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Plea Bargaining in Criminal Trials: Imported Doctrine or Functional Reform?

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Abstract

India's criminal justice system, currently burdened by over 52 million pending cases, faces an urgent need for procedural innovations that enhance judicial efficiency without compromising constitutional safeguards. One such reform was the introduction of plea bargaining in 2005 through the Criminal Law (Amendment) Act (CLAA), 2005 aimed at expediting minor criminal trials and reducing court congestion. This paper examines whether plea bargaining, which is largely inspired by American legal practice, fits within India's legal and constitutional framework or instead creates doctrinal and ethical tensions. The author aims to analyze statutory provisions under Chapter XXI-A of the erstwhile Code of Criminal Procedure (CrPC), 1973, the judicial interpretations emanating from key cases, and comparative insights drawn from the United Kingdom and especially the United States given that this entire concept is rooted within that country's jurisprudence. The author aims to discuss this concept's compatibility with constitutional protections under Articles 14 (equality), 20(3) (protection against self-incrimination), and 21 (life and personal liberty). Although theoretically promising, plea bargaining remains underutilized, accounting for just 0.11% of cases in 2022, as per leading reports. In this respect, the paper identifies key barriers to its adoption, including limited legal awareness, insufficient legal aid, and cultural resistance. The author argues that with robust procedural safeguards, judicial training, and transparent oversight, plea bargaining can evolve into an effective tool to balance expediency with fairness in India's criminal justice process.

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Introduction

The Indian criminal justice system today faces a formidable crisis in the form of judicial backlog. This is as grave a concern as it gets in a country which already has such skewed socio-economic markers and where legal aid is something that the government focuses on too much because of being cognizant of how poor the spectrum of access to justice is. With over 52 million cases pending across the country as of 2025^[1], of which millions pertain to criminal matters, courts are overwhelmed, under-resourced, and chronically delayed, to say the least. These delays rightly erode public faith in the justice system and disproportionately harm undertrial prisoners, who languish in jails for years awaiting trial.

Against this perpetual background, plea bargaining emerged in India as a legislative experiment aimed at achieving procedural efficiency and judicial economy. The CLAA, which inserted Chapter XXI-A into the CrPC, marked a major shift in India's approach to criminal trials. Currently, these provisions pertaining to plea bargaining are enshrined under Chapter XXIII of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. Despite the supposed major shift in approach, the introduction of plea bargaining raises foundational questions. The main issue is that whether plea bargaining functions as a reform tailored to India's judicial needs or constitutes a doctrinal dissonance, reflecting an importation of U.S.-style practices that may be incongruent with India's legal philosophy. This paper seeks to answer this very question by examining the theoretical foundations, legislative framework, judicial interpretations, comparative insights, and constitutional implications of plea bargaining in India. It further evaluates whether the practice aligns with Indian legal traditions, or whether it risks compromising core criminal justice values such as voluntariness, fairness, and the right to a fair trial.

Theoretical Foundations of Plea Bargaining

Plea bargaining, defined as a process where an accused person negotiates with the prosecution to plead guilty to a lesser charge or to receive a reduced sentence in exchange for certain concessions, has become an integral part of criminal justice systems globally. Most notably, it is seen in the United States, where it has evolved into a prominent mechanism used during criminal cases. Although framed as a compromise-based model of adjudication, it still leads to various legal and ethical debates, particularly in jurisdictions like ours where adversarial trial and procedural fairness are deeply embedded within our legal systems.

The historical development of plea bargaining in the United States can be traced back to the late 19th century, with one of the earliest documented cases being that of Albert McKenzie in 1881^[2], who pled guilty to embezzlement in California. The practice gained widespread traction during the early 20th century, particularly during the Prohibition era when federal prosecutions increased exponentially, creating pressure that only increased on courts to manage burgeoning dockets. By the 1920s, guilty plea rates in several American cities ranged from 74% to 90%, signalling a system-wide shift toward efficiency over full trials^[3]. The U.S. Supreme Court in *Brady v. United States*^[4] formally upheld the constitutionality of plea bargaining, provided the plea was made voluntarily, knowingly, and intelligently, and the accused fully understood the consequences, including the waiver of the right to a trial and appeal.

In its contemporary form, the American system of plea bargaining resolves nearly 90% to 95% of all criminal prosecutions^[5], encompassing various forms such as charge bargaining, sentence bargaining, and fact bargaining. Various studies suggest that defendants who accept plea deals often receive significantly reduced sentences, sometimes nearly two-thirds less than if they were convicted at trial. This reduction underscores the clear practical appeal of plea bargaining in managing sentencing outcomes and in turn also alleviating caseload burdens. It is attractive to the undertrial obviously and at the same time if it does come through, the courts have no reasons to shy away from it.

Now, the entire concept of plea bargaining rests on a dual premise of efficiency and fairness. The efficiency rationale is apparent in its ability to reduce trial delays, conserve judicial resources, and facilitate quicker resolutions, especially in jurisdictions like ours where the courts are burdened with cases. This rationale gained strength amidst rising crime rates, expanded and more exhaustive criminal legislations, and the general administrative constraints of modern criminal justice systems. Simultaneously, the fairness argument hinges on the voluntary nature of the plea, the importance of avoiding wrongful convictions through informed choices, and the preservation of agency for the accused, aligning the practice with broader due process ideals.

Nevertheless, critics contend that these theoretical ideals often falter in practice. Concerns about coerced confessions, particularly under the pressure of prolonged pre-trial detention, have emerged as significant challenges. The imbalance in power between prosecutors and defendants can coerce pleas, even from innocent individuals, who may accept a deal simply to avoid the uncertainty or harshness of a trial conviction. Scholars have noted that plea bargaining may shift the criminal process away from truth-finding to outcome management, compromising the normative goals of criminal adjudication.

In the Indian context, the trajectory of plea bargaining has been quite different. Here, we prioritise adversarial procedure and truth-finding. Indian criminal law has historically resisted compromise-based modes of resolution. As mentioned previously, plea bargaining was formally introduced in India through the CLAA, which inserted Sections 265A to 265L into the CrPC^[6]. The objective was to reduce judicial backlog, streamline minor criminal prosecutions, and afford certain procedural relief to willing accused persons.

In India, plea bargaining is available only for offences punishable by imprisonment not exceeding seven years, and it specifically excludes cases involving offences against women and children under 14, as well as those affecting the socio-economic fabric of the country^[7]. This sort of applicability with certain exceptions clearly reflects a cautious policy approach that seeks to preserve the integrity of criminal adjudication in serious or sensitive matters. The process begins with an application by the accused, followed by in-camera proceedings before the court to ensure voluntariness. A mutually satisfactory resolution may involve a reduced sentence or compensatory measures, but always requires the court's satisfaction that the process is just and free from coercion^[8].

Despite its formal incorporation, plea bargaining has seen very limited uptake in India. A 2024 report by the Ministry of Law and Justice^[9] documented negligible use of the provision, despite the growing backlog of cases across Indian courts. The reluctance is attributed to multiple factors, including a strong cultural emphasis on the sanctity of trial, distrust in negotiated justice, lack of awareness among accused persons, and hesitation among prosecutors. The rare instances where plea bargaining has been employed, such as, for example, in the case of foreign nationals from the Tablighi Jamaat seeking expedited resolution for visa-related violations, remain isolated and exceptional.

While India has consciously adopted a narrower version of plea bargaining than its American counterpart, the divergence between the two systems is significant. The author shall elaborate more on this in the section dealing with comparative analysis but for now, we need to understand that in the United States, the practice has evolved into a systemic necessity, albeit one that has attracted substantial criticism for undermining trial rights and fostering prosecutorial overreach but, in India, it remains a cautious innovation, restricted by both law and legal culture, and surrounded by concerns about procedural justice, voluntariness, and constitutional consistency. Even as both jurisdictions grapple with the tension between efficiency and fairness, India's statutory exclusions and judicial oversight mechanisms underscore a foundational commitment to ensuring that negotiated pleas do not erode core principles of criminal justice.

Legislative Framework of Plea Bargaining in India

I. Insertion of Chapter XXI-A, CrPC

Plea bargaining was introduced in India by the CLAA, which inserted Chapter XXI-A (Sections 265A to 265L) into the CrPC. This legislative move drew upon the recommendations of the 142nd, 154th, and 177th Law Commission Reports and

the Justice Malimath Committee on Criminal Justice Reform (2003), all of which emphasized the need to address trial delays and reduce case backlogs.

II. Scope and Eligibility

As mentioned above, the statutory framework confines plea bargaining to offences punishable with imprisonment up to seven years. Excluded from its scope are heinous offences such as those involving women and children under 14, socio-economic offences, and cases involving death or life sentences. This reflects a conscious tailoring of the U.S. model to Indian realities, where serious crimes remain outside the reach of negotiated justice.

III. Procedure and Safeguards

Under Sections 290 and 291 of the BNSS, the plea bargaining process is initiated by the accused within thirty days from the framing of charge, through an application accompanied by an affidavit affirming that the plea is made voluntarily, with full understanding of the punishment prescribed for the offence, and that the accused has not previously been convicted for the same offence. Upon receiving the application, the court issues notice to the Public Prosecutor or complainant and conducts an in-camera examination of the accused to verify voluntariness and eligibility.

If the court is satisfied, it allows a time period not exceeding sixty days for the parties to arrive at a mutually satisfactory disposition, which may include compensation to the victim and other case-related expenses. As provided under Section 293^[10], once an agreement is reached, the court disposes of the case by awarding compensation, and after hearing the parties, may sentence the accused to a reduced punishment: either half or one-fourth of the minimum prescribed sentence, or lesser fractions based on whether the accused is a first-time offender. Crucially, under Section 295^[11], no appeal lies against the judgment, reflecting the finality of plea-based convictions.

Judicial Reception and Constitutional Scrutiny

Plea bargaining in India has undergone a gradual shift, from early judicial disapproval to cautious acceptance after formal legislative adoption in 2005. Prior to its statutory recognition, Indian courts viewed plea bargaining with deep scepticism, primarily due to concerns about coercion, fairness, and the potential compromise of constitutional safeguards. In *Kasambhai Ardul Rehmanbhai Shaikh v. State of Gujarat*^[12], the Supreme Court warned that plea bargaining could erode the legitimacy of the trial process by inducing guilty pleas that undermine justice. A similar note of caution was struck in *Thippaswamy v. State of Karnataka*^[13], where the Court held that involuntary or induced pleas could violate Article 21's guarantee of life and personal liberty.

Earlier jurisprudence reinforced this apprehension. In *Madanlal Ramachander Daga v. State of Maharashtra*^[14], the Court discouraged bargaining, though it allowed sentencing leniency in exceptional circumstances. *Muralidhar Megh Raj v. State of Maharashtra*^[15] echoed disapproval, warning against informal plea agreements that could result in lenient sentences without proper judicial scrutiny. Similarly, in *Ganeshmal Jasraj v. Government of Gujarat*^[16], the Court expressed concern about superficial assessment of evidence in plea-bargained convictions. Perhaps most directly, *Kachhia Patel Shantilal Koderlal v. State of Gujarat*^[17] held that plea bargaining was

unconstitutional, illegal, and susceptible to corruption. The Court reiterated in *State of U.P. v. Chandrika*^[18] that sentencing should not rest solely on guilty pleas and that convictions must be based on merit following a proper trial. This judicial resistance shifted following the introduction of Chapter XXI-A (Sections 265A to 265L) of the CrPC through the CLAA. As clarified in Section 265L, or Section 300 in its present form under the BNSS, this excludes socio-economic offences and crimes against women and children under fourteen. The change was sought to address massive pendency of over five crore cases by 2023, as was also noted by Law Minister Arjun Ram Meghwal in the Rajya Sabha^[19]. Post-reform, courts began to accommodate the new framework. In *State of Gujarat v. Natwar Harchandji Thakor*^[20], the Gujarat High Court acknowledged the utility of plea bargaining for minor offences, provided safeguards of voluntariness and fairness were observed. The Supreme Court further endorsed the mechanism in *Re: Policy Strategy for Grant of Bail* (2022)^[21], where it integrated plea bargaining into broader disposal strategies alongside compounding and probation.

Despite these developments, usage remains minimal, as mentioned in the 2024 Ministry of Law and Justice Report. It was revealed that only 0.11% of criminal cases in 2022 were resolved through plea bargaining. Historical data from 2015 to 2018 show similarly low uptake. Even high-profile applications, such as those by foreign nationals in the 2020 Tablighi Jamaat case^[22], as mention earlier, remain rare. Cultural stigma around admitting guilt, lack of awareness, and judicial inertia when coupled with India's commitment to adversarial truth-finding, continue to limit its adoption. Still, judicial attitude has evolved significantly, yes, that much is undeniable, but future uptake will depend on broader structural and cultural reforms.

Comparative Analysis: The US and The UK Perspectives

Plea bargaining, though conceptually uniform in offering reduced sentences in exchange for guilty pleas, manifests differently across jurisdictions. The United States, United Kingdom, and then India each reflect distinct legal frameworks and cultural dispositions in their adoption and implementation of the practice.

In the United States over 95% of prosecutions are concluded through negotiated pleas. The U.S. Supreme Court upheld its constitutionality in *Brady v. United States* (1970), emphasizing the need for voluntariness and informed waivers of trial rights. However, the "trial penalty", which is the significant difference in sentencing between those who plead and those who go to trial has drawn criticism. The Innocence Project has documented that approximately 11% of DNA exoneration cases involved defendants who had entered guilty pleas, illustrating the risk of false confessions driven by fear of harsher sentences. Systemic inequities further deepen this concern. Studies by NYU and the National Registry of Exonerations indicate that Black and low-income defendants are more vulnerable to coercive plea deals, partly due to overburdened public defenders and unequal bargaining power. Critics argue that this prosecutorial dominance undermines the adversarial balance and transforms judicial proceedings into negotiations skewed against the accused.

In contrast, the United Kingdom employs a structured and judicially supervised model. Under the Sentencing Act, 2020 and Sentencing Council Guidelines, the U.K. permits standardized sentence reductions for early guilty pleas of up

to one-third at the first hearing, decreasing to one-tenth closer to trial. The judiciary applies these discounts without direct negotiation between prosecution and defence, promoting transparency and consistency. In 2018–19, 78% of magistrates' court cases and 71% of Crown Court matters were resolved by guilty pleas. Yet, concerns persist. Critics have questioned whether such discounts in serious offences like murder diminish public trust in the justice system. Additionally, the model's requirement of unequivocal admissions of guilt may be impractical where legal advice is delayed or evidence remains unclear. Nonetheless, the UK's emphasis on judicial oversight does significantly mitigate risks seen in more discretionary systems like that of the U.S. India's experience is more restrained and recent. As discussed, plea bargaining in India is limited to offences punishable by up to seven years' imprisonment. It also excludes crimes against women, children under 14, and socio-economic offences. The process must be initiated by the accused within 30 days of charge framing and is subject to judicial scrutiny. Despite the legislative intent to alleviate a huge backlog of cases, uptake has been minimal. In India, in my view, there is stigma around guilt, and a lack of awareness among litigants and lawyers, and limited access to quality legal aid.

While the American model illustrates risks of overreliance and the British system showcases structured fairness, India's challenge lies in operationalizing the model. Addressing legal, cultural, and infrastructural gaps is crucial to ensure that plea bargaining in India evolves into an effective, constitutionally sound procedural tool.

Empirical and Doctrinal Evaluation

Despite its introduction in 2005, plea bargaining remains underutilized. At the cost of repetition, the Ministry of Law and Justice's 2024 report notes that less than 0.11% of criminal cases were resolved this way. This can be attributed to the barriers as mentioned above.

Victim participation, mandated under Section 265C of the CrPC and Section 292 of the BNSS, often falls short, with studies indicating that victims feel marginalized, undermining restorative justice potential. Similarly, public prosecutors, overburdened and undertrained, struggle to negotiate fair agreements. Enhancing victim support and prosecutor training could bolster the mechanism's effectiveness.

Scholars argue that plea bargaining's restorative potential remains untapped, risking its reduction to a tool for procedural expediency without significantly reducing undertrial populations or enhancing victim compensation. The appeal bar under Section 265G (Section 292 under the BNSS) also raises concerns about potential miscarriages of justice.

Constitutional and Policy Challenges

Plea bargaining, while introduced in India through the CLAA, has faced significant constitutional and policy challenges. Its alignment with Articles 14, 20(3), and 21 of the Indian Constitution remains a subject of debate.

Article 20(3) safeguards individuals against self-incrimination. The requirement for an accused to plead guilty under plea bargaining may conflict with this right, especially if the plea is influenced by the promise of a reduced sentence. The Supreme Court, in *Thippaswamy v. State of Karnataka*, held that inducing an accused to plead guilty under assurance

of leniency violates Article 21, which guarantees the right to life and personal liberty. Similarly, in *Murlidhar Meghraj Loya v. State of Maharashtra*, the Court criticized plea bargaining, emphasizing that it undermines the integrity of the criminal justice system.

Article 14 ensures equality before the law. However, disparities in bargaining power can lead to unequal outcomes. Wealthier or more informed defendants might secure more favorable deals, while marginalized individuals, lacking adequate legal representation, may be coerced into unfavorable agreements. This disparity challenges the principle of equal protection under the law.

Policy-wise, the implementation of plea bargaining in India faces hurdles. Legal aid, mandated under Article 39A, is often inadequate. Many defendants, especially from economically weaker sections, lack access to competent legal counsel, leading to uninformed or coerced pleas. Furthermore, the absence of a robust appeal mechanism in plea-bargained cases raises concerns. Decisions made under plea bargaining are typically final, with limited avenues for appeal, potentially compromising justice if the plea was not truly voluntary.

Judicial training on plea bargaining procedures is another area requiring attention. Without proper training, judges may not effectively ensure that plea bargains are entered into voluntarily and with full understanding of the consequences. This gap can lead to miscarriages of justice, where defendants are unaware of their rights or the implications of their pleas. In conclusion, while plea bargaining aims to expedite the judicial process and reduce case backlogs, its current implementation in India raises constitutional and policy concerns. Ensuring that plea bargains are truly voluntary, informed, and equitable is essential to uphold the rights enshrined in the Constitution and maintain the integrity of the criminal justice system.

Concluding Remarks

Plea bargaining in India stands at a crossroads between practical reform and imported doctrine. Its legislative design, tailored to exclude serious offences and ensure judicial oversight, reflects adaptation to Indian conditions. To realize its potential, the following measures are crucial:

- Ensure all accused have access to competent counsel for informed decisions.
- Equip judges to oversee plea bargaining effectively.
- Allow limited appeals for manifest injustices.
- Explore broadening the scope while safeguarding due process.

Plea bargaining is not inherently incompatible with Indian jurisprudence, but its success hinges on reinforcing doctrinal foundations, implementing robust safeguards, and prioritizing justice over efficiency.

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