
PLEA BARGAINING IN INDIA AND THE UNITED STATES: A COMPARATIVE CRIMINAL JUSTICE STUDY

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ABSTRACT

Plea bargaining has surfaced as a significant mechanism within modern criminal justice systems to address concerns of delay, backlog of cases and resource constraints. While it has long been an integral feature of the United States criminal justice system, its introduction into the Indian legal framework through the Criminal Law (Amendment) Act, 2005 marked a notable shift from the traditional adversarial trial process. This paper undertakes a comparative analysis of plea bargaining in India and the United States, examining its legal foundations, procedural framework, objectives and practical implications within both jurisdictions. In the United States, plea bargaining resolves the majority of criminal cases and is largely driven by prosecutorial discretion, prioritizing efficiency and certainty of outcomes. However, it has drawn criticism for potential coercion, inequality and enfeeblement of the right to a fair trial. In contrast, India's plea-bargaining mechanism, initially codified under chapter XXI-A of the Code of Criminal procedure, 1973, adopts a more cautious approach by limiting its scope and emphasizing judicial oversight, voluntariness and most importantly victim participation.

This paper critically examines how constitutional values, legal culture, and institutional structures influence the operation of plea bargaining in both jurisdictions. It concludes that while plea bargaining can enhance efficiency, its efficacy in India depends on strong procedural safeguards, transparency and a rights-based approach to criminal justice.

INTRODUCTION

Since the beginning of criminal justice system, its foremost objective is to maintain peace and order within the society, while also providing a mechanism for redressal in case of violation of rights to the citizen. In its earliest forms, criminal justice system was fundamentally retributive with punishment driven by notions of vengeance and deterrence rather than procedural fairness. Ancient legal systems emphasized rigid penalties and collective responsibility. Over time, the development of state authority and legal institutions around the globe marked a gradual transition from private retribution to organized systems of adjudication administered by courts.

With the emergence of modern nation- states, the criminal justice system undertook significant transformation. The rise of the adversarial system, particularly in common law jurisdictions, placed emphasis on due process, presumption of innocence and the right to a fair trial. Criminal adjudication became progressively formalized, relying on evidence, procedural safeguards and judicial determination of guilt or innocence after full-fledged trials by the courts. While this model strengthened individual rights and legitimacy of outcomes, it also resulted in complex and time-consuming procedures that placed considerable strain on judicial institutions. The administration of justice across jurisdictions increasingly grappled with systematic challenges such as judicial delays, overcrowded prisons and mounting pendency of cases. In response, legal systems have sought alternative mechanisms to expedite criminal proceeding while maintaining fairness and efficiency. One such mechanism is plea bargaining, a process whereby an accused agrees to plead guilty in exchange for certain concessions, such as reduced charges or lesser punishments. Though widely practiced in several judicial systems, plea bargaining represents a significant departure from the traditional adversarial model centered on full-fledged trials. Plea bargaining as a mechanism emerged which allowed negotiated resolution of criminal cases in exchange for reduced charges or sentence. This practice gained prominence in the United States, where it became a central feature of criminal adjudication, justified on grounds of judicial economy and administrative convenience, which was later implemented by other states very rapidly.

HISTORICAL EVOLUTION OF PLEA BARGAINING

Plea bargaining, as a method of resolving criminal cases through negotiated guilty pleas, is a relatively modern development in criminal justice systems, particularly within common law jurisdictions. In its early origins, criminal adjudication was predominantly trial-oriented, with

confessions viewed with suspicion due to the potential for coercion and abuse. English common law traditionally emphasized jury trials as the primary means of determining guilt, and early courts down casted guilty pleas to preserve the integrity of the trial process and protect accused persons from undue pressure. The transformation toward negotiated justice began gradually in the nineteenth century, particularly in the United States. Rapid industrialization, urbanization and population growth led to a significant increase in criminal cases, placing immense pressure on courts. As caseloads expanded beyond the capacity of trial courts, informal practices of negotiation between prosecutors and defendants emerged as pragmatic solutions to manage judicial workload. By the late nineteenth and early twentieth centuries, plea bargaining had become increasingly institutionalized, despite the absence of explicit statutory recognition. Plea bargaining can be broadly classified into the following categories:

1. Charge bargaining- It involves an arrangement between the prosecution and the accused whereby the accused pleads guilty to a lesser charge or to one of the multiple charges, in return for the dismissal or reduction of more serious charges. This form of plea bargaining is commonly used to reduce the severity of criminal liability and the potential punishment faced by the accused. It allows the prosecution to secure a conviction without the uncertainty of trial while offering the accused a more favorable legal outcome.
2. Sentence bargaining- This refers to a negotiation in which the accused agrees to plead guilty in exchange for a lighter sentence, a recommendation for leniency, or probation instead of imprisonment. In such cases, the charge remains unchanged, but the punishment is reduced. This category is particularly prevalent in jurisdictions where sentencing discretion lies largely with the court but is influenced by prosecutorial recommendations.
3. Fact bargaining- It encompasses an agreement where the accused admits to certain facts in exchange for the prosecution's agreement not to introduce other aggravating facts or evidence. By limiting the factual narrative presented before the court, this form of bargaining can significantly influence sentence outcomes.

Judicial acceptance of plea bargaining in the United States developed incrementally through case laws. The U.S. Supreme Court eventually acknowledged plea bargaining as a legitimate

component of the criminal justice system, recognizing its role in promoting efficiency and certainty of outcomes. In one of the earliest and most authoritative cases of *Brady v. United States*¹ (1970), the U.S. Supreme Court expressly recognized plea bargaining as constitutionally valid. The court held that a guilty plea entered voluntarily, knowingly and intelligently is not invalid merely because it was motivated by the accused's desire to accept a lesser penalty rather than risk a harsher sentence after trial. The judgment acknowledged plea bargaining as an inherent and acceptable part of the criminal justice system. Overtime, procedural safeguards were introduced to ensure that guilty pleas were voluntary, informed and supported by factual basis.

In contrast, other common law jurisdictions, including India, remained reluctant to adopt plea bargaining for a considerable period. Indian courts initially rejected the concept, associating it with "plea negotiations" that could undermine fairness, equality before law and public confidence in the justice system. However, mounting arrears of criminal cases and delays in trial proceedings led to a reassessment of this position. Influenced by global criminal reforms and recommendations of law reform bodies, particularly the 142nd, 154th and 177th Law Commission reports, India formally introduced plea bargaining through the Criminal Law (Amendment) Act, 2005. The 142nd report of the Law Commission of India advocated for the implementation of "concessional treatment for individuals who opt to plead guilty without negotiation" for the very first time in India. The 154th Law Commission Report was the first official document to formally recommend the introduction of plea bargaining into the Indian criminal justice system. The report proposes incorporating plea bargaining with adequate safeguards to prevent coercion and misuse. It emphasized that the process must be voluntary, exclude serious and heinous offences and operate under judicial supervision to protect the rights of the accused. The Commission also drew comparative insights from the plea-bargaining practices prevalent in the United States, while cautioning against transplanting the model without contextual adaptation. These recommendations eventually culminated in the Criminal Law (Amendment) Act, 2005, which inserted chapter XXI-A (Sections 265A-265L) into the Code of Criminal Procedure, 1973 and later within the Bharatiya Nagarik Suraksha Sanhita, 2023 under chapter XXIII (Sections 289- 300), thereby formally introducing plea bargaining into Indian Criminal procedure.

¹ 397 U.S. 742 (1970)

LEGAL FRAMEWORK GOVERNING PLEA BARGAINING

India- Plea bargaining in India is governed by the statutory framework now contained in the Bharatiya Nagarik Surakhsha Sanhita, 2023 (BNSS), which replaces the Code of Criminal Procedure, 1973. The BNSS retains the concept of plea bargaining introduced in 2005, reflecting legislative continuity while aligning criminal procedure with contemporary reform objectives such as expeditious justice and victim participation. Chapter XXIV deals with the provision of plea bargaining under BNSS. Wherein section 289 provides the offences which could be dealt by the mechanism of plea bargaining and also elucidates the offences kept outside the purview of it. Under BNSS, plea bargaining continues to apply to offences punishable with imprisonment upto seven years, as provided earlier under CrPC. It also expressly provides that offences affecting socio-economic conditions of the country and the offences committed against women and children below the age of fourteen years are excluded from availing the benefit of plea bargaining. The restricted applicability underscores the legislature's cautious approach, ensuring that plea bargaining remains confined to less serious offences and does not undermine public interest or societal morality.

The process is initiated at the instance of the accused, section 290 lays down that "*the person accused of an offence may file an application for plea bargaining within a period of thirty days from the date of framing of charge in the court in which such offence is pending for trial.*" The application along with shall contain a brief description of the case and shall be accompanied by an affidavit sworn by the accused stating his voluntariness and that he is not a previous convict in a similar case. The BNSS mandates that the court must examine the accused in camera to ensure that the application is made voluntarily and without any form of coercion, inducement or undue influence. This safeguard is consistent with constitutional protections, particularly the right against self-incrimination under Article 20(3) of the Constitution of India. Once the court is satisfied as to voluntariness, it facilitates a mutual satisfactory disposition, as provided under section 291 between the accused, the prosecution and the victim. The inclusion of the victim in the negotiation process reflects a shift towards a more participatory and restorative model of criminal justice. There upon, if a mutual satisfactory disposition is entered, reports are submitted to court and the disposal of the case is dealt as per section 293. Section 293 states that- *Where a satisfactory disposition of the case has been worked out under section 292, the Court shall dispose of the case in the following manner, namely: —*

(a) the Court shall award the compensation to the victim in accordance with the disposition under section 292 and hear the parties on the quantum of the punishment, releasing of the accused on probation of good conduct or after admonition under section 401 or for dealing with the accused under the provisions of the Probation of Offenders Act, 1958 or any other law for the time being in force and follow the procedure specified in the succeeding clauses for imposing the punishment on the accused;

(b) after hearing the parties under clause (a), if the Court is of the view that section 401 or the provisions of the Probation of Offenders Act, 1958 or any other law for the time being in force are attracted in the case of the accused, it may release the accused on probation or provide the benefit of any such law;

(c) after hearing the parties under clause (b), if the Court finds that minimum punishment has been provided under the law for the offence committed by the accused, it may sentence the accused to half of such minimum punishment, and where the accused is a first-time offender and has not been convicted of any offence in the past, it may sentence the accused to one-fourth of such minimum punishment;

(d) in case after hearing the parties under clause (b), the Court finds that the offence committed by the accused is not covered under clause (b) or clause (c), then, it may sentence the accused to one-fourth of the punishment provided or extendable, as the case may be, for such offence and where the accused is a first-time offender and has not been convicted of any offence in the past, it may sentence the accused to one-sixth of the punishment provided or extendable, as the case may be, for such offence.

Upon successful completion of the plea bargaining process, the court disposes of the case by awarding compensation, imposing lesser sentence, or releasing the accused on probation, depending on the nature of the offence. The BNSS further provides for the finality of judgments delivered under plea bargaining by restricting the right to appeal, except through constitutional remedies. To protect the interests of the accused, the BNSS ensures that statements or admissions made during the plea bargaining process are not admissible for any other purpose. Overall, the plea bargaining framework under the BNSS represents a balanced approach that seeks to harmonize procedural efficiency with constitutional safeguards, judicial oversight and victim-centric approach.

In the case of *State of Gujarat v. Natwar Harchandji Thakor*², the Gujarat High Court recognized the practical necessity of plea bargaining to reduce case backlogs, even prior to the full operationalization of statutory provisions. The judgment signalled a shift towards pragmatic acceptance of negotiated justice.

USA- Plea bargaining in the United States forms a central pillar of the criminal justice system and is governed primarily by judicial precedents, constitutional principles and procedural rules, rather than a single comprehensive statute. Unlike India, where plea bargaining is codified, the U.S. framework has evolved through case law and institutional practice, with courts recognizing it as a legitimate and essential mechanism for criminal adjudication. The constitutional foundation for plea bargaining rests on the *fifth amendment* (protection against self-incrimination), the *sixth amendment* (right to fair trial) and the *fourteenth amendment* (due process of law). The U.S. Supreme court has consistently held that a guilty plea is constitutionally valid provided it is made voluntarily, knowingly and intelligently. This principle was firmly established in *Brady v. United States*³, where the court upheld plea bargaining as consistent with due process.

Procedurally, plea bargaining is regulated by Rule 11 of the Federal Rules of Criminal Procedure, which lays down detailed safeguards to ensure the validity of guilty pleas. Rule 11 requires the court to personally address the defendant, inform them of the nature of the charge, the consequences of the plea and the rights being waived. Rule 11(a) permits three kinds of pleas: Guilty plea, Not guilty plea and Nolo contendere (no contest), which may be accepted by the court at its discretion. This provision ensures that the accused has autonomy in choosing how to respond to criminal charges. Rule 11(b) ensures voluntariness and awareness. Before accepting a guilty or Nolo contendere plea, the court must personally address the defendant in open court. The judge must ensure that the plea is voluntary and not the result of force, threats, or crooked promises. The defendant must be informed of: the nature of the charge, maximum and minimum penalties and the constitutional rights being waived, including the right to trial by jury, the right to confront witnesses, and the privilege against self- incrimination. The court must also determine that there is a factual basis for the plea. Rule 11(c) formally recognizes plea agreements between the prosecution and the defendant. Such agreements may involve: dismissal of certain charges, recommendation or agreement on a specific sentence and sentence

² 2005 CRILJ 2957

³ 397 U.S. 742 (1970)

considerations. The court may accept, reject or defer its decision on the plea agreement. If the court rejects the agreement, the defendant may be given an opportunity to withdraw the plea. Rule 11(d) provides an opportunity for the defendant to withdraw a guilty plea before sentencing if they show a fair and just reason. Lastly, rule 11(h) provides that any variance from the requirements of Rule 11 which does not affect substantial rights shall be treated as harmless error, thereby balancing procedural strictness with judicial efficiency. Rule 11 serves as a critical safeguard in the U.S. plea bargaining system by institutionalizing judicial oversight and protecting defendant's constitutional rights. It ensures transparency, fairness and accountability in plea negotiations while allowing negotiated justice to function efficiently within the federal criminal framework.

Judicial recognition of plea bargaining in the U.S. was further strengthened in *Santobello v. New York*⁴, where the Supreme court described plea bargaining as an "essential component of the administration of justice." The court held that promises made by the prosecution during plea negotiations are binding and must be honoured, reinforcing principles of fairness and good faith. Prosecutorial discretion plays a dominant role in the U.S. plea bargaining framework. Prosecutors may engage in charge bargaining, sentence bargaining or fact bargaining, subject to judicial approval. This discretion was upheld in *Bordenkircher v. Hayes*⁵, where the court ruled that threatening enhanced charges during negotiations does not violate due process, provided the accused is free to accept or reject the plea.

CONSTITUTIONAL VALIDITY OF PLEA BARGAINING

Prior to the enactment of the Criminal Law (Amendment) Act, 2005, plea bargaining had no statutory recognition in India and was widely regarded as constitutionally impermissible. The judiciary consistently rejected the practice on the ground that it was inconsistent with the fundamental constitutional principles, particularly Article 21 (right to life and personal liberty), Article 14 (Equality before law) and Article 20(3) (protection against self-incrimination). In the case of *Madan Lal Ram Chandra Daga v. State of Maharashtra*⁶, the Supreme court disapproved of plea bargaining and held that criminal justice cannot be administered through bargains between the prosecution and the accused. This case reflects the early judicial resistance to negotiated justice in India. In cases such as *Kasambhai Abdulrehmanbhai Sheikh*

⁴ 404 U.S. 257 (1971)

⁵ 434 U.S. 357 (1978)

⁶ AIR 1968 SC 1267

v. *State of Gujarat*⁷ and *State of Uttar Pradesh v. Chandrika*⁸, the Supreme court held that negotiated justice could encourage coercion, corruption and unequal treatment of accused persons, thereby violating due process and the fairness of criminal trials. The absence of procedural safeguards further rendered plea bargaining constitutionally suspect. Justice V. R. Krishna Iyer strongly condemned the practice, terming it unconstitutional and unjust, particularly for the poor and the illiterate accused.

The constitutional position underwent a significant shift after the 2005 amendment, which formally introduced plea bargaining. By providing statutory framework with defined procedures and safeguards, the legislature sought to reconcile plea bargaining with constitutional mandates. The post- amendment framework emphasized voluntariness, judicial supervision, informed consent and limited applicability to only less serious offences. These safeguards addressed earlier constitutional concerns by ensuring compliance with Article 21's requirement of just, fair and reasonable procedure, as interpreted in *Maneka Gandhi v. Union of India*⁹. In the case of *Rajinder Kumar Sharma v. State (NCT of Delhi)*¹⁰, the Delhi High Court upheld plea bargaining under chapter XXI-A of the CrPC and stressed strict compliance with procedural safeguards. Thus, while plea bargaining was constitutionally impermissible in the absence of statutory backing, its regulated incorporation post 2005 reflects a constitutional accommodation of efficiency within the framework of fundamental rights. These cases demonstrate the evolution of judicial attitude in India- from absolute rejection of plea bargaining on constitutional and ethical grounds to its slow acceptance.

RIGHTS OF ACCUSED AND DUE PROCESS CONCERNS

Plea bargaining, while designed to promote efficiency in criminal justice administration, significantly affects the rights of the accused. Consequently, modern legal systems incorporate procedural safeguards to ensure that plea bargaining does not undermine constitutional guarantees. Ensuring strict adherence to due process strengthens both the credibility of negotiated justice and public confidence. Both Indian and comparative legal framework recognize several essential rights of the accused within the plea bargaining process.

⁷ (1980) 3 SCC 120

⁸ (2000) 7 SCC 338

⁹ (1978) 1 SCC 248

¹⁰ 2012 SCC Del 4201

1. Right to voluntariness- The foremost right of the accused is that the plea must be voluntary without any external factor playing a role to affect it.
2. Right to be informed- The accused has the right to be fully informed of the nature of the charges, the legal consequences of pleading guilty and the possible punishment. An unacquainted plea would be constitutionally invalid, as it compromises the accused's ability to make a reasoned decision.
3. Right to legal representation- Access to legal counsel is a critical right in plea bargaining. Effective assistance of counsel ensures that the accused understands the repercussions of the plea, negotiates fair terms and is not disadvantaged by unequal bargain.
4. Right to judicial oversight- Plea bargaining is not a private contract between the prosecution and the accused. The accused has the right to judicial supervision, whereby the court scrutinizes the fairness of the process, verifies voluntariness and ensures compliance with statutory safeguards before accepting the plea.
5. Right to fair sentencing- Even after a plea bargain, the accused retains the right to be sentenced in accordance with law. The court must ensure that the punishment imposed is proportionate and consistent with statutory provisions, rather than mechanically endorsing negotiated outcomes.
6. Right against use of statements- Statements or admissions made by the accused during plea bargaining cannot be used against them for any other purpose if the bargain fails. This protection prevents prejudice and encourage genuine participation in negotiations.

CRITICISM AND CHALLENGES PERTAINING TO PLEA BARGAINING

Despite its growing acceptance as an instrument for expediting criminal justice, plea bargaining has been subject to sustained criticism on constitutional, ethical and practical grounds. One of the foremost concerns is the risk of coercion. Accused persons, particularly those from economically or socially disadvantaged backgrounds may feel compelled to plead guilty due to fear of prolonged trials, pretrial detentions or harsher sentences if convicted after trial. This undermines the principle of voluntariness and raises serious concerns regarding due process of law. Another significant criticism relates to the erosion of the right to fair trial. Plea bargaining

shifts the focus from adjudication based on evidence to negotiated outcomes, potentially compromising the truth-seeking function of criminal courts. It has been debated that efficiency is often prioritized over justice, leading to wrongful convictions where innocent accused pleads guilty to avoid uncertainty and risk. This concern is particularly relevant in systems where prosecutorial discretion is dominant and oversight is limited.

Plea bargaining also raises concerns about inequality and arbitrariness. Outcomes may vary depending on the negotiated skills of counsel, prosecutorial attitudes or institutional pressures, resulting in inconsistent sentencing and unequal treatment of similarly positioned accused persons. In India, additional challenges include lack of awareness among accused persons, reluctance among lawyers and limited implementation due to procedural rigidity. From a victim's perspective, plea bargaining may marginalize their interests by reducing the perceived seriousness of offences and limiting their participation in the justice process. Although Indian law attempts to address this by mandating victim involvement, effective participation remains a practical challenge.

Further, there is apprehension that plea bargaining may encourage over-criminalization and prosecutorial overcharging, where exaggerated charges are used as leverage to secure guilty pleas. This practice can distort justice and undermine public confidence in the criminal justice system. In India, institutional challenges such as inadequate legal aid and absence of clear sentencing guidelines further complicate effective implementation. Consequently, while plea bargaining offers efficiency, its success depends on robust safeguards, transparency, judicial vigilance and strict adherence to constitutional principles to ensure that expediency does not come at the cost of justice.

RECOMMENDATIONS AND REFORMS

While plea bargaining has the potential to enhance efficiency in criminal justice administration, its effectiveness and legitimacy depends on the strength of procedural safeguards and institutional support. To ensure that plea bargaining operates in harmony with constitutional principles and due process of law, several reforms are necessary. First and the most important being, to strengthen voluntariness and informed consent. This crucial aspect must be followed closely and with great caution. Drawing from Rule 11 of the U.S. Federal Rules of Criminal Procedure, Indian courts under the BNSS should adopt a more detailed, standardized judicial colloquy to ensure that accused persons fully understand the nature of charges, consequences

and the rights being waived. Courts must rigorously examine accused persons to ensure that pleas are not induced by coercion, fear of prolonged detention, lack of legal awareness. Mandatory, effective legal representation at all stages of plea bargaining should be ensured, particularly for indigent accused, through a strong and robust legal aid system. Second, there is a need for clear sentencing guidelines to reduce arbitrariness and inconsistency in negotiated outcomes. Transparent guidelines would help courts assess fairness of plea agreements and ensure proportionality in sentencing, thereby promoting equality before law. Third, judicial training and sensitization should be enhanced. Judges must be equipped to scrutinize plea agreements critically rather than merely endorsing them. Specialized training can ensure meaningful judicial oversight and protection of constitutional rights. Fourth would be, greater victim participation, which should be operationalized beyond statutory recognition. Victims must be adequately informed, heard and compensated, ensuring that plea bargaining does not dilute their sense of justice or marginalize their interests. While Indian law mandates victim participation, U.S. restorative justice practices offer models for structured victim consultation and compensation framework. Finally, legislative clarity under the BNSS must be supplemented by judicial guidelines to address gaps in implementation. Plea bargaining should not be viewed merely as a tool for reducing pendency but as a mechanism based on rights which is rooted in fairness, transparency and accountability. With these reforms, plea bargaining can serve as an effective and constitutionally sound instrument of criminal justice reform.

CONCLUSION

Plea bargaining has emerged as a pragmatic response to the growing complexities and inefficiencies of modern criminal justice system. The comparative analysis of India and the United States demonstrates that while plea bargaining serves as an effective tool for reducing delays and judicial backlog, its legitimacy ultimately depends on strict adherence to constitutional principles and due process of law. Efficiency, though desirable, cannot be allowed to eclipse the fundamental values of fairness, equality and protection of individual liberty that lie at the heart of criminal jurisprudence. In India, the evolution of plea bargaining- from judicial rejection to statutory recognition under the 2005 amendment and its continuation under the BNSS- reflects a cautious attempt to reconcile negotiated justice with constitutional safeguards. Judicial oversight, voluntariness, informed consent and limited applicability are central features designed to protect the rights of the accused. However, challenges such as

unequal bargaining power, limited awareness and inconsistent implementation continue to impede its effective functioning. The Indian experience underscores the need for robust institutional mechanisms to ensure that plea bargaining does not become a coercive shortcut to conviction. The United States, with its long standing and expansive reliance on plea bargaining, offers valuable lessons as well as cautionary insights. While procedural safeguards like Rule 11 strengthen due process, excessive prosecutorial discretion and sentencing disparities reveal the risks of over- institutionalization. Comparative learning thus highlights the importance of balancing flexibility with accountability. Ultimately, plea bargaining must be understood not merely as an administrative convenience but as a constitutionally regulated process grounded in due process, transparency and judicial responsibility. Meaningful reforms such as standardized judicial scrutiny, effective legal representation, sentencing guidelines and empirical oversight are essential to preserve its fairness and legitimacy. When anchored in constitutional morality and principles based on rights, plea bargaining can contribute to a more responsive, benevolent and efficient criminal justice system without compromising the rule of law.