PLEA BARGAINING PRACTICES: COMPARATIVE ANALYSIS OF ITS EVOLUTION IN THE USA, INDIA AND EUROPEAN JURISDICTION

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ABSTRACT

The Plea-Bargaining practices of three jurisdictions India, the US and a few European systems are critically examined in this article. Beginning with the broad function of plea bargaining, the article highlights it as a tool that expedites court proceedings, lessens the strain of trials, and offers practical advantages to both the State and the accused. Specifically, the concept of the plea bargaining has grown to be one of the most important aspects of the criminal justice administration in the United States, largely due to court rulings. In contrast, although there are still structural and sociolegal obstacles to its implementation, the practice was only legally introduced in India in 2006, as a response to growing case backlogs and prolonged pre-trial detention. Moving to European approaches, civil law regimes such as Germany and France rely on negotiated justice models that prioritize court scrutiny, whereas the United Kingdom acknowledges sentencing reductions for guilty pleas. Despite these, plea bargaining is gradually being accepted as a useful aspect of criminal judicial systems in most parts of the world. Nonetheless, important issues remain, including fairness, voluntariness, and the possibility of coercion. Considering these current issues, this paper aims to propose a reasonable framework in which the proposed justice system can safeguard the rights of the accused without sacrificing the effectiveness, transparency, and integrity of criminal trials.

Keywords: Criminal Justice, Fair Trial, Comparative Analysis, Plea Bargaining, and Judicial Efficiency.

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1. Introduction

The concept of plea bargaining is quite new in most criminal courts. Most criminal convictions in the criminal justice system today are usually based on the plea, which was negotiated. Bargaining in a criminal case is the process of how the accused and the prosecution reach a mutually acceptable agreement in form of a plea bargain that depends on the court allowing it to take place. Plea negotiating is the process by which the defendant and other parties to a lawsuit reach a deal. In this kind of compromise, the prosecution grants some concession to the defendant as a way of gaining his voluntary consent to offer a guilty plea to all the counts that are filed against him. Either a reduction in his punishment or the simple imposition of lower charges against the guilty would constitute this concession. The concept of plea bargaining is that there should be a voluntary exchange between the accused and the prosecution whereby neither party should use or apply force to settle down. One of the most prominent methods of case termination in most countries of the world, and the USA, is plea bargaining. Nevertheless, not all governments have found this case disposal method to be equally effective.

2. Conceptual framework of Plea Bargaining

To understand the history of plea bargaining, its stakeholders should be comprehended. In a trial and plea negotiation procedure, the judge, prosecutor, and defense attorney are the main participants. Numerous researchers have attempted to examine how plea bargaining operates and apply a variety of ideas to this idea. Nevertheless, the idea of fair adjudication has been superseded by the realization that plea bargaining is now a recognized standard[3]. An economic analysis of plea bargaining as presented by Landes[4] gives the meaning of plea bargaining in which the prosecutor is trying to negotiate a guilty plea on behalf of the accused in return to reduce the punishment the accused will receive.

2.1 Definition and meaning of Plea Bargaining

According to the law dictionary, plea bargaining can be explained as an agreement between the parties (i.e. the plaintiff and defendant) to settle the case between them without proceeding with

[3] 'Abubakar Bukar Kagu, *'Globalization of Plea Bargaining: An Imperative Reform or A Compromise of Ideals?*' (2017)'https://www.strath.ac.uk/media/1newwebsite/departmentsubject/law/documents/studentlawreview/thirdeditionpa pers/Kagu.pdf (last visited October 2, 2025)

[4] 'William M Landes, "An Economic Analysis of the Courts" (1971) 14 The Journal of Law and Economics 61 https://doi.org/10.1086/466704 (last visited October 3, 2025)'

trial[5]. Britannica Encyclopedia defines plea bargaining as the practice of discussion between prosecutor and defense attorney (acting on behalf of the accused) where the defendant pleads guilty in exchange for a lesser sentence or recommendation or specific type of sentence or maybe dismissal of charges[6].

Put simply, a plea bargain is an agreement between accused and the State (via the prosecutor) in which the State aims to save time and reduce the costs of the investigation and adjudication process. Consequently, rather than performing its sovereign role of enforcing law and order, the State, tries to strike a compromise with the accused or offender so as to submit a guilty plea, possibly be exonerated of the charges after paying a fine, or possibly recommend a sentence to the adjudicator in order to save transaction costs associated with the prosecution of an offender or accused. As a result, a solution was found that benefited the state and the accused.

2.2 Significance

Plea Bargaining is founded on the concept of nolo contendere which refers to the fact that the accused has no desire to contest hence saving on the costs of enforcing, time and adjudication costs. The primary rationale for using such a mechanism for case disposition is that, first, there is a massive backlog of cases in practically every court in the world. Plea bargaining is one of the most effective and convenient methods to clear the backlog by ensuring that the case is promptly disposed since in a plea bargain between the two parties the accused himself pleads guilty to all the accusations leveled against him. Second, the work of prosecutors in virtually all countries is overloaded because of the continuously increasing cases. Therefore, if a certain number of cases are resolved swiftly through plea bargaining, the prosecutors will have more time to concentrate on the remaining cases. Thirdly, this is advantageous to the accused as well because he would not have to defend himself during the trial, saving him money and time[7].

2.3 Historical Origin of the Concept

The idea of a bargain plea dates back a century. It is difficult to pinpoint the exact beginning of

[5] 'Plea Bargaining Definition & Meaning - Black's Law Dictionary' (The Law Dictionary, 2 March 2013) https://thelawdictionary.org/plea-bargaining (last visited October 1, 2025)
[6] 'Plea Bargaining' (Encyclopedia Britannica) https://www.britannica.com/topic/plea bargaining/ (last visited October 4, 2025)
[7] Jim Schonrock. Plea Bargains: In Depth, Find Law,2021. http://criminal.findlaw.com/criminalprocedure/plea-bargains-in-depth.html (last visited October 1, 2025)

plea bargaining, but according to Friedman, it began sometime between 1880 and 1970. Friedman adds that there were three separate eras, but up until the 20th century, there was a mixed system in which defendants also sought trials, but some defendants also used plea bargaining to avoid going to trial[8]. During the second period, which ended in 1950, defendants tended to enter guilty pleas and trials were less frequent because the criminal judicial system tended to favor the State and, statistically speaking, the accused or defendant had a lower chance of being found not guilty[9]. To strengthen the prosecutor's bargaining position and result in fewer defendants being tried by adjudication or jury, the prosecutor is now inclined to charge the accused with crimes that may not even be proven true. This is known as "overcharging" the accused with charges that are far beyond his culpability[10]. Thus, it is evident from the historical context that plea bargaining is a form of negotiation that has always existed in legal systems all over the world.

2.4 Types of Plea Bargaining

Generally, plea bargaining takes place in three forms, which include: charge, sentence, and fact bargaining. Each type aims to expedite justice while ensuring fairness in criminal proceedings.

2.4.1 Charge barging: The most common is charging bargaining, where the prosecution can reduce the serious charges if the lesser charge is made in place of the serious charge. As an example, when a suspect pleads guilty to trespassing, the burglary case is dismissed.

2.4.2 Sentence Bargaining: Sentence Bargaining is the practice of admitting guilty to a greater charge on the price of a more lenient sentence. In India, this contains the approval of the victim and prosecution. As an illustration, the prosecution can accept to recommend no jail time in case Max pleads guilty of resisting arrest.

2.4.3 Bargaining Counts: Counts When there are several charges, bargaining is applicable. While some accusations are dropped, the offender enters a guilty plea to fewer. For example, Joey may enter a guilty plea to assault while the robbery allegation is withdrawn if he is charged with both simple and serious assault.

[8] Friedman LM, '*Plea Bargaining in Historical Perspective'* (1979) 13 Law and Society Review 247
[9] Jones JB, 'A Research Note on Caseloads, Plea Bargaining, and the operation of the criminal justice system'-JSTOR' (JSTOR) https://www.jstor.org/stable/20877581 (last visited on October 3, 2025)
[10] Wishingrad J, 'The Plea Bargain in Historical Perspective' (Digital Commons @ University at Buffalo School of Law) https://digitalcommons.law.buffalo.edu/buffalolawreview/vol23/iss2/8 (last visited October 3, 2025)

2.4.4 Fact Bargaining: To lessen the impact of punishment, the prosecution and defense may agree on specific facts through a process known as fact-bargaining. For instance, in a drug case, the prosecutor might consent to a guilty plea if the defendant had no past drug convictions or had less than the threshold amount.

3. Evolution of Plea Bargaining in US

Plea bargaining, now a central feature of US criminal procedure, grew over time in pragmatic adaptation to mounting caseloads and case-multiplying procedural difficulties. When it began, plea bargaining was highly suspect as a practice that seemed inconsistent with the adversarial system of justice and open trials secured by the Sixth Amendment.

3.1 Historical background

Even though the practice of plea bargaining is very old in the United States dating back to the 19th century, it was not originally a well-believed practice. At the time, it was thought that plea bargaining was linked to corruption and unjust judicial manipulation, two traits that were seen in other nations. In short, the courts of early America did not want any aspect of plea bargaining to be officially acknowledged as part of their operations. But by the 20th century, courts were overflowing with cases from a whirling populace and newly complex cases, severing the arguments.

In '*Brady v. United States'*[11], the US Apex Court formally recognized that plea bargaining is a legitimate step in the criminal judicial system, provided that the plea does not contravene the Due Process Clause. This means that pleas are constitutionally permissible if they are freely and sensibly entered after seeking legal advice. Since then, plea bargaining has taken center stage in the US, where it is estimated that 90–95 percent of criminal cases are resolved by negotiated pleas.

3.2 Legal Framework

The Fifth and Sixth Amendments to the U.S. Constitution include the right to trial, the entitlement to counsel, and the right not to incriminate oneself, which are the primary pillars of the legal framework on which the plea bargaining in the nation is based. Even though the

[11] '397 U.S. 742 (1970)'

Constitution provides that plea bargaining is an illegitimate element of the legal system, the Supreme Court has recognized plea bargaining as such.

The enforceability of plea deals was highlighted in *Santobello v. New York*[12], which held that both the defendant and the prosecution must abide by the conditions of the agreement. This decision upheld the idea that plea deals are contracts between the state and the accused that guarantee due process and justice[13].

Instead of being a casual handshake, the current plea bargain is a highly regulated process. Rule 11[14] serves as the foundation for federal plea negotiations. Every federal judge, prosecutor, and defense lawyer must abide by the rulebook. It is in place to make sure that ignorance, fear, or coercion do not lead to a guilty plea. Important clauses in **Rule 11** mandate that the court:

- **Verify the defendant:** To verify that the defendant is competent and that the plea was not obtained under duress or threats, the judge must talk with them directly in open court.
- **Rights Understanding:** The judge must make sure the defendant is aware of the extensive list of fundamental rights they are forfeiting, which includes:

  a. The alternative of pleading not guilty.

  b. The jury trial right.

  c. The right to counsel in a court of law.

  d. The right to interrogate and to confront witnesses.

  e. The right to protect against forced self-incrimination.

- **Verify Consequences:** The defendant must be informed of the maximum punishment for the offense, which may include jail time, fines, and a period of supervised release`, in addition to any mandatory minimum penalty.

[12] '404 U.S. 257 (1971)'
[13] 'Plea Bargaining Law: India and USA', Tarannum Vashist available at https://blog.ipleaders.in/plea bargaining-laws-india-united-states-america/ (Last visited October 2, 2025)
[14] Federal Rules of Criminal Procedure, December 1, 2024

- **Create a "Factual Basis":** The court needs to be convinced that the plea is supported by factual evidence. In theory, this stops a criminal from entering a guilty plea for a crime they did not commit.

3.3 Landmark Judicial Pronouncement

In the case of *State v. Adams*[15], the court described the Nolo Contendere concept. According to the Court, the "*Plea of Nolvut*" also referred to as the *Nolo Contendere*, which means that the accused does not want to contest.

In '*United States v. said. Risfield*'[16], the Court that in a criminal case, when an application has been applied in plea-bargaining, the Court decision on the guilty plea is not required. However, the court can pass the sentence of the accused on the spot.

The *Bordenkircher v. Haynes*[17] case was upheld by the US apex Court to have validated plea bargaining, ruling, however, he had sentenced the defendant to life imprisonment because of his refusal to take a guilty plea to a five-year sentence. The Apex Court noted that the possibility of the defendant being forced to decide between the two light punishments was slim. The Apex Court if it is impossible to be coerced or pressurized in case the alleged person is at liberty to accept or deny the proposal made by the prosecutor during the process of the plea-bargaining deliberations.

4. Evolution of Plea Bargaining in India

Introduced by the 'Criminal Law (Amendment) Act, 2005', plea bargaining was adopted in India to reduce case delays and promote speedy justice, following Law Commission recommendations.

4.1 Historical Background

In *Vedic Era* India has acknowledged the concept of plea bargaining in both a spiritual and legal meaning since ancient times. Several treaties and papers provide evidence that voluntary confession was viewed to purify oneself and lessen or even eliminate the effects of sin.

[15] '111 S. E. 2d 336 (1959)'
[16] 340 U.S. 914
[17] 434 U. S. 357 (1978).

Delaying a decision amounted to denying justice, according to Dharam Shastras. The idea of Prayaschita, or atonement, provided examples of how to purify oneself by confessing transgressions. Numerous Smriti specialists were in favor of imposing less severe punishments in exchange for a guilty plea. Manu Smriti even proposed a lighter sentence in return for confession.

As a result, voluntary confession that resulted in less sentence much like contemporary plea bargaining was acknowledged as a means of assisting criminals in reintegrating into society.

In the *Medieval Period* Similar concepts of plea bargaining were mirrored in the Muslim Criminal Code's Quisas system during the Mughal Empire. In this system, offenses against the State or people could be compounded, but offenses against God were punished miraculously. During Quisas, the accused paid the victim's heirs "blood money. "Neither the Quazi nor the king could step in if heirs accepted recompense. Muslim jurists, who prioritized the rights of God's creation, endorsed this practice. Quisas permitted a type of mediated settlement that was like plea bargaining, albeit limited.

During *Colonial Control* (British Rule), India embraced the British rulers' adversarial system. In 1672, the East India Company set up courts and sentenced criminals to either punishment or forced labor. The idea of plea bargaining had been abandoned by 1860. The British strategy prioritized punishment over compromise. Consensual settlements between the accused in murder cases and the heirs of a deceased victim were forbidden by Lord Cornwallis in an order dated December 3, 1790. Punishment could no longer be replaced by forgiveness or compensation. The 'Muslim Criminal Code' was totally repealed with the passage of the 'Indian Penal Code, 1860', putting an end to previous negotiated justice procedures.

In the *Modern Era* the 'Criminal Law (Amendment) Act, 2005', which went into force in 2006, introduced the contemporary idea of plea bargaining into Indian law. This Act legally established plea bargaining by adding Chapter XXIA to the 1973 Code of Criminal Procedure. But the origins may be traced back to the '*142nd Law Commission Report'*[18] (Justice M.P. Thakkar), which was the first to suggest plea bargaining as a solution to prison overcrowding, protracted pre-trial detentions, and delays. It suggested charge and sentence bargaining, the

[18] Law commission of India, "*142nd Report on- Concessional treatment for offenders who on their own initiative choose to plead guilty without any Bargaining*" (1991)

former where a person admits to fewer charges to have other charges dismissed and the latter where a person admits to a lesser sentence in exchange for a guilty plea.

The recommendation was broadened in the '*154th Report'*[19] (Justice K. Jayachandra Reddy), which stated that plea bargaining should be used for offenses carrying a sentence of seven years or less, apart from socioeconomic offenses, crimes against women and children, and habitual offenders.

Lastly, the *Malimath Committee Report* from 2003 reaffirmed the necessity of plea negotiations by stating that remorseful defendants ought to get concessions. To resolve matters quickly and effectively, it suggested implementing the Law Commission's recommendations.

4.2 Legal Framework

Plea bargaining was first introduced in India through an amendment to the 'Code of Criminal Procedure, 1973'. By virtue of the 'Criminal Law (Amendment) Act, 2005', a new Chapter XXI-A (Sections 265A to 265L) was inserted into the Code.

After the replacement of the Code of Criminal Procedure by the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), the provisions relating to plea bargaining have been incorporated under Chapter XXIII, Sections 289 to 300 of the BNSS, 2023[20].

Plea bargaining in India applies only to offences punishable with less than 7 years (not involving death, life imprisonment, or more than 7 years), and not to socio-economic offences notified by the government or offences against women and children (Sec. 289). The accused may apply within 30 days of charges being framed, submitting case details and an affidavit confirming voluntariness and no prior conviction. The court examines the accused in-camera, and if satisfied, allows up to 60 days for a mutually satisfactory settlement with the victim/complainant, prosecutor, or investigating officer (Secs. 290–291). In case of a settlement, the court submits the documents in writing and finishes the case with the guarantee of compensation and probation, admonition or less punishment (a half or a quarter of minimum sentence or a quarter/sixth of maximum sentence). penalty in case of nonexistence of minimum) (Secs. 292–293). Judgment is pronounced in open court and is final, with no appeal

[19] Law commission of India, "154th Report on- The Code of Criminal Procedure, 1973 (Act No.2 of 1974)" (1996)
[20] The Bharatiya Nagarik Suraksha Sanhita, 2023 [No. 46 of 2023]

except by SLP under Article 136 or writs under Articles 226–227 (Sec. 294–295). The court retains normal powers of trial, bail, and case disposal, detention set off applies, and this chapter overrides other BNSS provisions (Secs. 296–298). Importantly, statements made during plea bargaining cannot be used elsewhere (Sec. 299), and the scheme does not apply to juveniles under the JJ Act, 2015 (Sec. 300)

4.3 Landmark Judicial Pronouncement

One of the jurisprudential judgments on the issue, which was passed in 1976 in the case of '*Murlidhar Meghraj Loya v. of State of Maharashtra'*[21], was ruled preceding the addition of plea bargaining to the Criminal Procedure Code. The defendant in this case who had been found guilty of selling contaminated food went to the local magistrate informally to get a friendly penalty. He pleaded guilty in a similar way to plea bargaining. Justice Krishna Iyer alleged that our system had convinced all but the victim and the community to leave the business perpetrator without a punishment by selling his misery in jail as a guise over grief.

Its condemnation was accepted by the Apex Court in *State of Uttar Pradesh v. Chandrika*[22], which had overturned a High Court decision that had legalized plea bargaining. The Supreme Court has decided that it is unlawful to use promises or promises to induce an accused individual into a guilty plea since it is unconstitutional in the sense that Article 21 of the Indian Constitution outlaws it. It further stated that in certain situations the court had to reverse the decision and remand the case back to the trial court allowing the accused to defend himself because in case he is convicted he would be punished accordingly.

The Gujarat High Court held that it was a swift and cost-efficient way of dispute resolution in the '*State of Gujarat v. Natwar Harchandji Thakor*[23]'. Under this case, the court held that the primary purpose of the law is to offer quick, cheap, and simple justice through the settlement of disputes, especially those ones concerning the criminal justice system. Thus, one can say that the idea of plea bargaining is some sort of redress, and it will bring another facet to the reforms in the judicial system.

[21] AIR 1976 SC 1929
[22] AIR 1999 SC 164
[23] (2005) Cr.L.J. 2957

5. Evolution of Plea Bargaining in European Jurisdiction

European jurisdictions gradually adopted plea bargaining to ensure swift justice and reduce caseloads, adapting it within their civil law traditions while safeguarding due process rights.

5.1 Plea Bargaining: Origin and Development

The Plea Agreement, a procedure when the prosecution and defense work out a mutually beneficial settlement, was invented by the Anglo-American legal systems. Under this arrangement, the prosecution provides a less severe or realistic penalty than what may be given in the event of a full trial, and the defendant consents to acknowledge guilt[24]. The court must approve the agreement, which expedites the legal process by preventing drawn-out trials. Prosecutors may make a few concessions, depending on the jurisdiction. These may include lowering the severity of the sentence, offering less coercive or non-custodial penalties, dropping some charges in exchange for admitting others, or offering benefits like witness protection in exchange for the defendant's cooperation in the prosecution of other criminals.

This process evolved organically in adversarial or Common Law systems, where trials are like civil processes and the State, represented by the prosecutor, is formally on an equal footing with the defendant. Defendants have strong procedural protections that provide rights including fair representation and cross-examination. In the past, juries frequently returned erratic verdicts, and gathering evidence was difficult because of a lack of investigative resources. Plea agreements are a useful technique to lower trial risks and judicial effort while giving the defendant some control over the outcome since these uncertainties encouraged both the prosecution and the defense to seek compromise.

Civil law (European continental) systems were historically distinct. They adhered to the mandatory prosecution principle, which required prosecutors to try all cases. There was an imbalance because the prosecution was far more powerful than the defense. Legally, there was no way to negotiate with the defendants.

But things started to alter in the late 20th century. To maintain a balance of power between prosecutors and defendants, some European nations changed their criminal justice systems.

[24] 'Liviu-Alexandru LASCU'- "THE PLEA AGREEMENT – A NEW WAY OF NEGOTIATED JUSTICE IN THE EUROPEAN JUDICIARIES" http://univagora.ro/jour/index.php/aijjs (last visited October 2, 2025)

States were compelled to provide defendants with more robust rights and protections due to their membership in the Council of Europe and the impact of the European Convention on Human Rights. For defendants who collaborated and confessed to their crimes, European systems began to advocate for leniency.

These are the causes of Europe's transformation. Prosecutors found it more difficult to prove charges when defendants had stronger rights. Prosecutors' growing workloads pushed for alternatives to drawn-out trials. To settle disputes quickly and fairly, negotiated settlements have grown in popularity.

5.2 Plea Bargaining under Different region of the Europe

Plea bargaining in Europe has evolved uniquely across regions, shaped by diverse legal systems and traditions. While originally rooted in common law, many European countries have adopted the concept to enhance judicial efficiency, reduce case backlogs, and maintain fairness within their civil law frameworks.

5.2.1 France

To keep abreast with the dynamic character of the criminality, the so-called 'Perben Act II' of March 9, 2004, added the Plea Agreement called *La comparution sur reconnaissance préalable de culpabilite* (CRPC), or *plaider coupable*, to the French Criminal Procedure Code. The French Criminal Procedure Code anticipates the process of the plea negotiation through 'Articles 495-7, 495-16, and 520-1', a new way out of the situation when the full adjudicative trial could be evaded based on particular facts and the atmosphere of the criminal law. The provisions state that if a defendant is suspected of committing a few relatively small offenses[25], the prosecution may reach an agreement with them by offering a sentence of no more than a year in jail in exchange for a guilty plea.

Once reached, the agreement must be approved by either the president of the High Court or another judge designated for the tribunal de grande instance. In accordance with Article 495-11, the defendant must admit his guilt in court with the help of his or her lawyer following the

[25] The French Criminal Procedure Code's Article 495-7, which was adopted in 2004, set a maximum penalty of five years in jail for offenses that could be the subject of a plea bargain. With the exception of cases of intentional or unintentional physical or sexual assault, where certain punishment limitations still apply, Article 495-7 was revised on December 13, 2011, and the punishment limit was eliminated.

conclusion of the agreement with the prosecution. The court can issue an ordinance confirming the prosecutor's suggested penalty, which has the authority to be a final sentence, based on the specific circumstances and the case's supporting evidence. As soon as the judge's ordinance is announced, it must be put into effect.

5.2.2 Italy

One of the first nations on the European continent to implement the patteggiamento[26], or plea agreement, was Italy. 'Article 45, point 2 of Law No. 81', which gave the government the authority to draft a new Code of Criminal Procedure, made it formally operative on February 16, 1987. Later, Law No. 134 of June 12, 2003, amended it to become 'Article 444 of the Italian Code of Criminal Procedure'.

Essential Elements are:

- **Eligibility**: If a sentence of less than five years in prison is anticipated, the offender may engage in a plea deal.

- **Concessions from the Prosecutor**: In return for a guilty plea, the prosecutor may: Shorten the sentence, exempt the accused from paying court costs, drop some charges or swap them out for less serious ones.

- **Pay Attention to the Sentence, Not the Charges:** The sentence, not the charges, is the primary subject of negotiation. The sentence may be lowered by one-third after approval.

- **The judge's role:** The court must be presented with the plea deal. The agreement does not bind the judge. The agreement may be rejected by the judge if the evidence is insufficient to establish guilt, or if the suggested penalty is excessively light. The judge must accept the agreement if guilt is established and the penalty is appropriate.

- **Appeal Procedure:** The 'Corte di Cassazione'[27] (Court of Cassation), Italy's highest court, which solely considers the legality and interpretation of the law, may hear an appeal against

[26] Borasi, Ivan, Il patteggiamento. Approcio di sistema alle implicazioni procesuali, Altalex Editore, Ebook format, chapters I-II
[27] G. Lattanzi, E. Lupo, 'Codice di Procedura Penale', Vol. VI, Giuffré, Milano, 1997, p. 205-215.

the approval of the plea deal.

5.2.3 Germany

In Europe, Germany is thought to have one of the most distinctive approaches to plea bargaining. Despite being widely used in practice, plea deals lacked a legal foundation until May 2009, when 'Section 257c of the German Criminal Procedure Code' was formally enacted by the German Federal Parliament. This clause, known as the "Negotiated Agreement," formally recognized plea bargaining.

Prior to 2009: Legal Practice, even in the absence of any legislative provisions, plea agreements, also referred to as Absprachen ("agreements"), were utilized in courts. Such agreements were used even in severe situations, such as drug trafficking and killing, because there were no statutory restrictions. This demonstrated that judges and prosecutors prioritized effective case resolution over rigorous adherence to procedural guidelines.

After 2009: Section 257c (Negotiated Agreement): Instead, then establishing a new practice, the new law made what was already taking place lawful. Important characteristics include:

- No offense-specific restrictions: Plea deals are applicable in all criminal cases, not just minor ones.
- Confession is required: As part of the deal, the defendant must confess in court.
- Negotiation restrictions: Reform and prevention-related measures are not negotiable.

The role of the court: Based on the facts and standard sentencing guidelines, the court may recommend a maximum and minimum punishment. The recommended punishment must be accepted by the defendant and the prosecution for the agreement to be deemed legitimate.

5.2.4 Poland

When compared to other European systems, Poland's 1998 introduction of a type of plea agreement[28] is thought to be quite distinctive.

[28] Criminal Procedure Code of Poland, Act of 6 June 1997, Article 387 para. 1-5, (English version) available on http://legislationline.org/download/action/download/id/4172/file/Polish% 20CPC%201997am% 202003 en.pdf

Essential Elements (Article 387(1), Polish Criminal Procedure Code)

- **Phase of the Agreement:** In Poland, plea deals are reached during the court hearing, as opposed to most other nations where they are reached prior to trial. At the first-instance hearing, the defendant could offer a plea deal before the first examination.

- **Application Scope:** Only misdemeanors carrying a maximum sentence of eight years in jail are covered.

- **Methodology:** Without undergoing a full trial and assessment of the evidence, the defendant may ask to be found guilty and given a certain punishment. "Voluntary submission to a penalty" is the term for this. Only when the victim, the prosecutor, and the court all agree can the agreement be approved by the court.

- **Role of the Court:** If the court determines that the penalty is inappropriate, it may reject the plea deal even if the victim and the prosecutor agree. Changes may be recommended by the court. The court must accept the updated proposal if the defendant agrees to these modifications.

- **Right to appeal:** It's interesting to note that despite the plea deal appearing to be final, the victim, the prosecution, and the criminal all retain the ability to challenge the punishment.

- **Victim's role:** A key player in this process is the victim. The victim may serve as an "auxiliary prosecutor" under Polish criminal law. This implies that the victim's rights, such as the ability to appeal, are comparable to those of the state prosecutor. Because the victim's interests are explicitly represented during the plea negotiation, this aspect enhances fairness.

6. Comparative Analysis of Plea Bargaining: USA, India, and Europe

Different legal traditions, institutional agendas, and societal settings have all influenced how plea bargaining has changed over time in various countries. Plea bargaining is crucial to criminal judicature under the US model, mainly for case management and efficiency. In 2005, India implemented plea bargaining with an emphasis on justice and judicial supervision to shorten court delays. The restricted, judge-supervised versions maintained by European

nations, which mostly have civil law systems, strike a compromise between speed and preservation of human rights and procedural safeguards.

6.1 Nature of Offense

- **USA:** Plea bargaining is widely applicable to almost all offenses, from small to major ones, and its reach is unrestricted by law.

- **India**: According to Section 289 BNSS, 2023, limited to crimes carrying a maximum sentence of seven years in jail, excluding crimes against women or children, crimes carrying the death penalty, and crimes that influence the country's socioeconomic situation.

- **Europe:** varies by nation; Italy limits sentences under five years, Germany allows extensive use with judicially enforced restrictions (Section 257c), while other nations impose various substantive or procedural constraints to maintain equity.

6.2 Role of the victim

- **USA:** Although prosecutors may take victim opinions into consideration, victim involvement is typically indirect and involves discussions between the defense and the prosecution.

- **India** is acknowledged by law, and victims have the power to reject or veto plea agreements, guaranteeing that their interests be considered.

- **Europe:** Victims frequently hold official positions; in Poland, they serve as "auxiliary prosecutors" with the ability to appeal decisions, while Italy requires victim participation and reparation rights, both of which demonstrate robust procedural protections.

6.3 Enforceability Mechanism

- **USA:** Prosecutors and defense parties arrange plea deals out of court, and after they are finalized, they are submitted for judicial approval.

- **India:** Demands that the accused make an application to start the plea-bargaining process, guaranteeing voluntariness and minimizing coercion before talks start.

- **In Europe,** several procedures are followed: Poland completes agreements during initial hearings; Italy requires judge approval and proof corroboration; Germany requires in-court confession and judicial review of penalty restrictions.

6.4 Judicial Discretion

- **USA:** Once a plea agreement has been established, judges rarely reject it, instead primarily confirming voluntariness and comprehension of the implications.

- **India:** Stronger judicial safeguards in plea bargaining are reflected in judges' broad power to accept or reject deals judged unfair or inappropriate.

- **Europe:** Strong judicial control; courts make sure that guilt is substantiated by evidence, that sentences are suitable, and that they have the power to change or reject agreements (e.g., Germany and Italy).

6.5 Finality of Plea Agreements

- **USA:** Unless there are procedural or constitutional infractions, plea agreements are normally final and binding after they are granted by the court.

- **India:** Plea agreements may be reexamined after acceptance by means of writ petitions (Articles 226, 227) or special leave petitions (Article 136), allowing for additional judicial review to avoid unjust or undue leniency.

- **Europe:** Jurisdictional protections that allow appeals or judicial review to uphold justice and rights protection result in varying degrees of finality.

6.6 Protections and the Rights of the Accused

- **USA:** Plea agreements incorporated into a long-standing adversarial system, substantial defense counsel participation, and due process rights guaranteed by the constitution.

- **India:** Demands the production of an affidavit attesting to voluntariness, comprehension of the consequences, judicial review, and the protection of the victim's interests; yet, obstacles still exist, including insufficient legal counsel and unclear procedures.

- **Europe:** To prevent injustices, integrated judicial review is used in conjunction with procedural safeguards like confessions in court, the verification of evidence, and clear restrictions on factual and legal matters (e.g., Germany's Section 257c, Italy's judicial role).

7. Conclusion

Plea bargaining is contentious. However, in the criminal judicial systems of the US, India, and Europe, it is essential, albeit to differing degrees. When combined, the comparison analysis reveals three different paths: Although efficiency and volume are given priority in the US model, it is criticized for being unbalanced and coercive. Despite prioritizing precautions and constraints, the Indian model is underutilized and mistrusted by the public. The European models offer judicial control, greater involvement of the victims, and a range of cautious integration strategies, which balance between efficiency and tradition.

Ultimately, it is crucial to maintain the balance between the rights of defendants and the effectiveness of the legal system as a success and fairness of plea bargains throughout. While monitoring the U.S. for efficiency improvements (without imitating its excesses), India can learn from Europe's careful, rights-focused approach to strengthen safeguards and victim participation. India's legal protections demonstrate to Europe how stringent laws may stop misuse. The European insistence on judicial review serves as a brake on unbridled prosecutorial power for the United States.

Thus, despite differences in culture, law, and procedure, all three systems have the goal of transforming plea bargaining into a transparent, equitable, and fair tool that supports justice and accountability in the public's eyes rather than just an administrative expedient.

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