courts**. One major reason is the **lack of awareness** among the accused, police, prosecutors, and even some members of the judiciary. Moreover, procedural unfamiliarity and the absence of clear institutional guidelines have led to hesitation in adopting this method at the trial court level. **No dedicated infrastructure or training** exists for effective implementation, making the process underutilized.

5. Ethical Concerns from a Human Rights and Victim Justice Perspective

Plea bargaining raises ethical issues from a **human rights perspective**. The process may pressure accused persons into confessing without full knowledge of the legal consequences of the defense. Simultaneously, it can be **insensitive to victims**, especially when they are left out of the process or when justice is perceived as being "bargained" away. Though **Sections 292 and 294** involve the victim in the process, the extent of their role remains limited and sometimes merely procedural.

6. Limited Success in Practical Application

Data from various High Courts and subordinate courts reflect the **underwhelming use of plea bargaining**. Even years after its introduction, the percentage of cases disposed of through this mechanism remains marginal. According to reports from legal scholars and judicial conferences, the tool remains **largely underused** due to judicial reluctance, procedural ambiguity, and lack of coordination between prosecution

and defense.¹¹The BNSS has not yet published consolidated nationwide statistics, but the trend appears consistent with CrPC-era implementation

While the intention behind incorporating plea bargaining into the BNSS is commendable, its limited scope, systemic weaknesses, and ethical implications highlight the need for **greater procedural safeguards, awareness, and institutional support**. Unless these challenges are addressed, plea bargaining will remain a **theoretical reform** with limited practical value.

Comparative Legal Analysis of Plea Bargaining

Plea bargaining has evolved differently across jurisdictions based on the structure of their criminal justice systems. While India has only recently formalized the practice, countries like the **United States, United Kingdom, and Canada** have long-standing plea negotiation frameworks, offering useful insights and cautionary experiences.

1. Plea Bargaining in the United States: Extensive Use and Critiques

In the **United States**, plea bargaining is **deeply embedded** in the criminal justice system. Over **90% of federal and state criminal cases** are resolved through negotiated pleas.¹² Plea deals may involve **charge bargaining** (pleading to a lesser charge), **sentence bargaining** (agreement on sentencing), or **fact bargaining** (admission to specific facts in exchange for leniency).

Advantages:

- Rapid disposal of cases.
- Avoidance of full trials saves resources.
- Offers flexibility in sentencing.

Critiques:

- Risk of **coercion**, especially for indigent defendants.
- Possibility of **innocent persons pleading guilty** to avoid harsher penalties.
- Limited judicial oversight; often a **prosecutor-driven process**.
- **Undermines the adversarial trial system** and public confidence in justice.¹³

¹¹ See National Judicial Academy Reports; Ministry of Law & Justice, Annual Review of Judicial Reforms (on file with author).

¹² William Ortman, *When Plea Bargaining Became Normal*, 100 B.U. L. Rev. 1435, 1437 (2020).

¹³ Stephanos Bibas, *Plea Bargaining Outside the Shadow of Trial*, 117 Harv. L. Rev. 2463, 2465 (2004).

2. United Kingdom and Canada: Safeguards and Frameworks

United Kingdom:

The UK does not formally use the term "plea bargaining," but **early guilty pleas** attract reduced sentences under the **Sentencing Council Guidelines**. A defendant may receive up to a **one-third sentence reduction** for a timely guilty plea.¹⁴

- Plea discounts are **regulated and transparent**.
- Judicial discretion remains central.
- **No negotiation of charges** is allowed in the formal sense—safeguards preserve prosecutorial and judicial independence.

Canada:

Canada allows plea bargaining with more structure:

- Agreements are **negotiated between the defense and the Crown**, but the **judge must review and approve** the plea and the proposed sentence.
- Canadian courts apply the **"public interest test"** to assess fairness and voluntariness.
- Judges can **reject plea agreements** that appear unjust or coercive.¹⁵

3. Lessons India Can Learn from Global Practices

While the **BNSS (Sections 289–303)** lays down a statutory mechanism for plea bargaining, its utility can be enhanced by incorporating **global best practices**, such as:

Judicial Oversight:

Like Canada, India must ensure that judges actively evaluate not just the voluntariness (as in **BNSS Section 291**), but also the **fairness of the outcome**, especially where the accused is unrepresented or marginalized.

Transparency and Regulation:

India can adopt a model similar to the UK's sentencing discounts, offering **pre-defined reductions** for early pleas while avoiding full-fledged negotiation of charges.

¹⁴ Sentencing Council (UK), *Reduction in Sentence for a Guilty Plea – Definitive Guideline* (2017), <https://www.sentencingcouncil.org.uk>.

¹⁵ *R. v. Anthony-Cook*, [2016] 2 S.C.R. 204 (Can.).

Statutory Guidelines:

Clearer rules and **training for prosecutors and trial judges** on how to handle plea deals ethically, as practiced in Canada, would enhance consistency and fairness.

Victim Participation:

BNSS **Section 292–294** promote victim participation, but India can learn from victim-centric approaches in the UK and Canada that emphasize **restitution and emotional closure**.

Monitoring and Data Collection:

India lacks systematic data on plea bargaining outcomes. U.S. jurisdictions maintain detailed records, which help evaluate the system's fairness and efficacy—a practice worth replicating.

India's plea-bargaining mechanism under the BNSS is a **positive step toward judicial efficiency**, but its **success depends on informed implementation**. By learning from the **overuse and pitfalls in the U.S.**, and the **structured safeguards in the UK and Canada**, India can develop a model that balances **speed, fairness, voluntariness, and justice**.

Recommendations and Reforms

The codification of plea bargaining under **Chapter XXIII (Sections 289–303)** of the **Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS)** has laid a statutory foundation for negotiated justice in India. However, the limited use and structural weaknesses call for a range of legislative, procedural, and institutional reforms to ensure that the system is not only efficient but also just and inclusive.

1. Widening the Scope to Include Certain Non-Heinous Offences

Currently, **Section 289** of the BNSS restricts plea bargaining to offences punishable with imprisonment of **less than seven years**, excluding crimes involving women, children, or those affecting the socio-economic condition of the country. While this restriction is justified to prevent abuse, the scope could be **moderately widened** to include:

- **Economic and white-collar crimes** with limited societal harm.
- **Repeat offenders** involved in petty crimes (with judicial oversight).
- **Victim-consented settlements** in select compoundable offences.

This would help address the **underutilization** of the mechanism and reduce trial delays in a wider range of cases.

2. Creating Guidelines to Prevent Coercion or Abuse

To uphold **voluntariness and fairness**, the Ministry of Law & Justice or Supreme Court should issue **comprehensive procedural guidelines**:

- Clear timelines and documentation for each stage of plea bargaining.
- Requirements for **audio/video recording** of plea meetings to ensure transparency.
- Judicial inquiry (as in **Section 291**) must be **more structured**, including mental fitness assessments and right-to-counsel verification.

This would help mitigate the **risk of coercion or pressure**, especially among socio-economically vulnerable accused.

3. Sensitizing Legal Practitioners and Judicial Officers

There is a serious gap in awareness and training among legal stakeholders. Continuous Legal Education (CLE) programs should:

- Train prosecutors, judges, and defense lawyers in **negotiation ethics, victim rights, and BNSS procedure**.
- Include plea bargaining modules in **judicial academies and law school curricula**.

Capacity building is essential for the **correct, fair, and uniform application** of plea-bargaining provisions.

4. Strengthening Legal Aid and Victim Compensation Frameworks

BNSS encourages **victim participation** under **Sections 292–294**, but victims often lack support and representation. Similarly, many accused lack access to legal counsel.

Reforms should include:

- **Free legal aid** and informed counselling for both victims and accused during the process.
- **Mandatory victim compensation orders**, especially where financial loss or harm is evident.
- **Dedicated plea-bargaining officers or facilitators** in district courts to guide unrepresented parties.

This would enhance access to justice and reduce the **power imbalance** between the state and individual parties.

5. Incorporating Restorative Justice Principles More Meaningfully

While current provisions allow victim participation, the **restorative aspect** remains weak and underdeveloped.

Suggested reforms include:

- **Restitution-driven settlements**, where the accused agrees to compensate for harm caused.
- Use of **community mediation** or victim-offender dialogue (under court supervision).
- **Periodic review of outcomes** to measure victim satisfaction and accused reintegration.

Restorative justice helps in **rebuilding trust, promoting accountability**, and offering closure to victims, making plea bargaining a more humane process.

The plea-bargaining framework in the BNSS is a step in the right direction, but without systemic reforms, it risks remaining underused or unjust. These recommendations aim to make the process **more accessible, equitable, and restorative**, ensuring that the **efficiency of the system does not come at the cost of fairness or due process**.

Conclusion

The introduction of plea bargaining into India's criminal justice framework, first through the Code of Criminal Procedure and now retained in the **Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS)**, represents a significant step toward procedural efficiency and judicial economy. Through **Sections 289 to 303**, the BNSS provides a statutory foundation for resolving less serious criminal cases through negotiated settlements, involving both the accused and the victim.

This research highlights several **key findings**. First, the current scope of plea bargaining remains narrow, limiting its impact on the broader backlog of cases. Second, while the mechanism promises speed and reduced litigation costs, it is vulnerable to **coercion, inequality, and inadequate safeguards**. Third, **judicial interpretation**—as seen in landmark cases like *State of Gujarat v. Natwar Harchandji Thakor*—underscores the importance of voluntariness and transparency, which must be strictly maintained.

Looking forward, there is a need to **balance efficiency with fairness**. While plea bargaining can reduce pendency and prison overcrowding, it must not compromise constitutional rights or allow procedural shortcuts to replace substantive justice. Judicial oversight, legal aid, and victim participation must remain central pillars in any negotiation process.

To achieve **meaningful implementation**, India must focus on both **institutional and legal reforms**: expanding eligibility, issuing standard guidelines to avoid misuse, training stakeholders, and strengthening restorative justice practices. If implemented with integrity and supported by infrastructure, plea bargaining has the potential to transform India's criminal justice delivery—making it faster, more inclusive, and fundamentally just.

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