

Plea Bargaining — A Comparative Study of India with Foreign Countries

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DOI: [10.32353/khrife.4.2022.03](https://doi.org/10.32353/khrife.4.2022.03) UDC [343.12:343.97](540)

Submitted: 09.12.2022 / Reviewed: 12.12.2022 / Approved for Print: 16.12.2022 /
Avialable online: 30.12.2022



Plea bargaining has become more popular as a means of settling court issues all around the world. Plea bargaining's application, scope, and operation change significantly between common law and civil law regimes. To analyze these differences in regard to different jurisdictions, a comparison between India and the USA (their plea bargaining) has been done in this study. The relative benefits and drawbacks of plea bargaining are up for debate. This is because it is argued that plea bargaining calls into question the primary goals of a trial, which are to establish the truth and uphold justice. It is without dispute that India needs a framework for speedy justice administration. Indian courts are being battered by the rise in criminal cases. Prisons are now overflowing with inmates who are being held without a trial due to the ongoing delays in case resolution. India has developed plea bargaining (as a response to this sad status of the judicial system), which was acknowledged as a trustworthy strategy for concluding open cases and accelerating the criminal justice system. According to the then-Chief Justice of India, Y. K. Sabharwal (2005–2007), the introduction of plea bargaining in India would not only expedite the criminal justice system but also serve as a restorative form of justice where victims would be equal stakeholders and receive sufficient compensation. However, despite years of conceptualization, the Indian criminal justice system has yet to adopt plea bargaining. The paper attempts to research whether plea bargaining in India in its present form and structure is adequate to achieve that goal by weighing its advantages and disadvantages in the context of the Indian judicial system. Given the above, it is proposed to introduce changes to this contemporary dispute resolution mechanism.

Keywords: *pre-trial concessions; negotiations; plea bargaining; punishment; Law Commission; judicial system.*

Research Problem Formulation

Criminal law is practiced all over the world and includes unique methods that are created to achieve a certain goal. These might be specific instructions to help the police make arrests or the exact method used by the courts to decide cases and provide verdicts. These mechanisms grow over time, making it easier for novel procedures to regularly materialize. One such process is plea bargaining, a relatively recent way to be found guilty in court.

In a plea agreement, the defendant admits guilt in exchange for a reduced sentence after the prosecution and defence counsel establish an amicable agreement. Criminal trials are taking longer and longer to resolve by the time they are finished. In many cases, the trial process does not start until many years after the accused has been placed in judicial custody. This is due to the criminal courts' increasing use of administrative procedures to expedite the process of conducting criminal trials. The criminal justice system in India stipulates that numerous inmates who are awaiting trial are compelled to remain in jails around the nation. According to the National Crime Records Bureau, there were almost 50,000 more people in jails in 2011 than there were beds available, and most of them were awaiting trial or had been there for more than five or six years¹. Many people who are charged with crimes are unable to post bail for a variety of reasons, one of which is that they have been detained in jail for a long time as prisoners awaiting trial, where they have to deal with a great deal of mental stress and burden. One of the

additional factors is that the accused is ultimately found not guilty if there is insufficient proof that he committed the crime.

As a result, the courts established an informal system of pre-trial settlement and bargaining, which was used in the United States and is now more commonly known as plea bargaining. In this system, the suspect or the accused may admit all or some of the charges against him, and instead of waiting for the trial to end, may request a lesser punishment.

Analysis of Essential Researches and Publications

Plea bargaining is a procedure where the accused is asked to admit guilt in return for the judge being lenient when determining the severity of the penalty or the nature of the offence. It comes from the Latin expression "Nolo Contendere" which translates to "I do not desire to contend" or a "No contest" plea². In a plea bargain, the defendant agrees that the accusations against him are true and that he will not challenge the court's decision regarding his guilt³.

Plea bargaining was first used in the American court system, not the Indian legal system. However, the Law Commission's efforts via its 142nd and 154th reports encouraged the inclusion of the Plea-Bargaining provisions. Based on the Law Commission's recommendations for some crimes, a new chapter on "Plea Bargaining" was added to the Criminal Procedure Code.

While the idea of "Plea Bargaining" is used in both India and the USA, the actual implementation varies. To make a meaningful comparison between the two legal

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- 1 Prison Statistics India 2019 / National Crime Records Bureau (Ministry of Home Affairs). URL: <https://ncrb.gov.in/sites/default/files/PSI-2019-27-08-2020.pdf> (date accessed: 08.12.2022).
 - 2 Merriam-Webster Dictionary. URL: <https://www.merriam-webster.com/dictionary/nolo%20contendere> (date accessed: 08.12.2022).
 - 3 Babasaheb Bhimrao Ambedkar University. URL: <https://www.bbau.ac.in/dept/HR/TM/LL.M.%202023%20Unit%204.Plea%20Bargaining.RM.pdf> (date accessed: 08.12.2022).

systems, it is important to understand the concept of plea bargaining and significant cases connected to it in each system separately.

Plea bargaining cannot be perfectly or plainly defined. Black's Law Dictionary defines it as "the process by which the accused and the prosecution in a criminal case work out a mutually satisfactory disposition of the matter subject to court approval". In exchange for a sentence that is less severe than the one that could be given for the more serious crime, the defendant frequently enters a plea of guilty to a lesser charge or to only some of the counts in a multi-count indictment⁴.

Due to the overcrowding of criminal courts and case dockets, plea bargaining frequently entails "mutual admission" rather than "mutual satisfaction" regarding the merits or deficiencies of both the accusations and the defences. Plea negotiations often take place before a trial, while in certain jurisdictions they can happen at any point until a decision is made. Additionally, the parties may agree to a plea deal after a jury is deadlocked during a trial in order to avoid having to hold another trial.

Plea bargaining involves negotiations in three different areas⁵:

- *Charge Bargaining*: As the term implies, the accused enters a plea of guilty to a less serious accusation as opposed to a more serious one. Sentence negotiating and charge bargaining are distinct from one another because sentence bargaining is done to negotiate the length of time for which the sentence would be pronounced, whilst charge negotiation is done to negotiate the charge that is levied. Punishment for a term of seven or ten

years is an example of the former. An illustration of the latter is accusing the defendant of kidnapping or murder. They are fundamentally two separate things. This type of plea is typical and well-known. It entails negotiating the particular accusations (counts) or offences the defendant will be prosecuted for. A prosecutor may frequently drop the higher or additional charge(s) or counts in exchange for a plea of guilty to a lower charge. For instance, a prosecutor would accept a "guilty" plea to manslaughter in exchange for dropping charges of first-degree murder (subject to court approval).

- *Sentence Bargaining*: When negotiating a sentence, parties agree to enter a plea of guilty (for the original offence rather than a lesser one). It spares the prosecution from having to go to trial and make its case. It offers the chance for the defendant to get a lesser punishment. Pledging for a lesser punishment is the goal of this plea negotiation. A lesser sentence is promised in exchange for the accused's admission of guilt to the alleged offense.
- *Fact Bargaining*: As the name implies, it makes an effort to negotiate for the case's facts. Alternative claims on the pertinent facts to the current case are covered by this sort of plea bargaining. The facts that must be accepted by both parties are the subject of negotiation between the parties. According to some, this kind of plea bargaining is against the principles of the criminal justice system. This is so

4 Black's Law Dictionary / ed. B. A. Garner. West Publishing Company, 7th Ed., 1999.

5 Plea Bargaining / USLegal. URL: <https://criminallaw.uslegal.com/plea-bargaining/> (date accessed: 08.12.2022).

because it is against the principles of criminal justice to negotiate the fundamental facts of the case. A fact is a fact and cannot be modified in a case. If we compromise on altering the case's core facts, it becomes nothing less than a fabrication. The least common negotiation involves admitting to some facts in exchange for a promise not to introduce others into evidence. This eliminates the necessity for the prosecution to provide evidence by stipulating to the truth and existence of particular facts.

Three crucial factors determine whether a plea agreement is legitimate:

- a knowing waiver of rights;
- a voluntary waiver;
- a factual foundation for the accusations the defendant is pleading guilty to.

Plea negotiations typically take place over the phone or in the courtroom prosecutor's office. With very few exceptions, judges are not engaged. Plea agreements that the judge accepts are subsequently made on the record in front of the whole court. There must be a defendant present.

One crucial distinction is that a prosecuting attorney lacks the power to compel a judge to accept a plea deal reached between the parties. Only recommendations for the court to accept a plea deal are allowed from the prosecution. The court will often request evidence to confirm that the aforementioned three requirements have been met before accepting the prosecution's suggestion.

Plea negotiating is also more complicated than it first appears. In order to successfully negotiate a criminal plea agreement, the attorney must possess technical knowledge of each element of a crime or charge, understanding of the actual or potential evidence that is already present or

could be developed, technical knowledge of lesser included offences versus separate counts or crimes, and a reasonable understanding of sentencing guidelines.

Article Purpose

The aim of the research is to study and compare the concept of plea bargaining in two different jurisdictions. The objectives are to study the relative drawbacks and benefits, the historical perspective and the contemporary ongoings with respect to plea bargaining.

Research Methods

The research methodology used for the project is doctrinal method of research wherein secondary sources of data have been used by the researcher.

The study is limited only to the concept of plea bargaining in these different jurisdictions. It discusses the history, the contemporary scenario, the benefits and drawbacks and compares relatively the difference in the laws relating to plea bargaining in these jurisdictions. The limitation of the research project is that it does not take into account the in depth study of the ground realities of how powerful plea bargaining is a tool used in these States in order to combat high rates of pending cases. The research project thus is limited to the secondary data bases and no survey or empirical study has been done in the process of comparison.

Main Content Presentation

India

Applicability of Plea Bargaining and Procedure under the Code of Criminal Procedure

In India, the practice of plea bargaining is still in its infancy. The criminal law reforms

made by the Criminal Law (Amendment) Act of 2005 resulted in the implementation of the system (Act 2 of 2006). Although the Act was passed on January 11, 2006, the provisions were not announced or went into effect until July 5.

The inclusion of plea bargaining in the Criminal Procedure Code was met with strong criticism. Also rejecting the premise of plea bargaining, the Supreme Court ruled that it is inappropriate to bargain in criminal matters. In *State of Uttar Pradesh vs Chandrika* ⁶ a court cannot make decisions regarding criminal cases based on the concept of plea bargaining, it was decided. The court must decide each case on its own merits; if the accused admits guilt, the appropriate punishment must be carried out. In the same instance, the court additionally concluded that a sentence reduction should not be based only on an individual's acknowledgement of guilt. Additionally, the accused is not permitted to request a lesser sentence from the court in exchange for his guilty plea.

In civil proceedings, concessions are actually promoted as a more agreeable alternative to a formal trial for resolving conflicts between parties. However, "law enforcement" rejects the concept of compromise as unethical or, at best, a necessary evil if the conflict finds itself in the area of criminal law.

Further, according to the Supreme Court in *Kasambhai Abdulrehtnanbhai Sheikh v. State of Gujarat And Anr.* ⁷, convictions based on the appellant's guilty plea, which was the product of a plea agreement, cannot be upheld. It is against public policy to allow an accused person to be convicted by luring him with the promise that he will be treated properly in exchange for plead-

ing guilty. Such a procedure, which would also be obviously unreasonable, unfair, and unjust, would clearly violate the new activist dimension of Article 21 of the Constitution that emerged in Maneka Gandhi's case. Even if the procedure is supported by statute, it might still not be legal if it violates the spirit of Article 21 as stated above. Because it could persuade an innocent defendant to plead guilty in order to avoid a drawn-out and challenging criminal trial, it would have the effect of tainting the pure fountain of justice. The second obstacle that might prevent it is that, according to Indian law, which is prohibited in the case of *Basheshar Nath v. Commissioner of Income Tax Delhi & Rajasthan and Ors* ⁸, plea bargaining equates to waiving a constitutional right to a trial that is inherent in Article 21.

Nevertheless, the Government ultimately decided that it was appropriate and added Sections 256-A to 265-L to the Criminal Procedure Code to create Chapter XXIA of the Code, which provides for the raising of the plea of plea bargaining in specific categories of criminal cases. The division bench of the Gujarat High Court commented on this issue in *State Of Gujarat v. Natwar Harchandji Thakor* ⁹ and stated that given the existing actual profile of the pendency and delay in the settlement of criminal cases, fundamental adjustments are required. The very goal of the legal system is to offer quick, low-cost, and straightforward justice through the trial of criminal cases and other types of disputes.

Chapter XXIA's application is covered in Section 265-A. Plea negotiations can be advantageous in two situations. One is when a police station's station house officer sends the magistrate a report following the conclusion of an inquiry. The second scenario

6 2000 Cr.L.J. 384(386).

7 AIR 1980 SC 854.

8 AIR 1959 SC 149.

9 2005 CriLJ 2957.

occurs when the magistrate determines that an offence has occurred “based on a complaint filed in accordance with Section 190(a), which is followed by the examination of a complainant and witness in accordance with Sections 200 or 202, and the issuance of a summons in accordance with Section 204. Following the commencement of judicial proceedings stemming from a private complaint made in accordance with section 190(a) of the Code, it so indicates.

However, if the accused committed a crime that entails a death sentence, a life sentence, or a term of more than seven years in jail, the benefit cannot be extended. Additionally, crimes that affect the socioeconomic standing of the country as well as those that the Central Government has recognized as crimes against women or crimes against children under the age of 14 are not eligible for the benefit of a plea deal. Any juvenile or child as those terms are defined in the Juvenile Justice (Care and Protection of Children) Act of 2000 is exempt from the requirements of plea bargaining under Section 265-L. In the event of contradiction with other Code provisions, the Chapter has been given a separate life by the saving provisions under Section 265-J¹⁰.

The procedure of plea negotiations is initiated by an application from the accused in accordance with Section 265-B. Only the trial court should receive the application. “The application must be in writing and include a concise summary of the case’s facts as well as information on the accused’s prior convictions and an affidavit signed by the defendant attesting to the application’s sincerity as one that was voluntarily made. Upon receiving the application, the trial court is required to notify the prosecution, the accused, and in situations under Sec-

tion 190(a), either the complainant or the public prosecutor, of the day the application will be heard.

Historical Background

In Vedic Period. Since the beginning of time, India has used the notion of plea bargaining. Evidence from several ancient treaties and documents indicates that this concept was used as a means of self-purification by erasing or lessening the repercussions of sins caused by committing an offence. Hindu law holds that delaying a decision in a lawsuit amounts to denying justice. The Dharam Sastras also offer a notion in a different chapter named Prayaschita where it suggests many models of self-purification via confession of wrongdoing. This was used as a justification for the imposition of a lighter penalty and was supported by numerous smritis experts. Even Manu Smriti calls for a less sentence in exchange for a guilty plea.

Therefore, several smritis in the Vedic era permitted and supported the idea of reducing penalty by voluntary confession. This is comparable to the idea of a plea agreement. This leniency in sentencing was intended to allow the guilty a chance to recover his standing in society.

In Medieval Period. The Quisas system in the Muslim Criminal Code might be seen as an analogue to the Mughal practice of plea bargaining. According to this law, if a person commits an offence against a deity, God will punish them accordingly, but if they commit an offence against the government or a private individual, they have the choice of compounding their offence along with the offender. Quisas is a form of “blood money” in which the accused pays a sum of money to the legally entitled heirs or surviving relatives. If a relative of the dead or his legal heirs decides to settle with

10 Chandrasekharan Pillai K. N. R. V. Kelkar’s Criminal Procedure. Eastern Book Company, 2008. 1429 p.

the accused in return for money, the king or the Quazi cannot intervene. Muslim jurists supported this practice on the grounds that the rights of God's creation should take precedence and that the accused could not be put to death until the child's species had reached adulthood in cases where the next deceased victim was a child.

Due to the fact that the family of the victim in a murder case received compensation, Quisas at this time period only applied the notion of plea bargaining in a limited sense.

During British Rule. The adversarial system, which was adopted in India from the British Colonial authorities, was used to resolve cases. The East India Company founded the Court in 1672, which sentenced offenders to punishment or required them to labor for the owner. In the year 1860, both this premise and the principle of plea bargaining were dropped. Instead of negotiating with recompense, the British people's principal goal was to punish. When Lord Cornwallis issued a suggestion on 3 December, 1790 stating that there could not be a consensual settlement between the heir of the deceased and the accused in murder cases, the practice of plea-bargaining as it was common during the Mughal era suffered a setback. They were not allowed to offer forgiveness or compensation as payment for the blood. The Muslim Criminal Code was completely abolished when the Indian Penal Code was given legal form in the year 1860.

In Modern Era. The Criminal Law (Amendment) Act, 2005¹¹, which went into

effect in 2006, marked the Code of Criminal Procedure, 1973 relatively recent introduction of the plea-bargaining concept. By virtue of this amendment, Chapter XXIA of the Criminal Procedure Code was added, and the idea of plea bargaining was established¹².

But the history of plea agreements are much older. The first mention of it was made in the 142nd Report of the Law Commission of India, which Justice MP Thakkar oversaw¹³. The difficulty India was experiencing with the way trials and appeals were conducted, which frequently led to the accused and those awaiting trial being detained for an inordinate period of time, was recognized by this research. In a model modelled by the already-existing American system, it was advised that pleas be granted to the guilty without haggling in order to provide them a concession and permit the reduction of their convictions. The cost of holding such offenders in jail for astronomically long periods of time was also discussed in the report. Sentence and charge negotiations were the subjects of discussion. In the former, the prosecution offers a specific conviction recommendation in return for the defendant's guilty plea. In the latter, in exchange for the promise that the remaining charges will be dropped, the defendant consents to enter a plea of guilty to some of the charges.

The 154th Report of the panel¹⁴, presided over by Justice K Jayachandra Reddy, which explained how precisely the provision of plea bargaining would function in the Indian system, broadened the scope

11 The Criminal Law (Amendment) Act, 2005 / Goa Police. URL: [https://citizen.goapolice.gov.in/documents/10184/1794152/law2005.pdf/f1e0e3ac-f97c-4a08-a5b2-de304d6613a2#:~:text=Page%201-,THE%20CRIMINAL%20LAW%20\(AMENDMENT\)%20ACT%2C%202005%20NO.,%3A%2D%20CHAPTER%20I%20PRELIMINARY%201](https://citizen.goapolice.gov.in/documents/10184/1794152/law2005.pdf/f1e0e3ac-f97c-4a08-a5b2-de304d6613a2#:~:text=Page%201-,THE%20CRIMINAL%20LAW%20(AMENDMENT)%20ACT%2C%202005%20NO.,%3A%2D%20CHAPTER%20I%20PRELIMINARY%201) (date accessed: 08.12.2022).

12 The Code of Criminal Procedure (India, 1973). Chapter XXIA. Sections 265 A to 265 L. URL: <https://legislative.gov.in/sites/default/files/A1974-02.pdf> (date accessed: 08.12.2022).

13 Bare Acts Live. URL: <http://www.bareactslive.com/LCR/LC142.HTM> (date accessed: 08.12.2022).

14 Ibidem. URL: <http://www.bareactslive.com/LCR/LC154.HTM> (date accessed: 08.12.2022).

of this topic. The 142nd Report's defence of the plea-bargaining system was supported by the Report, which also established that it should be applied to offences that carry a sentence of seven years in prison or less, which is the current model. Additionally, it stipulated that this would not apply to habitual or repeat offenders, those who committed socioeconomic crimes, or those who broke the law against women and children.

The 2003 Malimath Committee Report conducted the final deliberation on the matter prior to the passage of the 2005 Amendment¹⁵. It emphasized that an accused person should receive special treatment and be given various concessions anytime he or she feels contrite and wants to atone for his or her wrongdoings. In order to swiftly and efficiently determine a sizable number of Court matters, the processes suggested in the 142nd and 154th Law Commission Reports should be put into place, according to this study. It contributed to bolstering the notion that plea bargaining was essential, which helped shape the 2005 Amendment's structure and the current legal system.

Present Scenario

The Criminal Procedure Code's Sections 265A through L now govern plea bargaining. It does not apply to crimes against women or children under the age of fourteen, or to cases that have an impact on the socioeconomic situation of the country. It only applies to offences that result in a prison term of seven years or less¹⁶. Addition-

ally, if the application was made against the accused's will or if he had previously been found guilty of the same crime by a court of law, he would not be eligible to use the plea-bargaining option¹⁷. The application must be accompanied by a synopsis of the case and an affidavit from the suspect stating that he voluntarily offered a plea bargain. The court would be aware of this and conduct a private interview with the defendant without the presence of the other party before deciding on a conviction sentence that was less severe than the charges that were actually appropriate to bring¹⁸. The victim would be entitled to compensation while the court could reduce the sentence of the accused by up to one-fourth of the minimum punishment specified for the offence committed¹⁹.

Therefore, negotiating a plea offers a speedy legal remedy that requires no arguments other than the presentation of the evidence and the prosecution's suggested penalty for conviction. The victim is eligible for compensation after the trial but is not even required to attend the court proceedings. The accused must be required to be present when he is sentenced. The main goal of plea bargaining is to hasten court trials and organize the court system so that the prisoners can be released, as stated in both the 142nd and 154th Law Commission Reports. For their good intentions, those who are sorry for what they did should receive sentence reductions. The Reports had expected that this framework would be appropriate and applicable to all legal

15 Committee on Reforms of Criminal Justice System. Report. Vol. 1. 2003. URL: https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf (date accessed: 08.12.2022).

16 The Code of Criminal Procedure (India, 1973). Section 265 A. URL: <https://legislative.gov.in/sites/default/files/A1974-02.pdf> (date accessed: 08.12.2022).

17 Ibidem. Section 265 B. URL: <https://legislative.gov.in/sites/default/files/A1974-02.pdf> (date accessed: 08.12.2022).

18 Ibidem. At 16. URL: <https://legislative.gov.in/sites/default/files/A1974-02.pdf> (date accessed: 08.12.2022).

19 Ibidem. Section 265 E. URL: <https://legislative.gov.in/sites/default/files/A1974-02.pdf> (date accessed: 08.12.2022).

violations in the future, but at the moment it doesn't appear that there are any plans to broaden the parameters or breadth of plea bargaining. The true intent of the legislature in passing the Amendment Act of 2005 could not be fully understood, but the overcrowding of jails, high acquittal rates, and inhumane treatment of prisoners were cited as justifications²⁰.

Stance of the Judiciary

The Apex Court in India, in particular, had a staunch opposition to the idea of plea bargaining and any method connected with it at the outset. These accords' immorality and the consequent implications for the idea of natural justice were the main sources of criticism²¹. *Murlidhar Meghraj Loya v. State of Maharashtra*, a seminal decision on the subject determined in 1976, was decided prior to the adoption of plea bargaining into the Criminal Procedure Code²². In order to get a favorable penalty from the local magistrate, the accused in this instance, who was found to be selling contaminated food, approached him informally. He pled guilty in a way that was similar to the plea-bargaining system. According to Justice Krishna Iyer, our system allowed the "business perpetrator" to escape punishment by selling his agony in jail for the appearance of sorrow, persuading everyone but the victim and the community. In *State of Uttar Pradesh v. Chandrika*²³, the Supreme Court overturned a High Court decision that approved plea bargaining, upholding its censure. According to the

Supreme Court, it is unlawful to pressure an accused individual into entering a guilty plea through the use of any assurances or promises since it violates Article 21 of the Indian Constitution. It further stated that in certain situations, the court must vacate the conviction and remand the matter to the trial court so that the accused person can have a chance to defend himself and receive the proper sentence if proven guilty²⁴. This condemnation, however, was not universal; in the case of *State of Gujarat v. Natwar Harchandji Thakor*²⁵, the Gujarat High Court found it to be a quick and affordable way to settle disputes. In this case, the court determined that the primary goal of the law is to deliver quick, inexpensive, and straightforward justice through the settlement of disputes, including the criminal justice system. As a result, it can be claimed that the idea of plea bargaining is actually a kind of redress and will give judicial reforms a new dimension.

The fact that all of these cases occurred before plea bargaining was included in the Criminal Procedure Code is pertinent, though. The first time plea bargaining was permitted was in the case of *Vijay Moses Das And Another v. Central Bureau Of Investigation*²⁶. The Indian court system then largely accepts and recognizes it in *Ranbir Singh v. State*²⁷. In this case, the petitioner contested the sentences of paying a fine of ₹5,000 under Section 279 of the IPC and receiving an additional month of simple imprisonment in the event that the fine was not paid, along with a sentence of

20 Aggarwal T., Rewari S. Wanna Make a Deal? The Introduction of Plea Bargaining in India. (2006) 2 SCC (Cri) J-12. URL: https://www.ebc-india.com/lawyer/articles/2006_2cri_12.htm (date accessed: 08.12.2022).

21 AIR 1968 SC 1267 ; AIR 2000 SC 164.

22 AIR 1976 SC 1929.

23 AIR 2000 SC 164.

24 AIR 1983 SC 747.

25 (2005) Cr.L.J. 2957.

26 Crim. Misc. Appln. 1037/2006.

27 Crl. M. C. 1705/2011.

imprisonment for six months in addition to the penalty of ₹5000 under Section 304 A of the IPC. A ¼th of the sentence for imprisonment may be imposed by the Trial Court. Even then, the knowledgeable Trial Court is required to consider any mitigating factors. The full penalty was imposed without taking any of the mitigating circumstances into consideration. The petitioner is the only source of income, with the help of his elderly parents and two young children. The petitioner provided financial compensation to the victims. In order to prove that the parties reached an agreement and there is no longer a disagreement between them, he has also reported the affidavit of the deceased person's legal heirs. On the other hand, the prosecution argued that strong action was necessary to reduce the impact of the rising number of murders by careless and reckless driving offences under Section 304 A IPC. According to Section 265 E of the Criminal Procedure Code, the Court could impose a sentence equal to ¼ of the fine, including in the case of a deposition that both parties could agree upon. In accordance with Section 265 G of the Code, the trial court's decision is also final and cannot be challenged. Even if it cannot be said that the petitioner should not be imprisoned given these mitigating circumstances and should be released, the Delhi High Court ruled that he should not have been given the whole sentence as the learned Trial Court had done. The court changed the punishment to a fine of ₹1,000 and four months in jail under Section 304 A of the IPC.

In *Pardeep Gupta v. State* ²⁸, According to Justice Shiv Narayan Dingra, the trial court's rejection of the accused's plea agreement demonstrates that the court did not take into account the provisions of chapter XXIA of the law that were intend-

ed for this usage. Since the applicant is participating in an offence under Section 120 B of the IPC and her involvement is equal to that of her co-accused, the court rejected the accused's plea agreement. However, none of the offences for which the petitioner was charged carried a sentence of more than seven years. The role of the accused, the nature of the offense, and other factors should be taken into consideration when considering the plea negotiation request. Due to his involvement with section 120 B of the Indian Penal Code, the trial court should not have denied his request for a plea agreement on the grounds that he was ineligible to request a lesser sentence. The trial court's frame of thought suggests that it did not read the provisions of chapter XXIA before considering the application. The High Court instructed the trial court to reconsider the accused's plea bargain request in light of the Code of Criminal Procedure's provisions and not just on a whim.

In the case of *Rahul Kumpawat v. Union of India* ²⁹, the trial court's decision to reject the petitioner's motion for a plea deal in the current case was challenged by the petitioner in a miscellaneous criminal appeal before the high court of Rajasthan. The attorney claimed that there was no basis for the ruling rejecting the application in question. It was dismissed without explanation because it violated the letter and spirit of Section 265A of the Code of Criminal Procedure. The attorney vehemently argued that the purpose of implementing Section 265A was to shorten the duration of a criminal trial. By disregarding the spirit of the aforementioned Section in the instant case, the learned trial court abused it. The High Court of Rajasthan found these arguments to be meritorious. It was noted that the said trial court order needed to be overturned

28 Bail Appln. 1298/2007.

29 CRIMINAL MISC. (PET.) (CRLMP) No. 2257 of 2015.

in order for justice to be served. The High Court accordingly took the necessary action.

United States of America

Historical Background

As Justice Charles Clark famously stated, “Plea deals have accompanied the whole history of our nation’s criminal justice system” many Americans have long believed that plea bargaining is an inherent and integral part of their legal system³⁰. This idea is not entirely supported by empirical truth, though. In actuality, the plea-bargaining system has been strongly condemned by the American judiciary for many generations. They didn’t begin welcoming the mechanism with open arms until the late 19th century. The 20th century saw an increase in the power and influence of politicians, the media, and the general public, requiring the need for an immediate judicial system and enabling plea bargaining to flourish in legal proceedings. The country’s substantial increases in criminal law and alcohol bans also helped to further this development³¹.

Plea bargaining received enormous praise and support after the 1920s, to the point where it started to dominate the handling of criminal cases. The United States Constitution’s Sixth Amendment does not specifically reference plea bargaining, but judicial bodies have upheld the practice’s legality. Thus, the scope of its operation was broadened, leading to the current plea-bargaining framework in the USA, where plea bargains are now permitted to be made for reductions in conviction sentences for all types of criminal offences committed. The extensive evaluation and popularity of the

plea-bargaining mechanism in criminal law continue to be largely attributed to the United States.

James Earl Ray admitted to killing Martin Luther King Jr. in 1969 in order to avoid being put to death. Finally, he was sentenced to 99 years in jail. The US Supreme Court ruled in the seminal case of *Bordenkircher v. Hayes* that the constitutional justification for plea negotiations are that there is no element of punishment or retribution as long as the accused is free to accept or reject the prosecution’s offer. The accused, however, refused the plea deal of five years in jail, therefore the Apex Court maintained his life sentence³². The Supreme Court noted that it is always in the best interest of the party under duress to select the lesser of the two evils in the same case, but in a different context. Similar justification has also been used by the courts in private party tort issues. In a different case, the US Supreme Court publicly agreed that plea bargaining was necessary for the fair administration of justice and should be promoted when done well.

Current Scenario

When a defendant is arrested in America, he must first appear in court to be assessed for his rights and any offences that may have been done against him. The defendant is then brought back before the court and given the opportunity to enter a plea when the prosecutor files accusations against him. *Nolo contendere* indicates that the defendant is not going to challenge his conviction. No matter how serious the crime, the accused is allowed to enter a plea deal and may even do so after the case has already begun. He has the right to rescind his appeal for

30 524 U.S. 184 (1998).

31 Alschuler A. W. Plea Bargaining and its History. *Law & Society Review*. 1979. Vol. 13. No. 2. Special Issue on Plea Bargaining. Pp. 211–245. DOI: 10.2307/3053250 (date accessed: 08.12.2022).

32 Randhwa G. S. *Victimology and Compensatory Jurisprudence*. Central Law Publications, 2015. 296 p.

legitimate reasons³³. However, the accused is not legally entitled to receive a plea bargain, and the decision to accept or reject such offers rests with the prosecution³⁴. Even the judge has the option to accept the plea of bargain; he or she is not required to do so even if the parties have come to an agreement³⁵. Whether the accused entered a plea voluntarily and fully understanding its implications is primarily decided by the judge. In addition, the Federal Procedure Code requires the courts to pose a number of inquiries in order to establish justice and equity³⁶. However, in terms of procedure, it is fairly simple, requiring only a statement of the desired agreement to be entered into the court's records for a successful application of the provision of plea bargaining.

Plea bargaining is noticeably more common and has a much wider range of applications in the United States than in the majority of other nations. 97% of Federal cases and 94% of Civil cases are resolved through plea negotiations³⁷. While obtaining lenient sentences is the primary goal of plea bargains, they are also used to coerce defendants into disclosing case-related information and obtaining testimony against others. Plea bargaining has become essential to the American legal system as it currently stands.

Stance of the Judiciary

In America, plea bargaining is used to determine a sizable number of cases. In the

famous case of *Brady v. United States*³⁸, the question of plea bargaining and its legality are covered. The judges in this case agreed that plea bargaining was a legal and constitutional mechanism, but they expressed some concerns about the possibility of abuse of this clause by citing the case where even innocent defendants would plead guilty with the hope of receiving concessions through plea deals. It was held in *Santobello v. New York*³⁹ that in situations where attempts at plea bargaining are unsuccessful, the public has a number of other options.

In essence, the plea-bargaining mechanism determines the outcome of almost every criminal case in American law. Plea bargaining is widely believed to be a crucial and necessary component of the criminal justice system in the United States.

In the instant case of *State v. Adams*⁴⁰, The Nolo Contendere concept was articulated by the court. According to the Court, the plea of "Nolo Contendere" often referred to as "Plea of Nolvut" indicates that the accused does not desire to contest. In *United States v. Risfield*⁴¹, the Court noted that the adjudication by the Court in connection to the guilty plea is not required in a criminal case in which a plea-bargaining application has been lodged. However, the accused person's sentence may be given immediately by the court.

In the case of *Bordenkircher v. Haynes*⁴², The US Supreme Court upheld the constitutionality of plea bargaining while impos-

33 LaFave W. R. et al. 5 Criminal Procedure § 21.3(f) at 769 (West 3d ed. 2007).

34 Weatherford v. Bursey, 429 U.S. 545 (1977).

35 LaFave W. R. et al. 5 Criminal Procedure § 21.3(e) at 769 (West 3d ed. 2007).

36 Fed. R. Crim. P. 11(b)(1).

37 Goode E. Stronger Hand for Judges in the 'Bazaar' of Plea Deals / The New York Times. URL: <https://www.nytimes.com/2012/03/23/us/stronger-hand-for-judges-after-rulings-on-plea-deals.html> (date accessed: 08.12.2022).

38 397 U. S. 742 (1970).

39 404 U. S. 257 (1971).

40 111 S. E. 2d 336 (1959).

41 340 U.S. 914

42 434 U. S. 357 (1978).

ing a life sentence on the accused who refused to accept a guilty plea in exchange for a five-year prison sentence. The Supreme Court noted a slim chance that the accused person would be forced to select the less severe of the two penalties. The Supreme Court further noted that if the accused person is free to accept or reject the offer made by the prosecutor during the plea-bargaining negotiation process, there is no likelihood of coercion or duress.

Italy

Historical Background

Italy's criminal law framework differs greatly from those of India and the United States because of the way the country's civil law system is structured. With far less importance attached to precedents, the majority of its laws are codified into codes that may be easily examined or referred to. The inquisitorial system of justice was first practiced in Italy, where the courts and its agents' primary goal was to elicit information and intelligence from the accused in order to empower the judge to make his own decisions. The Adversarial System, which allows for plea bargaining, provides more options than this system does⁴³.

The Adversarial System of Justice, where two sides present their cases and counter each other's arguments, was adopted as the new code of criminal procedure in Italy after 1988. It also included plea bargaining and shortened trials. The foundation of plea bargaining, consensual justice, was also made legal in Italy by the legislative branch⁴⁴.

Present Form & Purpose

Plea bargaining, or *patteggiamento* as it is more widely called in Italy, differs significantly from the practices used in the other two nations. The accused enters a plea of guilty in the Italian legal system based on the judgement rendered against him, not the allegations brought against him. Along with the forgiveness of all legal expenses, a good plea agreement can lower his sentence by one-third. The accused consequently admitted guilt on all counts brought against him. Plea bargaining is only permitted, though, when the penalty for the offence is a fine or a term of imprisonment of five years or less. Additionally, appeals of court rulings are only allowed in cases where there was a procedural error; they cannot be made on the basis of the case's merits⁴⁵.

An idea is agreed upon by both the prosecution and the defence, and is then submitted to the judge for his approval. The judge determines whether the defendant is innocent, guilty and deserving of a harsh sentence, or guilty and deserving of a merciful sentence based on the facts and evidence at hand. This primarily aims to speed up court proceedings because the judge has already been given the verdict⁴⁶.

Stance of the Judiciary

Because Italy adheres to Civil Law rather than Common Law, court precedents have relatively little weight there. They do, however, have some corroboratory significance, so they cannot be totally disregarded.

43 Iovene F. Plea Bargaining and Abbreviated Trial in Italy. Warwick School of Law Research Paper. No. 2013/11. DOI: [10.2139/ssrn.2286705](https://doi.org/10.2139/ssrn.2286705) (date accessed: 08.12.2022).

44 Ibidem.

45 Pizzi W., Marafioti L. The New Italian Code of Criminal Procedure: The Difficulties of Building an Adversarial Trial System on a Civil Law Foundation. *Yale Journal of International Law*. 1992. Is. 1. Art. 2. Vol. 17. Pp. 1–40. URL: <https://openyls.law.yale.edu/handle/20.500.13051/6264> (date accessed: 08.12.2022).

46 Ibidem.

The case that raised the issue of plea bargaining in Italy for the first time unambiguously stated that, despite the fact that it was legal, the Italian legal system would not change into a fully adversarial one because it would be in conflict with the principles of Civil Law⁴⁷. Since then, the plea-bargaining process has been unequivocally approved and is being used with little to no criticism or condemnation.

The criminal jurisprudence now attempts to plea bargain in every case possible with the aim of fostering quick dispensation of justice due to the introduction of plea bargaining into Italian law and its general favorability in their justice system.

Role of Law Commission of India as to Plea Bargaining

The idea of plea bargaining was not initially attempted to be implemented in India. Later, in its 142nd and 154th reports, the Law Commission of India introduced the provisions relating to plea bargaining.

*142nd Report*⁴⁸. In its 142nd report, the Law Commission interviewed numerous states and jurists about the issue of plea deals and made the following observations:

It specifies that only the offender or accused may implement this plan.

There will be no plea negotiating discussions with the prosecution office or its attorney.

The competent authority, known as the “plea judge” is chosen by the Chief Justice of the respective High Courts of each State from among the sitting judges qualified to hear cases carrying sentences of up to seven years in prison. The Chief Justice of the

state also appoints two retired judges of the High Court to serve on the bench.

The competent authority will only consider a plea-bargaining request if he is confident that the defendant is entering the plea voluntarily and free from coercion or undue influence.

The application must be heard by the competent authority in front of the party who was wronged and the public prosecutor.

For compounding the offense, the authority has the right to impose a jail sentence, a fine, or demand that the accused pay restitution to the party who was wronged. With regard to certain offenses, the authority qualified to hear this application may impose a jail sentence of six months or one year.

When the competent authority is not required to use the release on probation powers under the Probation of Offenders Act, 1958, or under section 360 of the Code of Criminal Procedure, 1973, in accordance with the rules, the competent authority may impose a jail term that does not exceed one-half the maximum allowed by the relevant provision.

The scheme may initially only be applied to offences that are punishable by a fine or a sentence of less than seven years in prison.

After thoroughly evaluating and assessing the outcomes of the application of the scheme to offences punishable by imprisonment for less than seven years, the scheme may be made applicable to offences punishable by imprisonment for seven years or more.

47 La Corte Costituzionale. Sentenza 313/1990 (ECLI:IT:COST:1990:313). URL: <https://www.cortecostituzionale.it/actionRicercaSemantica.do> (date accessed: 08.12.2022).

48 Vishwanath A. Why hasn't Plea Bargaining taken Off in India? / Mint. URL: <https://www.livemint.com/Politics/otm5Xv7DTZJ9KaKSChJ4H/Why-hasnt-plea-bargaining-taken-off-in-India.html> (date accessed: 08.12.2022).

154th Report⁴⁹. The following recommendations have been made in the 154th report's paragraph 9:

When the accused appears, this process can be started by a written request or by the court acting on its own initiative to make sure the accused is willing. The court may require the accused to submit an application after determining his willingness.

The court must decide whether the accused filed the application voluntarily, knowingly, and free from coercion or improper influence by any police or public defenders before the hearing date. The police and the prosecutor are not required to be present during the preliminary examination.

The court will set the hearing date and issue a final order once it is certain that the application was submitted voluntarily. The court has the authority to reject an application if it determines that it was made under improper influence.

Such a decision might be taken at the beginning of the process or after the public prosecutor and the harmed party have testified. If the court determines that the case is not appropriate for a plea agreement, it may reject the claim and explain why.

The court's decision regarding the application of the accused-applicant is confidential and will only be disclosed to the accused if he requests it. No prejudice will be brought against the accused at the ensuing trial as a result of the accused making such an application.

No appeal may be filed against a judgement rendered by the court accepting such a plea; it shall be considered final.

When the Probation of Offenders Act, 1958 or Section 360 of the Criminal Procedure Code apply to the accused applicant, he is allowed to submit an application stat-

ing his desire to enter a plea of guilty and asking to be granted the benefit under the aforementioned legislative provisions. In such situations, the court may issue the proper order granting the benefit of those legislative provisions after hearing from the public prosecutor and the party who was wronged. In the right circumstances, the court may have the authority to waive the requirement of receiving a report from the probation officer.

In the event that an accused pleads guilty to an offence for which a minimum sentence is set, the court may, rather than rejecting the application, accept the plea of guilty, issue an order of conviction, and sentence the accused to one-half of the minimum sentence set.

After receiving a plea of guilty, the court must inform the accused that it may record a conviction for the offense, and that it may then hear from the public prosecutor or the aggrieved party, depending on the circumstances —

- Sentence him to a suspended term and place him on probation;
- Direct him to provide the harmed party with compensation; or
- Impose a sentence that is appropriate for the plea agreement; or
- If it is possible given the facts and circumstances of the case, convict him of a crime with less serious consequences than the one for which he has been charged.

Comparative Analysis

Substantive Differences

In India, the US, and Italy, plea negotiations are significantly different in terms of both content and method. On one end of the scale is Italy. In Italy, the use of plea

49 Bhattacharjee A. Indian Laws on Plea-bargaining Anwasha Bhattacharjee / Lawyers Club India. URL: <https://www.lawyersclubindia.com/articles/Indian-Laws-on-Plea-bargaining-4213.asp> (date accessed: 08.12.2022).

deals is very restricted, only being used in cases of infractions that carry sentences of five years or less in prison. Additionally, the Italian judicial system requires pleading guilty to all charges, which is very different from the systems in the other two countries. Italy currently employs an adversarial system, but this is a by-product of the civil law system in place.

The United States, on the other hand, represents the opposite extreme of the spectrum. In the USA, plea bargaining is available for any type of crime that might be committed. The accused is free to engage in both charge and sentence negotiations with the hope of obtaining sentence concessions, which he typically does. Few cases in the USA are decided without a plea agreement because most defendants are prepared to admit guilt from the beginning of a case. The outrageous amount of time a convict would have to spend in jail if the case went against him far outweighs any negative attention, he may receive for accepting a plea deal. Therefore, the chance of accepting plea deals appeals to the majority of defendants. The prosecuting attorney only needs to inform the Court of the desired settlement agreement in order to follow the procedure. There are no hassles associated with submitting any documents or filing any paperwork with the court throughout the entire process.

In terms of its approach, India sort of veers in the middle and reiterates the fact that its legal system is a synthesis of those of many different countries. India does allow plea negotiations, but there are many conditions and limitations attached although not as many as in Italy. In India, compared to America, far fewer “cases are resolved through the use of plea bargaining. The application must abide by all the special requirements outlined in section 265A-L of the Cr.P.C., which makes the pro-

cess in India far more onerous than it is in the USA.

It might be difficult to decide which of the three systems is best. However, it can be dealt with more effectively after taking into account all the benefits and drawbacks of plea bargaining in these nations.

Advantages

Plea bargaining’s main goal is to make the judicial administrative system more efficient. Those who favor plea negotiating favor a speedy resolution of the cases rather than a drawn-out trial. The parties strike an agreement outside the boundaries of the Court by using plea bargaining. In that situation, the judge only looks at the evidence at face value and avoids giving it a meaningful judicial review. Additionally, there is no opportunity for the sides to advance their points. Another significant benefit of this legal rule is that none of the parties to the case may challenge the judgement rendered in plea bargaining instances.

Plea bargaining enables the courts and judges to shorten the length of pending cases, so enabling more people to benefit from the opportunity to get justice. In India, pending litigation provide a significant barrier to receiving justice from the courts. In India, obtaining justice is not always so simple. The situation is reversed in the American court system, since it is simpler to get justice there than it is in India.

Fundamentally, if the plea deal is only available to criminals who really regret their crimes, the whole legal system will be able to benefit the most from this legislative provision. The only people who truly deserve forgiveness under this rule are those who seek to change for the better. Hardcore offenders who don’t want to change their ways and merely want to take advantage of this provision should not be given the benefit of the doubt.

The judicial systems in the United States and India are diametrically opposed. While in the United States people believe in forgiving and moving on with life while letting offenders make changes to become more likeable and responsible citizens, in India this plea agreement provision only has a limited application to offences of a specific nature. Offenders who are facing serious charges are not permitted to use this clause. In addition to the aforementioned, in the United States, the option of plea bargaining is used to seek conviction of the offenders accused of serious crimes by giving a lenient punishment to their accomplices accused of crimes of lower seriousness. For example, thieves are permitted to receive a lighter sentence if they testify against mobsters or rioters in order to apprehend them⁵⁰.

With a few minor procedural and substantive exceptions, Italy's legal system for plea bargaining is essentially identical to that of India.

Disadvantages

The main victim of the plea-bargaining system is justice. Sometimes those who are actually guilty get away with less severe punishment than they should, and other times those who are falsely accused in a criminal case receive the harshest sentences, which they could have avoided had they waited patiently until the delivery of the final verdict in their case. In the case of a plea agreement, the judicial evaluation of the arguments and the polish of the

evidence is diminished, and it is not given the importance it deserves. Plea bargaining undermines the fundamental tenet of a trial, which is to discover the truth and dispense justice⁵¹. In cases of plea bargaining, the punishment is determined solely by a rough estimation or evaluation of the evidence in the case. Additionally, the likelihood that innocent people will receive a relatively harsher punishment rises, and it is also possible that the real offender may only receive a token punishment⁵².

Either society or the victim of the crime doesn't receive justice in the true sense of the word when one knocks on the door of the legal system. The victim and society often have a very negative impression of the judicial administrative system because the penalty is not given in its absolute and strict sense. While plea bargaining is freely used in the US, there are some restrictions in India. As a result, in Indian law, the victim plays a significant role in the Plea-Bargaining process. In the event that a mutually agreeable resolution cannot be reached, the victim has the right to reject or veto. The victim, however, does not actively participate in the Plea-Bargaining process in the USA.

In the USA, a plea-bargaining application is only submitted following the conclusion of negotiations between the prosecutor and the accused. To ensure that the application for plea bargaining is made voluntarily by the accused, the negotiation process with the accused does not even begin in India before the application is submitted. As a result, there is a lower likelihood that the

50 Messitte P. J. Plea Bargaining in Various Criminal Justice Systems. Conf. Montevideo, Uruguay (May, 2010). URL: https://www.law.ufl.edu/_pdf/academics/centers/cgr/11th_conference/Peter_Messitte_Plea_Bargaining.pdf (date accessed: 08.12.2022).

51 Cheesman S. J. A Comparative Analysis of Plea Bargaining and the Subsequent Tensions with an Effective and Fair Legal Defence. Faculty of Law and Political Science, University of Szeged. URL: http://doktori.bibl.u-szeged.hu/2488/1/Samantha_Joy_Cheesman_ertekeztes.pdf (date accessed: 08.12.2022).

52 Kathuria S. The Bargain has been Struck: A Case For Plea Bargaining in India. *Special Issue on Alternative Dispute Resolution in Association with the Singhanian Chair on ADR Laws*. 2007. Vol. 19. No. 2. Pp. 55–68.

accused will be forced into making a plea bargain application or that there will be covert negotiations.

The second problem with plea bargaining is that it lacks the level of spontaneity that, by law, it should have. According to the law, the suspect or defendant shall choose a plea deal on his or her own, independent of the prosecution or the judge. However, the situation is different on the ground. To assure a win for both the prosecution and the accused, the accused is persuaded into entering into a plea bargain. The prosecution would nearly intimidate the defendant, forcing them to accept a plea deal. Particularly those who become entangled in the web of the police and the prosecution choose to negotiate a plea out of fear of further harm from the court's final verdict. Another factor that forces the accused to enter a plea agreement rather than have the case decided on the merits is the burdensome legal procedures.

Plea bargaining ultimately serves the interests of the guilty while unintentionally undermining the cause of justice. Even though many nations have adopted plea bargaining in accordance with American laws, India is still far from it⁵³. Only minor and non-heinous offences in India are eligible for the plea-bargaining offer. The major drawback of plea negotiations is that a co-accused is sometimes persuaded to testify against the other accused on the promise of receiving a considerably less sentence than his partner. Those in charge of the justice system frequently lose sight of the real offender in front of them in the process. As a result, a cunning criminal gets away with less punishment than the other, and does so without feeling guilty. Due to this situation, most nations, including India, are reluctant to permit the free application of plea bargaining in serious and heinous crimes.

Recommended Reforms

It is obvious that multiple improvements may be implemented in India when weighing the benefits and drawbacks of the plea-bargaining procedure. The first one may have to do with the power and supervision of the judges. Although it is up to the judges' discretion whether to accept or reject the suggested punishment, the law tacitly urges them to do so. With regard to trial and punishment, the judges' scope of authority has to be broadened. Additionally, there has to be a check on the judges' performance to prevent them from becoming complacent. The judge simply accepts the sentence that is offered; however, this practice is against justice and frequently results in the conviction of the innocent while the guilty are allowed to walk free with unfairly lenient sentences.

Although it is not advisable to adopt the American system of plea bargaining, which favors only the wealthy, given its narrow and constrained scope, it is also not expected to be successful in India. The core of plea bargaining has been lost as a result of the revisions and the strictly controlled rules. Trials are more appealing to defendants than plea bargains because they do not always result in conviction in India and because they offer more protections against rights violations. In order for the process to actually succeed in its goal of accelerating the resolution of cases, the scope should be expanded rather than only allowing it to be used against offences for which the punishment does not exceed 7 years. Additionally, there are lessons to be learned from the American model, which permits a lesser charge if the accused enters a timely plea agreement. Furthermore, the concessions made in a plea agreement must be more desirable than the punishment and options an accused person would have in a trial. It should also be noted that even though one

of the main goals of introducing plea bargaining in India was to embrace the victim's wishes and move toward a restorative form of justice, the same thing may have contributed to the process' failure. The victims are frequently motivated by the punitive form of justice, making it challenging for the prosecutor and the accused to come to a resolution that placates the victim. Therefore, eliminating the tri-partite system could benefit plea negotiations in India.

Furthermore, the case's adjudication needs to be given a lot more importance. If a judge is unable to preside over the case, the prosecution and defence may choose an impartial mediator to decide on a reasonable sentencing based on the facts and available evidence. Although it involves making the trials a little more difficult, it is still a quicker method of deciding cases and does not put as much pressure on the Court. Currently, the defendant frequently has no choice but to agree to the prosecution's demands. Every case needs to be examined more thoroughly in order to get around this. Given the scope of his authority and responsibilities in the court of law, the defence attorney cannot do this work alone.

These suggestions might be helpful up to a point, but it's debatable whether plea bargaining is ever beneficial rather than harmful. There is no question that India needs a framework for instantaneous justice administration, and there is no doubt that plea bargaining in its current form and structure is insufficient to accomplish that goal.

Conclusions

Even though it was a revolutionary idea in India, plea bargaining has evolved through time. The Indian judiciary has completed a significant amount of neces-

sary work. The criticisms raise an important question: Isn't it possible that in the pursuit of swift justice, justice itself is denied, engulfing the accused in an ocean of evils? The idea of plea bargaining was developed to lighten the load on the courts, but it accomplishes this in an unconstitutional way because the victim is placed in a disadvantageous position and his rights are violated by giving the accused a lesser sentence in exchange for using plea bargaining. Even this idea does not help to lower crime rates because it gives the accused the idea that he can commit an offence and still negotiate a lesser sentence. Only time will be able to determine whether or not the introduction of this novel idea was warranted. In the USA, plea bargaining can result in convictions in as many as 90% of cases, whereas in India, it only accounts for about 10% of criminal cases. This discrepancy exists as a result of the variations between the American and Indian approaches to plea bargaining. Although India's conviction rate is far lower than the United States, it is nonetheless successful in ensuring that the application for plea bargaining was submitted freely. Even if justice is delayed, it must still be upheld. In India, choosing the lower of the possible punishments is a voluntary activity rather than a part of the plea-bargaining process. As a result, there is a good chance that an innocent individual will not receive punishment in India through plea bargaining. Plea negotiations clearly differ amongst nations, especially when common law and civil law nations are contrasted. The underlying idea that underlies this, however, is unaffected. Criminals who admit their guilt, feel regret, or are willing to work with the administration of justice in other capacities ought to get some leniency in the form of a sentence reduction. Additionally, the criminal justice systems of many countries around the

world are ineffective and cumbersome, a situation that needs to be resolved for an effective administration of justice.

When examining the numerous disadvantages, some of which are more serious than others when compared, it becomes clear that they are not small in nature and cannot be disregarded. In order to accept the idea of plea bargaining and incorporate it into the criminal justice system, a solution must be found to each of the consequential questions about the legitimacy of plea bargaining that each issue raises.

The current state of plea bargaining in India has several barriers that prevent it from being as effective as it would want to be. The way plea bargaining petitions are handled should change significantly. There is a pressing need to examine the calibre of decisions and orders made in the matter. However, in the current situation, plea bargaining has been crucial in addressing the outrageous application processing rate at the Court, a problem India has experienced more than any other nation. As a result, judges do not currently hold this concept of plea bargaining in high regard because it has only been used in a very small number of cases, and higher courts have not given it the proper consideration in those cases. However, it is urgent that cases be resolved quickly. In order to decrease the number of prisoners awaiting trial, the legislature must implement reforms and give the judiciary the necessary infrastructure.

In India, as opposed to the United States of America, the idea of plea bargaining has, in my opinion, been introduced with restrictions and regulations, which benefits the system. There are still some oddities, but they have mostly been rectified by our competent legal system. My opinion is that all we need to do is have faith in our judicial system, and that will eventually take care of the remaining problems as well.

Угода про визнання провини — порівняльне дослідження Індії з іноземними країнами Бойвоб Манджемда

Угода про визнання провини відома як засіб урегулювання судових спорів у всьому світі. Застосування, сфера охоплення та функціонування угоди про визнання провини істотно змінюється залежно від режимів загального й цивільного права. Для того щоб проаналізувати ці відмінності щодо різних юрисдикцій, у цьому дослідженні проведено порівняння таких угод в Індії та США. Питання відносних переваг і недоліків угоди про визнання провини досі залишається дискусійним. Це зумовлено тим, що, як відомо, угоди про визнання провини ставлять під сумнів основні цілі судового розгляду, які полягають у з'ясуванні істини й обстоюванні справедливості. Беззаперечно, Індія потребує запровадження певної структури, яка б забезпечувала оперативне відправлення правосуддя. В індійських судах спостерігається збільшення кількості кримінальних справ. Наразі в'язниці переповнені ув'язненими, яких утримують без судового розгляду через постійні зволікання із розв'язанням справ. Індія розробила угоду про визнання провини (як відповідь на сумний стан судової системи), яку визнано надійною стратегією для завершення відкритих справ і прискорення роботи системи кримінального судочинства. За словами Головного Судді Індії Й. К. Сабхарвала (2005—2007), запровадження угод про визнання провини в Індії не лише прискорить роботу системи кримінального судочинства, а й слугуватиме відновною формою правосуддя, де жертви є однаково зацікавленими сторонами й отримують достатню компенсацію. Утім, незважаючи на роки концептуалізації, індійська система кримінального правосуддя ще не запровадила угоди про визнання провини. У цій праці досліджено, чи є угода про

визнання провини в Індії в її нинішніх формах та структурі достатньою для досягнення цієї мети, зважаючи на її переваги й недоліки в контексті індійської судової системи. У зв'язку з наведеним вище запропоновано внести зміни до цього сучасного механізму розв'язання спорів.

Ключові слова: поступки в процесі досудового розгляду; ведення переговорів; угода про визнання провини; покарання; правова комісія; судова система.

Funding

This research did not receive any specific grant from funding agencies in the public, commercial, or not-for-profit sectors.

Disclaimer

The funders had no role in the study design, data collection and analysis, decision to publish, or preparation of the manuscript.

Contributors

The author contributed solely to the intellectual discussion underlying this paper, case-law exploration, writing and editing, and accept responsibility for the content and interpretation.

Declaration of Competing Interest

The author declare that they have no conflict of interest.

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