
FROM CASE BACKLOG TO REPEAT OFFENCE: PLEA BARGAINING IN INDIA BETWEEN DOCKET MANAGEMENT AND RECIDIVISM CONTROL

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ABSTRACT

Plea bargaining was introduced with some scepticism in India. It was hoped to offer faster resolutions while also overcoming negotiations that are incongruous and legitimizing unearned guilt. This Article attempts to answer the question: does the practice of plea bargaining in India minimize recidivism, or does it predominantly lead to faster resolutions and that, in fact, the system is compelled to offer structural delay? Doctrinal legal research oriented this Article while utilize some available official data that National Court Infrastructure Upland's Commitments. It is the imprisonment of undertrials, the tracking of leading INFIT, and the 2023 Bharatiya National Security Law. The research analyzes all plea bargaining in India. Law claims to find it, coupled in some sense with victim participation, related to compensation, and sentence discounts. India's data do not track recidivism. The leading recidivism data corroborates the conclusion that plea bargaining is recidivism, whereas other data are reported. Stronger claims of plea bargaining are to recidivism, and to plea integration to other data.

Keywords: Plea bargaining; Bharatiya Nagarik Suraksha Sanhita, 2023; case backlog; undertrial detention; recidivism.

1.1 INTRODUCTION

India's plea bargaining system exemplifies an economy of processes, jury discretion on penalties, and fair trial balancing. The system's primary concern today is not about the viability of the system, as much as it is about fragmentation of processes from the instance of an allegation to a singular instance of a conviction. The concern here is whether it serves the system of rehabilitation, or whether it merely expedites the processes.

Plea bargaining is codified in Chapter XXIII of the Bharatiya Nagarik Suraksha Sanhita, 2023, which came into operation on 1 July 2024. This statute not only incorporates previous statutes, but also updates the general framework for procedures. With this law, pleadings and negotiated settlement cannot be treated as rogue or illicit mechanisms. The question is more about their purpose. From the new law, is plea bargaining bound to a system of designing litigation and asserting rational guilt, or is it only bound to the prevalence of delays, detention, and the lack of contests?¹

The importance of that controversy lies in the exceptional state of India's criminal process. District and subordinate courts have more than 48.9 million pending cases², High Courts have more than 6.39 million³, and the Supreme Court has more than 92,000⁴. In such an institutional setting, any process that promises an optically quicker disposal is bound to attract policy interest. Speed, however, is no substitute for substantive justice in the procedural realm. In a legally sanctioned imbalance, a strategic guilty plea may be far more apt, than an unequal system of justice, and especially so, in the absence of any strategic advantage, where the accused is powerless to retain their choice of counsel, or is equally disemployed or unable to secure their right to post a bail to access their right.

This Article relies on a doctrinal approach, supplemented, where needed, by official institutional data and recent judicial materials, to support the argument that, under Indian law, plea bargaining is permissible as a limited procedural diversion of the ordinary trial, characterized by the voluntariness of the process, involvement of the victim, and proportionate

¹ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), ss. 289-300.

² District and Subordinate Courts Dashboard, available at: https://njdg.ecourts.gov.in/njdg_v3/ (last visited on May 1, 2026).

³ High Court National Judicial Data Grid, available at: https://njdg.ecourts.gov.in/hcnjdg_v2/ (last visited on April 30, 2026).

⁴ Supreme Court Data Grid, available at: <https://scdg.sci.gov.in/scnjdg/> (last visited on April 29, 2026).

sentencing leniency.

However, evidence with respect to plea bargaining supports the fact that it is more likely to lead to a managed increase in the speed of case disposal than establish a significant reduction in reoffending. The Article also discusses the judicial and legislative background, the normative plea bargaining framework, the backlog of cases and undertrial detainees, and finally what it and what it does not support concerning recidivism.⁵

1.2 FROM JUDICIAL REJECTION TO STATUTORY RECOGNITION

In the process of developing Indian plea bargaining, the courts' initial scepticism and distrust over negotiated guilt evolved into a more favourable parliamentary position on the practice. The current statutory structure is still hesitant to abandon the initial legislative concerns regarding coercive plea bargaining, corruption, and sentencing inequities.

1.2.1 Judicial Rejection Before Codification

During the first half of the 1990's, for example, the Supreme Court looked at plea bargaining and its application across global jurisdictions, and invariably concluded that plea bargaining and the fair and just administration of criminal justice were mutually exclusive. In *Murlidhar Meghraj Loya Etc. v. State of Maharashtra Etc.*, the Supreme Court had concern that a plea of guilty in exchange for a reduction of the sentence, could lead to the formalization of an informal sale of punishment. The concerns were not merely moral, but rather institutional. The process of sentencing an offender was viewed to be the result of the statute and judicial process, and not the result of the private combination of interests.⁶

The Court reiterated and consolidated its stance in *Kasambhai Ardul Rehmanbhai Shaikh v. State of Gujarat*, when it dismissed the conviction due to a bargain-like guilty plea in a food adulteration case. It linked plea bargaining to two core issues. Firstly, it risked treating such serious legislatively sanctioned crimes as if they were trivial. Secondly, plea bargaining tended to introduce a process of disposal in which vying for the extreme of desperation, the length of time from the desire to disposal, and the fear of the imposition of the maximum results, would become routine. The Court's opposition therefore entailed as much substantive justice as

⁵ Department of Justice, "Access to Justice through Plea Bargaining as an Alternative Model to Traditional Criminal Trial in India: A Case Study of Select Indian States" (Ministry of Law and Justice, 2024).

⁶ *Murlidhar Meghraj Loya Etc. v. State of Maharashtra Etc.*, (1976) 3 SCC 684.

process.⁷

Once more, in *Thippaswamy v. State of Karnataka*⁸, the Supreme Court approached the matter from the perspective of plea bargaining and refused to endorse a low-level sentence resulting from a guilty plea to a serious crime. This same trend was seen in *State of Uttar Pradesh v. Chandrika*⁹, where the Court stated that no conviction and sentence should occur as a result of bargaining taking place between the prosecution and the defence. These rulings formed the basis prior to the implementation of the statute. They did not stipulate that an accused could not plead guilty; what they did mandate was that, prior to the implementation of a planned statutory regime, penal ramifications could not, in any case, be determined as a result of negotiated concessions.

1.2.2 Law Reform Reports and Legislative Design

The legislative change happened for a reason. The Law Commission of India considered concessional treatments for offenders who plead guilty.¹⁰ They proposed a regulated plan that could handle judicial control and cut out delays and improve efficiency. Then, the Committee on Reforms of the Criminal Justice System, led by Justice V. S. Malimath, proposed the idea of plea bargaining as a response to the expanding amount of requests in the criminal docket.¹¹ The documents of these reforms helped to change the view of plea bargaining, from thinking it was a bad idea to thinking it was a well-planned tool for a procedure.

Chapter XXI-A was added to the Code of Criminal Procedure by Parliament as part of the Criminal Law (Amendment) Act from 2005 that became active in 2006. The legislative guideline was very narrow. It did not include offences that lead to the death penalty, life imprisonment and those that lead to more than seven years of imprisonment. It also did not include those that impact the socioeconomic conditions of the country, those that affect women or those that affect children who are under the age of fourteen. The stance of the law was straightforward. It was acceptable to include plea bargaining in the law, but only in situations

⁷ Kasambhai Ardul Rehmanbhai Shaikh v. State of Gujarat, (1980) 3 SCC 121.

⁸ Thippaswamy v. State of Karnataka, (1983) 1 SCC 194.

⁹ State of Uttar Pradesh v. Chandrika, (1999) 6 SCC 120.

¹⁰ Law Commission of India, "142nd Report on Concessional Treatment for Offenders Who on Their Own Initiative Choose to Plead Guilty Without Any Bargaining" (1991).

¹¹ Government of India, "Report of the Committee on Reforms of Criminal Justice System" (Ministry of Home Affairs, 2003).

where it was done in less serious cases and where there was a great deal of interest.¹²

1.2.3 Plea Bargaining under the Bharatiya Nagarik Suraksha Sanhita, 2023

Current legislation maintains this configuration. For the Bharatiya Nagarik Suraksha Sanhita, 2023, Chapter XXIII (Sections 289-300) upholds premises pertaining to basic exceptions, application formalities, and court supervised agreements, indicating variables of continuity and change. Despite the displacement of the general criminal law restructuring from the Code of Criminal Procedure to the Bharatiya Nagarik Suraksha Sanhita, 2023, one can say that plea bargaining functions as a regulated pathway of limited procedural statutes.¹³

*State of Gujarat v. Natwar Harchandji Thakor*¹⁴ and *Kundan Dhanke v. State of Maharashtra*¹⁵ are paradigmatic cases of plea bargaining. In the former, the Gujarat High Court observed that a plea of guilty, as part of the regular statutory process, is not the same as bargaining, which is prohibited. This judgment is important as it draws the line between a simple admission of guilt and other bargaining techniques that are permissible under the plea bargaining mechanism. The latter case highlights that to ascertain whether or not an offence causes an adverse impact to the socioeconomic condition of nation, it is the prerogative of the government to do so through a notification, and refraining from doing so, is not for the courts to do so on an ad hoc basis.

A successful plea bargain shows even more of India's mixed objectives. The court, considering the fully agreeable disposition, can grant the victim damages and must, if there is a minimum penalty, sentence the accused to at least half, and/or in default of otherwise eligible cases, to one fourth of the penalty. The law also allows for the possibility of a suspended sentence when it is in the best interest of all. So in theory, the law provides, efficiency, victim's interest, moderated sentence, and reformation, among other objectives. Whether this balance is achieved will depend on the conditions away from the law.

1.3 THE NORMATIVE CASE FOR PLEA BARGAINING

Before we even begin to consider the dispassionate supportive facts of the case at hand for the arguments for plea bargaining in India, we shall consider the overwhelmingly supportive

¹² The Criminal Law (Amendment) Act, 2005 (Act 2 of 2006), s. 4.

¹³ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), ch. XXIII.

¹⁴ *State of Gujarat v. Natwar Harchandji Thakor*, 2005 SCC OnLine Guj 11.

¹⁵ *Kundan Dhanke v. State of Maharashtra*, Criminal Writ Petition No. 1946 of 2019 (Bombay High Court, 16 December 2019).

normative facts of the case. Those supporting plea bargaining maintain that the unique compromises necessary to permit plea bargaining to occur under strict regulation would serve a number of justifiable purposes, including procedural economy, compensation to the victim, moderation of sentences, and a rehabilitative disposition for offenders of lesser seriousness who acknowledge their offence at the onset of the criminal proceedings.

1.3.1 Backlog Reduction and Procedural Economy

The justification for efficiency is by no means small or a mere administrative concern. A lawful mechanism for rapid resolution in the ordinary criminal process that is slow, costly, and overburdened can save precious court time for important and contested matters. In a system of overburdened criminal litigation, the advantages of a provision for plea bargaining, despite its many limitations, are resulting in the fast tracking of the litigation process and a reduction in the injustice of the long drawn process, equally for the victim and the accused.

The regulatory phenomenon, or the strongest normative arguments for the efficiency that we have discussed, are not without certain significant caveats. We can agree that ease of the process of law that is regularly overburdened is a public good, but this cannot be equated to the overriding of the voluntariness of the process, or, in legal parlance, the euphony or the propriety of the process.

1.3.2 Victim Participation and Limited Restorativeness

Even here the restorative label must be used with caution. The Indian model does not replace conviction with consensual and restorative elements; rather it places a criminal process over a negotiated consequence. The accused is still a convict, and the court is still the highest authority. It is therefore accurate for lawyer commentators and practitioners to describe Indian plea bargaining as a modified, rather than a transposed, form of the comparative model. This form combines the utilitarian purpose of case disposal and focuses accommodatingly on victims, rather than on the full scope of, restorative justice. Its intended purpose is a partial remedy, not a complete substitute for justice.¹⁶

¹⁶ Pradeep Kumar Singh, "Plea Bargaining and Criminal Justice in India", 7 *Athens Journal of Law* 33 (2021).

1.3.3 Sentencing Individualisation and Probation

Another normative argument is that plea bargaining enables courts to adjust and direct punishment with greater control, particularly in minor or less significant cases. The legal framework stipulating the punishment provides, through specific express provisions, room to exercise control over, and direct, punishment in the form of reduction, including through the option to suspend. This is aimed at a rational conviction in dealing with first offenders or cases that do not pose a substantial risk or require, and thus do not warrant, a greater severity of punishment. Exacting control, combined with the suspension of punishment, is more beneficial in reducing recidivism, and thus it is the predominant pathway through which plea bargaining is said to have helped to reduce recidivism.

The link is indeed real but marginal. The Department of Justice study recorded the tendency of the judiciary to extend the theory of probationary principles to certain cases of plea bargaining.¹⁷ It refers to *Shambhu Sharma v. State of Jharkhand*¹⁸ as an example of a scenario in which the court was willing to extend probationary relief after plea bargaining in the absence of a criminal background. At the same time, courts have also recognized the absence of limitations. In *Satya Prakash v. State*¹⁹, the High Court of Delhi pointed out that offences under Section 304A of the former Indian Penal Code were not suitable for treatment under probation or plea bargaining in the normal circumstances. Indian law thus supports selective, not arbitrary, moderation of sentencing.

1.4 BACKLOG PRESSURE AND ACTUAL USAGE

A pragmatic evaluation of plea bargaining must transcend statutory provisions into institutional constraints. A provision created for efficiency, equitable settlement, and moderated sentencing, may possibly function in a totally different manner as part of a criminal process characterized by mass pendency, prolonged undertrial detention, inequitable quality of defence, and apathy of the public to the fulfillment of their procedural rights.

¹⁷ Department of Justice, "Access to Justice through Plea Bargaining as an Alternative Model to Traditional Criminal Trial in India: A Case Study of Select Indian States" 145 (Ministry of Law and Justice, 2024).

¹⁸ *Shambhu Sharma v. State of Jharkhand*, 2013 SCC OnLine Jhar 1588.

¹⁹ *Satya Prakash v. State*, 2013 SCC OnLine Del 3551.

1.4.1 Structural Backlog in Indian Courts

Current pendency figures set the necessary stage. As of the time of writing, the National Judicial Data Grid reports more than 48.9 million cases pending in district and subordinate courts²⁰, 6.39 million cases in various High Courts²¹, and 92,599 cases pending in the Supreme Court²². These figures do not prove that plea bargaining is the right answer, but do show why the quasi-early disposition mechanisms continue to be seen as institutionally desirable by policy makers and judges. Figure 1 illustrates the dominant percentage of pending litigation attributed to trial courts.

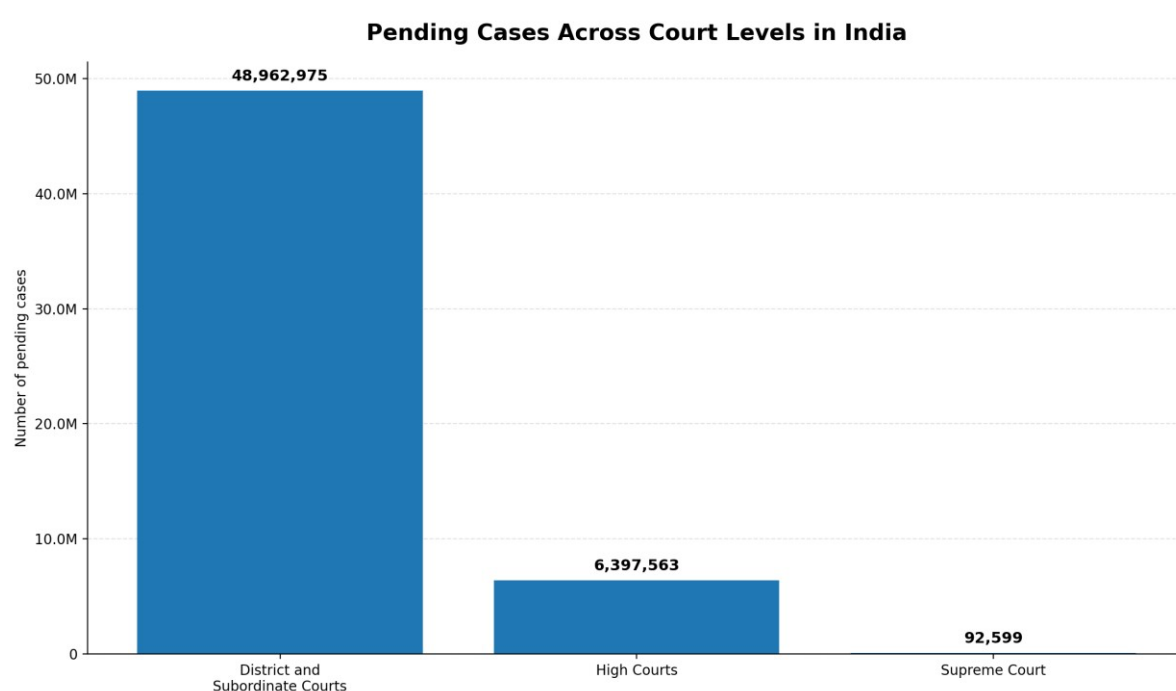


Figure 1. Pending cases across court levels in India.

1.4.2 Undertrial Detention and the Risk of Strategic Guilty Pleas

Growing pressure due to longer delays increases the length of pre-trial custody. Indian parliamentary figures show there were 4,34,302 undertrial prisoners as of 31, December, 2022. Larger undertrial numbers breaking the 5 year mark were recorded in other Sections of state and union territory reports. Figure 2 translates that data into a visual comparison. We know

²⁰ District and Subordinate Courts Dashboard, available at: https://njdg.ecourts.gov.in/njdg_v3/ (last visited on April 28, 2026).

²¹ High Court National Judicial Data Grid, available at: https://njdg.ecourts.gov.in/hcnjdg_v2/ (last visited on April 27, 2026).

²² Supreme Court Data Grid, available at: <https://scdg.sci.gov.in/scnjdg/> (last visited on April 26, 2026).

trial delays cause prolonged incarceration. The decision to seek earlier disposal may be caused by prolonged absence of liberty, and not by culpability alone.^{23 24}

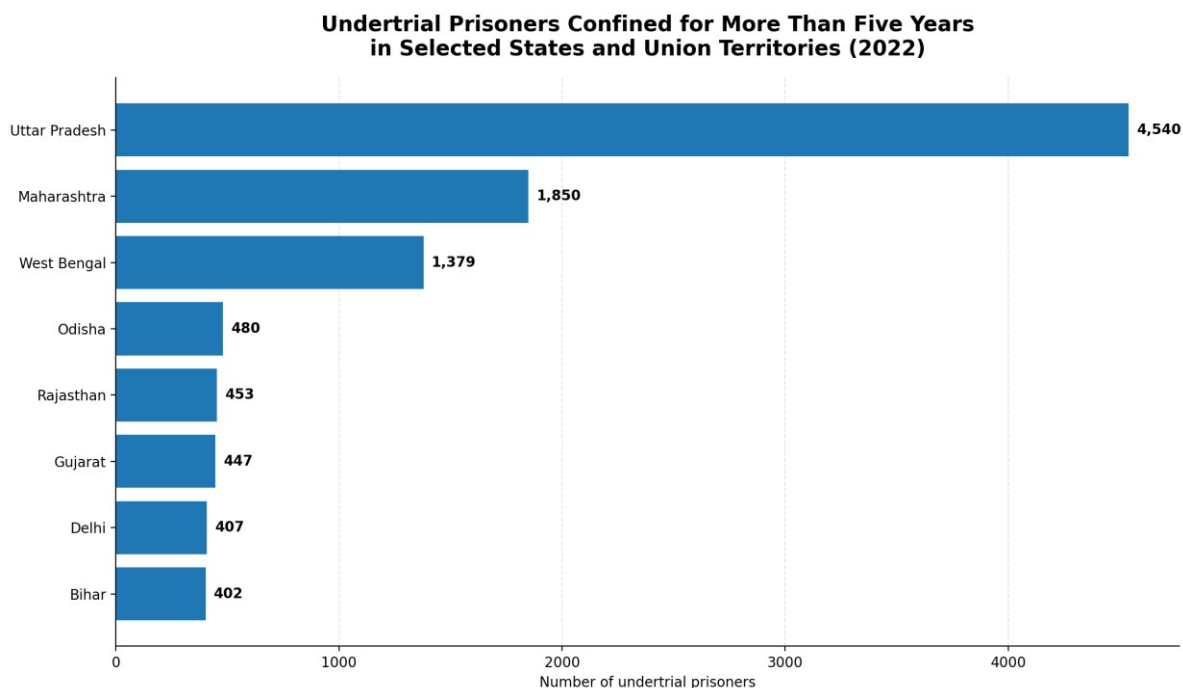


Figure 2. Long-duration undertrial detention in selected jurisdictions.

Not all plea bargains are coerced. However, due consideration of institutional realities must accompany formal declarations in assessments of voluntariness in procedural law. An accused who is in custody may rationally choose to suffer a reduction of a conviction, which is a lesser punishment, as opposed to seeking a reduction of a conviction, which is a lesser punishment, as opposed to suffering a conviction in a full trial. From the standpoint of formal logic, it is perhaps in the best interests of the court to treat the issue of voluntariness as substantive rather than as ritual. The plea bargaining segment of a law must be engaged to it for it to be truly effective as a resolve rather than a preliminary sustain to detainment and backlog.

1.4.3 Empirical Uptake of Plea Bargaining

Evidence suggests that, legally, plea bargaining that is otherwise limited, is actually employed less than what it ought to be, given the volume of criminal litigation. The most recent

²³ Under Trial Prisoners, available at: <https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=2003162> (last visited on April 25, 2026).

²⁴ Fast Track Courts to Deliver Speedy Justice, available at: <https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=1986452> (last visited on April 24, 2026).

Department of Justice study has not provided the general public with a portrayal of a justice system that is a product of successful and extensive bargaining. The study of the justice system, categorized by the various levels of offences, suggests that several offences are at the minimum level of use and trade of the system, on the extreme use end, and several other crimes, including the crime of cruelty committed by the husband and/or his relatives. Figure 3 may be interpreted as usage that is marginal and selective, rather than frequent negotiation in criminal procedures.²⁵

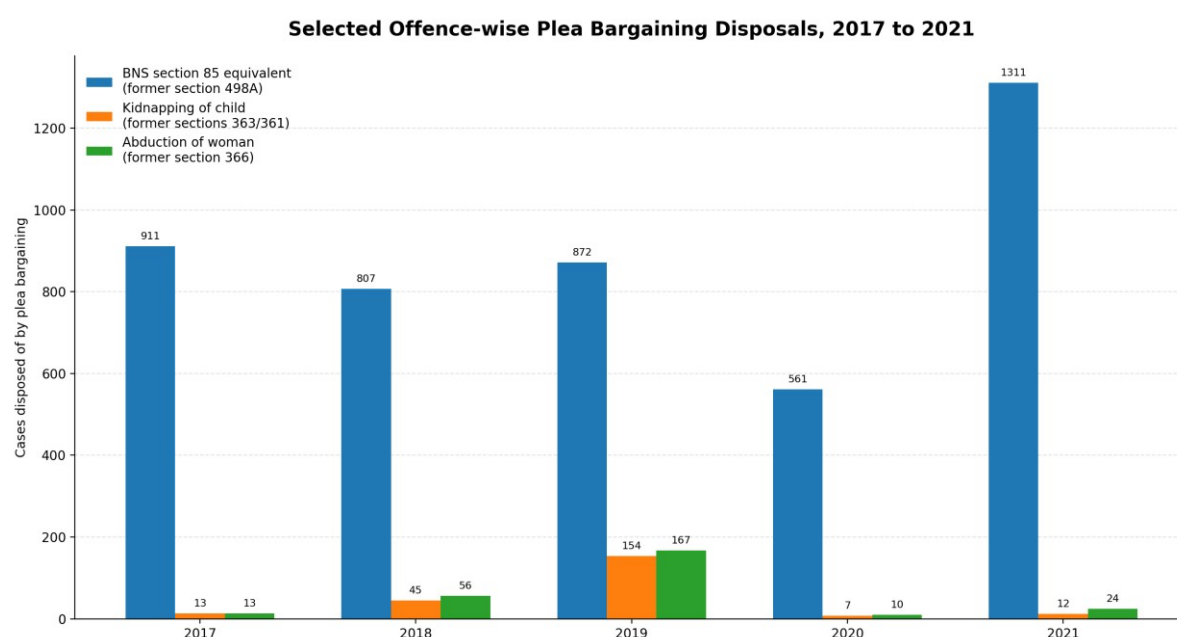


Figure 3. Selected offence-wise plea bargaining disposals, 2017 to 2021.

There are recent examples of case law showing a court's desire to make a scheme more visible and more usable from a procedural perspective. In *G. Venkateshan v. State*, the Madras High Court decided to notify a person charged with a crime, in writing, that plea bargaining was available, once the charges were formally framed, so that the right to plea bargaining could be invoked, and the application could be made within the stipulated period under the Bharatiya Nagarik Suraksha Sanhita, 2023. That decision is an important one, as legal remedies that are not used because people are not informed about their existence do not help in alleviating the backlog in the courts or in promoting greater equity. It is likely that the limited actual use of the provision is a result of low knowledge of it among defendants, and inconsistent practices

²⁵ Department of Justice, "Access to Justice through Plea Bargaining as an Alternative Model to Traditional Criminal Trial in India: A Case Study of Select Indian States" 169 (Ministry of Law and Justice, 2024).

within institutions.²⁶

1.5 RECIDIVISM AND THE INDIAN EVIDENTIARY GAP

The central concern of the Article cannot be answered honestly, without addressing a certain uncomfortable reality. Currently, there is no publicly accessible, countrywide, plea-related database in India that correlates plea-related convictions with new offences. Until now, any assertion that plea bargaining leads to a decrease in recidivism should be considered more as a working theory, rather than a proven theory.

1.5.1 Why Recidivism Matters

Recidivism is significant as it relates to long-term public safety and the challenges associated with reintegrating offenders. Simply expediting the criminal process can fail the public if it leaves the motivations or reasons behind an offender's repeated criminal behaviour untreated. A moderate sanction that includes admission of guilt, compensation, probation or supervision, and community reintegration can, in fact, provide benefits to the public beyond the value of reducing the time spent on court-related activities. This second possibility makes plea bargaining more attractive than just serving the court's efficiency. This is especially true in the absence of anything that can be tied to post-conviction reform.

1.5.2 The Limits of Available Indian Data

While many factors exist that can be evaluated to determine public backlog and detention, there is a serious lack of materials that specifically address plea-related recidivism. A partial substitute exists in the public estimates of detaining a backlog and many of the materials on plea-specific recidivism. A partial substitute is in the data provided by the National Crime Records Bureau on the number of compulsive offenders that have been formally charged and the data on the number of principals that have been provided to the courts. This data on the number of people that will be sent to a correctional institution will be extensive and will provide a unified estimate of senatorial detention components. This data does not provide any estimates on the number of detention sentences that have been rendered by plea and the number of sentences that have been rendered after a trial. Therefore, this data cannot be a basis for any

²⁶ G. Venkateshan v. State, 2024 SCC OnLine Mad 3861.

plea-related recidivism estimates.²⁷

That constraint is hardly a trifle. It is central to the Article's research problem. To find out if plea bargaining reduces recidivism, at a minimum, one would need cohort-based tracking, offence-based level exposures, prior antecedents, and whether the plea was followed by probation or other rehabilitative measures. The public domain does not likely provide the most recent. The evidence is asymmetrical. India is able to describe its pendency problem, but, with equal or comparable confidence, is unable to assess plea bargaining's behavioural consequence.

1.5.3 What Can Still Be Inferred

While a strong causal explanation is not possible, several weaker, yet logical statements, can be made. First, India's law is likely at its intended graduated recidivism-reducing punishment framework by virtue of its moderating, graduated punishment, and, as it fits, the obligation to exercise of and provide for, probationary treatment framework. Second, as it remains unverified, it is likely that the most probable consequence of plea bargaining is the graduated obligation framework, as the deterrent of recidivism framework is the likely mechanism, that is, the pose of plea, followed by a probationary framework, and perhaps the graduated incarceration framework of plea bargaining.

1.6 FROM CASE BACKLOG TO REPEAT OFFENCE: A DOCTRINAL ASSESSMENT

The competing arguments that can be made for Indian law and its framework of plea bargaining are a slight departure. The law poses (per se) the question, but what is left to be ascertained is whether plea bargaining has the potential to achieve rehabilitative outcomes or whether, at its best, it is only a framework to achieve quick and effective outcomes in the face of backlogs of pendency, pre-trial detention, and a constrained framework of procedural choices.

1.6.1 Does Plea Bargaining Reduce Recidivism?

Any affirmative response can only be made based on doctrinal potential. The Indian framework has elements that could lead to reduced future offending in selected cases, such as early resolution, compensation, moderated punishment, or the accessibility of the judiciary to grant

²⁷ NCRB - Offence Wise Prisoner Statistics: Year Wise Number of Habitual Offenders Admitted (Incidence of Recidivism), available at: <https://dataful.in/datasets/23139/> (last visited on April 23, 2026).

a case to a judge to be considered for probation. When a first-time offender in a case that meets these criteria, is subject to a proportionate sanction and spends no time in prison, the plea-bargaining process may mitigate the criminogenic potential of a case that is subject to a delayed trial and prison exposure. The strongest rehabilitative argument is likely to direct to this narrow band of low-risk offenders, as opposed to the system as a whole.

Nonetheless, the argument may apply to the system as a whole. Even within this narrow band, the current situation is rather backward. The system lacks a national source that is currently available to estimate the recurrence of offending in individuals for whom plea-bargaining is available, and those for whom offending is not declared legally, as opposed to those who are declared offence-free as a result of a trial. Consequently, this Article chooses to supply the absence of a broad-based socio-legal argument in support of a never evidenced claim for the purpose of recidivism control with plea bargaining in India. In a limited number of cases this may still be the case, more so when these cases are linked to probation and various support services. The basis for any case plea bargain is still missing.

1.6.2 Does IT Primarily Accelerate Convictions?

This argument has the strongest support. Given concerns over delay, plea bargaining was designed to implement early closure of cases in the statutes. This integrates the legal framework to enable the system to transform some contested matters into negotiated outcomes under the supervision of the judiciary. In the current situation, where there is extensive undertrial imprisonment, the judiciary function is maximized. When the judiciary is used, the most impactful and visible effect of the system is to adjudicate cases faster than through the use of full trial mechanisms, resulting in cases moving towards conviction and sentence faster.

1.6.3 A Qualified Position

Thus, a more defensible doctrinal possibility is warranted. In this regard, plea bargaining is far more than a system of recidivism reduction. A legal system is constrained and maximized by its potential systemic contributions. Currently, the system has more contributions to faster adjudication than to recidivism reduction. The greater the systemic supports, the more justifiable the plea bargaining system. The fewer the supports, the greater reliance plea bargaining has on systemic delay mechanisms.

Recent litigation on collateral consequences broadly supports that assertion. *Pramod Provision Store v. The Special Commissioner (Food and Supplies) and Another* argues before the Delhi High Court that administrative consequences should be treated differently than a traditional full admission of guilt when settlement is achieved through the plea-bargaining process. The example emphasizes oversight that is often taken for granted. A plea-bargained conviction holds collateral consequences that can be adversely extensive and impact one's license, job opportunities, and legal status. More so, these consequences justify the need for judicial oversight of the process.²⁸

1.7 CONCLUSION

The doctrinal and empirical components have provided a somewhat restrained and somewhat clear answer. The conjectural Indian plea bargaining system has in recent years lost its status as an illegal system which has an almost blanket suspicion, however the predominant public justification for the process seems to be the procedural economy rather than the proven system of lower crime relapse under the system of justice.

Against this background and this framework, however, the practicality of this system in question becomes apparent. Large case backlog and prolonged political detentions of defendants provide a strong case for the need for alternative reforms to create expedited adjudication. Bargaining can reasonably and legitimately fulfill this need. However, the data available to the public today makes it impossible to advocate that plea bargaining is necessarily related to low crime rate. There is no plea-specific longitudinal data to recognize at a theoretical level. Hence, at this point the system of lower crime rate should be the aspiration, rather than an accomplished goal.

A defensible legal position, in general, should avoid two corresponding mistakes. It should abandon the previous belief from the legal community that any negotiated guilty plea should be deemed corrupt or unjust. It should also abandon the more recent belief that, for procedural expediency or for procedural leniency, plea bargaining warrants the legal system's rehabilitative assumptions. From this perspective, Indian plea bargaining could be justified by the controlled case management framework in Indian penal reform. Justifying it as recidivism reduction, the legal fraternity of that country would need to provide better data, more robust

²⁸ *Pramod Provision Store v. The Special Commissioner (Food and Supplies) and Another*, W.P.(C) No. 10362 of 2024 (Delhi High Court, 29 July 2024).

safeguards of voluntaries, and greater engagement with the systems of probation, legal aid, and post-conviction support.

1.8 SUGGESTIONS

The aforementioned problems highlight the need to reform plea bargaining to incorporate greater restorative justice (i.e. rehabilitation) and greater measurement and fairness of restorative justice across the existing plea bargain system.

1. Establish a national plea bargaining data registry: For everyone to be comfortable, access to primary data must be allowed to track the numbers of applications, categorized by charges, and each stage of the bargaining process, from offers to outcomes and sentencing concessions, along with the question of whether or not the offender was given probation.> Without such primary data, any claims regarding reduction of recidivism and general effectiveness of this policy will invariably lack relevance.
2. Track recidivism by disposal pathway: The National Crime Records Bureau, together with the Justice Department, will need to provide a cohort study on the comparison of disposal case plea bargain to others, while keeping the privacy and the required details to ensure that the mitigation of plea bargains could indicate a reduction of repeat offenders in the given categories.
3. Strengthen the judicial inquiry into voluntariness: Judges will need to provide a more specific reasoning to demonstrate that the accused was informed of the charges, the consequences of conviction, and the available options for the case to go to ordinary trial. A checklist of voluntariness will be standardized in such a way that the test will not be reduced to a mere custom.
4. Mandate early rights information for accused persons: Accused persons who qualify must be informed in writing about plea bargaining, legal assistance, possible consequences of sentencing, the option of compensation, and the right to refuse the settlement. The method employed in the *G. Venkateshan v. State* case should be adopted as a standard by way of practice directions and/or court rules.
5. Integrate plea bargaining with probation services: When a plea is accepted in case of a

first time offender, or a low risk offender, the court should consider, rather than (or as an alternative to) probation/supervision/counselling, or community based sanctions, as a first option. Reduced sentencing of offender to serve time in a correctional facility without rehabilitative follow up is less likely to yield the desistance benefits frequently associated with negotiated justice.

6. Separate detention pressure from bargaining decisions: When there is a long period of incarceration, the plea must be evaluated in terms of free choice and fatigue. In these situations, defence attorneys must be consulted regarding the officer's recommended plea, prior to the recording of the agreement.
7. Develop offence-specific guidance: Plea negotiations, flexibility of the law, and the early dismissal of cases, should not be viewed as interchangeable in addressing all lawful offences. Judicial academies and High Courts should develop a framework that identifies when law compensation and immediate resolution are permissible, as opposed to when the law should exhibit an increased degree of public injury or legal evidentiary complexity.
8. Clarify collateral consequences in law and policy: Legislatures and agencies must provide clear definitions and stipulations regarding the impacts that plea agreement convictions provide in federally funded legal services. Clearly stated stipulations and parameters may alleviate complexity and impede legally negotiated agreements that have unintended adverse consequences whereby plea agreements are comprehensive and the accused lack a reasonable understanding of them.
9. Improve defence counsel incentives and training: The guilty plea context must ensure that there is an adequate underpinning legal framework. In order to achieve this, legal aid and Bar Council must provide comprehensive plea training on the elements of sentence valuation, victim compensation, and the culpability of these acts, while ensuring that legal aid disbursements advocate the passage of law and prevention of justice.
10. Require periodic High Court monitoring: Really, High Courts should be the ones to guarantee that, inter alia, coercive improvements of plea practice to the courts are not employed.

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