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A STUDY ON CONCEPT OF PLEA BARGAINING **IN INDIA**

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ABSTRACT

According to Bhartiya Nagarik Suraksha Sanhita 2023, plea bargaining is a negotiating arrangement in criminal proceedings wherein the accused consents to enter a guilty plea to a lesser charge or punishment in exchange for certain concessions. The Bhartiya Nagarik Suraksha Sanhita 2023 replaced the previous laws and established the current statutory framework governing plea bargaining and criminal procedure in India. It was first introduced by the Criminal Law Act, 2005 by amendment and went into effect in July 2006 as Chapter XXI-A of the CrPC. The main objective or intention of the plea bargaining was to reduce the large backlog of criminal proceedings, and the accused suffering from long trials. It's also provides faster justice to the victim and victim interests.

Plea bargaining is restricted by the statutory legal rules to offenses that BNSS permits under sections 289 to 300 of chapter XXIII, which provides provisions for plea bargaining in criminal procedures. Plea bargaining is only available for crimes carrying sentences shorter than seven years in prison; it does not apply to crimes against women and children or socioeconomic crimes. The accused must not employ compulsion during the plea negotiating process, and the court will then verify that the accused applied willingly and without coercion. If satisfied, the process will be continued. While the provisions also highlight the critical circumstances which lead to coercion risks, fairness issues, and under-utilisation due to legal and practical limitations.

This paper analyses the evolution, objectives, legal framework (including BNSS 2023 revisions), comparative practices, and judicial arguments surrounding plea bargaining in India. It recognises that despite statutory backing, its narrow scope and procedural barriers have limited its influence. Recommendations include raising awareness, safeguarding voluntariness, and expanding the scheme to better balance efficiency with justice and victim interests.

INTRODUCTION

Plea bargaining is one of the various statutory legal systems that support fair justice and safeguard an individual's fundamental rights in a variety of situations, including civil and criminal. ¹ Plea bargaining is an out-of-court negotiated agreement in criminal proceedings wherein the accused takes a guilty plea to some or all of the accusations in exchange for concessions. This agreement made between the prosecution and accused without a full trial. There are three main types of plea bargaining in Indian criminal justice system under the statutory provisions (BNSS 2023) are Charges plea, facts plea and sentence plea. In India, for plea bargaining there are limitations on offences to plead guilty. It is only applicable on offences punishable below 7 years of jail and does not extend offences punishable against socio economic or offences against women and children. In Indian legal system, it is mandatory to take victim consideration, typically any plea settlement considered the compensation of the victim.

EVOLUTION AND HISTORICAL BACKGROUND-

Plea bargaining has been around for centuries in other nations, such as early English confession laws. ¹ By the 20th century, the idea had gained popularity in the American legal system as a result of overcrowded courts and the need to expedite criminal trials. In United States, over 90% of criminal cases resolves with the help of guilty pleas rather than trials. In India, the idea of plea bargaining was a "Day Late and A Dollar Short," which suggests that it was implemented after the judges fiercely opposed it. For example, Murlidhar² Meghraj Loya v. State of Maharashtra Etc 1976 declared plea bargaining to be "evil" and unconstitutional. However, the³ Malimath Committee and 6Law Commission submitted its report recommending the plea bargaining across 142nd, 154th, and 177th Reports called for reform after realizing the courts backlogs, long trials and delays in criminal cases. Later on, the parliament enacted sections 265A-265L in Crpc in 2005 and came into effect in July 2006.

OBJECTIVES

Plea bargaining's primary goals are quick justice in criminal cases and a reduction in the backlog of cases. It aims to give victim relief through a compensation by plea settlement and

¹ Albert W. Alschuler, Plea Bargaining and Its History, 79 Columbia Law Review 1 (1979).

² Murlidhar Meghraj Loya v. State of Maharashtra (1976) 3 SCC 684

³ The Law Commission of India 142nd Report on Concessional Treatment for Offenders who on their own initiative chose to pleas guilt without any bargaining.

faster resolution to ensure faster and fair justice. ⁴In defence of plea bargaining, the supporters argue that it saves court time and reduces overcrowded courts by solving cases without lengthy trials and provides certainty to victims which rescue them from public trials. However, the opposition argues that the plea bargaining might weaken the Indian Constitution by coercion the innocent to plead guilty and lead to unfair trial. They caution that defendants (especially the destitute ones) might plead guilty because of the pressure from prosecution regardless of their actual guilt or let criminals off too easily. They argue that when legal outcomes are decided behind closed doors through compromise rather than openly in a court of law, the public may lose trust in the fairness and integrity in the legal system. The debate between this is about finding the right balance on plea bargaining's role in India.

RESEARCH GAP

Although plea bargaining is recognized under Indian law, it is still not frequently utilized. There is still limited empirical research and data which shows the less effectiveness of plea bargaining in criminal system. Many scholars believe on basis of official statistics plea agreements are scant. Key unsettled issues are that whether the current statutes are genuinely alleviate the court backlog, how voluntariness is achieved in practice, and how victims' interests are safeguarded. This research aims to fill that gap by studying law, provisions, procedures and reported cases as well as by comparing India's approach with worldwide practices.

RESEARCH QUESTIONS.

1. Whether the plea bargaining helps to contribute for the improvement of criminal justice system by delivering the achievement the goals of case management, reduce pendency and expediting the disposal of cases?
2. Does the plea procedure pressurized the accused even the innocent one to plead guilty just to get lighter penalties or to escape from the public trials which leads to unfair trials and questions the integrity in the legal system?
3. What impact do plea deals have on victims of crime? Are their interests and rights are protected by law, or do they remain ignorant in the process?
4. Under what circumstances have Indian courts (especially the Supreme Court) refused to examine plea agreements, even if they may shorten the trial?

⁴ www.ijlra.com

OBJECTIVES OF THE STUDY

The objective of this study are:

1. To understand the procedure utilized in these circumstances and to examine the legislative framework that controls plea bargaining in India, particularly the provisions under Chapter XXI-A of the CrPC and the related sections of the BNSS.
2. To determine and examine the categories of crimes for which Indian law permits or prohibits plea bargaining.
3. To investigate the efficacy, legality, and practical operation of plea bargaining in India, with an emphasis on its use following the implementation of the BNSS.
4. To assess the impact of plea bargaining on the criminal justice system, specifically with regard to the timely resolution of cases, the preservation of victims' interests, and the defense of accused individuals' rights, utilizing statutory provisions, court decisions, and legal research.

HYPOTHESIS

Plea bargaining can assist reduce case backlogs and the stress of India's congested courts without compromising justice if it is effectively implemented with the safeguards provided by sections 289–300 of the Bhartiya Nagarik Suraksha Sanhita BNSS 2023. However, using the advantages of plea bargaining and better balancing efficiency with justice and victim interests may be challenging due to pressure, stringent constraints, and ignorance.

RESEARCH METHODOLOGY

This study uses a doctrinal and analytical approach. Statutory documents that analyze plea bargaining are among its primary sources such as The Code of Criminal Procedure, 1973 (Sections 265A–265L) and the Bharatiya Nagarik Suraksha Sanhita, 2023 (Sections 289–300), as well as significant rulings from the Supreme Court of India and comparable U.S. precedents. This study uses a doctrinal and analytical approach. The study examines the legal framework within which plea bargaining decisions are expected to be made, relying on available secondary statistics, rather than conducting empirical research regarding the frequency or prevalence of plea bargaining applications among accused persons, prosecutors, or courts. As a result, it does not attempt to make general claims regarding the conduct of prosecutors, or judicial officers based on primary data collection.

TYPES OF PLEA BARGAINING

In the Indian criminal court system, there are three primary types of plea bargaining: 1. charge negotiating, 2. Bargaining over sentences, and 3. Bargaining over facts.

The definition and procedure of plea bargaining are provided by BNSS 2023. There are various types of plea bargaining, which are typically categorized as:

1. Charge bargaining: in exchange for a concession, the accused enters a guilty plea to a reduced charge. Under the "mutually satisfactory disposition" paradigm, Indian law implicitly authorizes charge bargaining as long as the reduced offense is within the seven-year sentencing cap.
2. Sentence bargaining: When a defendant enters a guilty plea to one or more charges in return for a reduced sentence. This agreement made between the prosecution and accused, instead of charges dropped it's get lighter punishment than maximum.
3. Fact Bargaining: The accused agrees to certain factual admissions, which lessens the prosecution's burden of proof on those facts, in exchange for the prosecution agreeing not to introduce certain potentially damaging facts during the trial. (In reality, this type is rare and largely frowned upon in India.)

OFFENCES PERMITTED FOR PLEA BARGAINING

Plea bargaining is only available for very minor offenses in India. CrPC Section 265D (now BNSS §289) Only offenses with a maximum sentence of seven years or less are eligible for plea negotiation. What that means is only cases such as theft, simple assault, forgery, etc. are eligible. No offence punishable by life imprisonment or by the death penalty shall be allowed. In practice, governments have also excluded some serious categories. For instance, plea bargaining is not permitted for offenses that "impact socio-economic situations" or are "committed against a woman or a child," according to BNSS Sec. 289(2). This is in line with policy, which limits plea options to regular, first-time, non-violent cases. Minor property offences, frauds, and personal disputes that would result in light jail sentences or fines are typical examples of cases that are allowed. Both repeat offenders and those with prior convictions are legally prohibited from negotiations (they must be first-time offenders).

OFFENCES EXCLUDED FROM PLEA BARGAINING

Plea bargaining is not permitted for major and heinous crimes under Indian criminal code (Bhartiya Nagarik Suraksha Sanhita 2023). Excluded offences are death or life imprisonment

crimes, offences specifically barred like socio-economic offences such as NDPS act drugs, Prevention of Corruption Act, major economic crimes, etc and offences against women and children.

In short, not only heinous crimes which is punishable up to 7 years of jail, but also crimes which are against women and children, drugs act and major economic crimes.

LEGAL PROCEDURE OF PLEA BARGAINING

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023's Chapter XXIII describes the plea bargaining process. It creates a legal framework that allows an accused person to negotiate a settlement with the prosecution and, if needed, the victim. The process is largely based on the structure for plea bargaining that was in place under Chapter XXI. The new criminal procedure law incorporates A of the Code of Criminal Procedure (CrPC).

1. **Application submission:** Within 30 days of the charge being framed, the accused may enter into a plea agreement under Section 290 BNSS. The situation and the offense must be succinctly mentioned in the application. It should be supported by an affidavit to the effect that the accused has voluntarily opted for plea bargaining, understands the nature of the offense and its punishment and has no previous conviction for the same offense.
2. **Notification to the Victim and Prosecutor:** The prosecutor and, if relevant, the victim are notified by the court upon receipt of the application.
3. **Preliminary hearing for voluntariness:** the accused may be questioned by the court outside of the courtroom (in camera) to make sure the plea is fair, informed, and voluntary. The judge can also consider objections from the prosecutor or victim about the fairness proceedings. And of the court finds out that the accused pleaded guilty out of coercion or pressure, it can reject the bargain and the case proceeds with formal trials.
4. **Negotiation period:** If the plea is voluntary, the court gives the prosecution and the accused up to 60 days to negotiate a mutually agreeable plea. This process includes the judge, prosecutor, accused, the victim and their advocate. In Indian criminal system, victim presence ensures the interest especially at the time of compensation.
5. **Settlement and Report:** after the parties finalize the agreement and give report to the court. The final decision is relied on court order. The court can accept, reject or can modify the plea.
6. **Final Order:** after the acceptance, the court passes a sentence as per the agreement.

Although courts can limit the sentencing rather than no sentence. The court can also record all the procedures on record. And lastly, the final plea order can have no appeal by the accused and only leave to appeal in the Supreme Court.

LEGAL FRAMEWORK

Plea bargaining is legal in India and is subject to specific statutory provisions. By adding Sections 265A to 265L to the Code of Criminal Procedure, 1973 (CrPC) under Chapter XXI-A, the Criminal Law (Amendment) Act, 2005 formally established the system. These clauses created an appropriate legal process for plea bargaining and went into effect in 2006. They address things like applying, being questioned by the court, having conversations with the parties involved, coming to a mutually agreeable resolution, and deciding on the punishment. The process is designed to guarantee that the accused takes part voluntarily and that it is overseen by the court without the use of coercion or undue influence.

While making some procedural adjustments, the BNSS essentially maintains the previous framework. For instance, it gives you 30 days to submit your plea-bargaining application and 60 days to finish the negotiation process. Its scope excludes certain offenses, such as specific offenses involving women, children, and socioeconomic conditions.

Judicial decisions and Case Law

Indian courts generally disapproved of informal plea bargaining prior to its statutory recognition. In *Murlidhar⁵ Loya v. State of Maharashtra* (1985), the Supreme Court voiced concern that informal agreements should not imperil criminal justice, emphasizing that an accused individual should not be convicted through an improper or forced arrangement.

The Court distinguished between plea negotiating and a standard guilty plea in *State of Gujarat v. Natwar Thakor* (2005). The circumstances and process used in the specific case must also be taken into account; simply admitting guilt does not imply that plea bargaining has occurred.

Since plea bargaining was acknowledged by statute, courts have accepted the procedure when it is conducted in compliance with the law. Judicial rulings, however, continue to emphasize that the victim's participation and interests must not be disregarded, the accused must provide free and voluntary consent, and the prescribed procedure must be followed. The significance of true consent and appropriate protection of the victim's rights is emphasized by rulings like

⁵ *Murlidhar Meghraj Loya v. State of Maharashtra* (1976) 3 SCC 684

⁶ <https://indiankanoon.org/doc/1439610/>

⁷Susheela Singh v. Dhanraju (2022) and Urmila v. State (2022).

In short, although plea bargaining is permitted in India, it cannot be considered a casual way to avoid going to trial. The victim's rights and interests, as well as those of other relevant parties, must be properly taken into account by the court.

PLEA BARGAINING OUTSIDE INDIA

The global perspective on plea bargaining: Plea bargaining is employed in numerous countries across the globe. The process, extent, and legal protections, however, vary by nation.

Plea bargaining is a prevalent practice in the United States. The great majority of criminal matters are settled by plea agreements rather than full trials. The U.S. Supreme Court has recognised plea bargaining as constitutionally valid when the accused understands the consequences and gives the plea freely and voluntarily.

In ⁸United States v. Brady (1970) case, the U.S., the Supreme Court decided that the accused's fear of a heavier punishment after trial does not invalidate a guilty plea. The Court recognized that plea bargaining can have a big impact on the criminal justice system as long as the accused makes an informed and willing decision. Additionally, the Court held in ⁹The Santobello v. New York (1971) that a commitment made by the prosecution to the accused during plea talks must be honored. An assurance included in the plea deal cannot be revoked by the prosecution.

Certain forms of plea bargaining are also permitted in the United Kingdom and Australia. In some situations, an accused individual may agree to enter a guilty plea to a less serious charge. But instead of being completely bound by a deal between the prosecution and the accused, the judge usually retains the power to determine the proper sentence. Charge bargaining is allowed in England, but prosecutors are usually not allowed to promise a sentence.

Additionally, countries like France and Germany did not employ plea bargaining in the same manner as common-law countries. However, limited forms of negotiated settlements or plea agreements for specific types of criminal cases have been introduced in recent years due to legal developments and reforms.

As a result, the United States is the country that uses plea bargaining the most, while other nations use more limited or structured versions of the practice. While the processes differ, they all aim to settle appropriate criminal cases without necessitating a full trial while upholding the necessary legal protections.

⁷ <http://indiankanoon.org/doc/164173419/>

⁸Brady v. United States, 397 U.S. 742 (1970).

⁹ Santobello v. New York, 404 U.S. 257 (1971).

CONSTITUTIONAL PROVISION

Plea bargaining is linked to several fundamental principles even if it is not specifically permitted by the Indian Constitution. ¹⁶The entitlement to a just and prompt trial is guaranteed by Article 21, and by cutting down on needless delays, plea bargaining can help criminal cases be resolved more quickly. But the procedure must always be impartial and devoid of any kind of coercion or pressure. By reducing the time and costs associated with protracted criminal proceedings, plea bargaining can support ¹⁰Articles 38 and 39A, which promote equal access to justice and seek to make the justice system affordable and accessible to everyone. A guilty plea must be entered voluntarily and with appropriate legal counsel because Article 20(3) prohibits an accused person from being forced to testify against themselves. Equality and justice before the law are further guaranteed by Article 14. The practice of plea bargaining must abide with Articles 14, 20(3), and 21 in order to maintain fairness, voluntary participation, legal aid, and speedy justice.

IMPORTANT ROLE OF VICTIMS

Victims Role in plea bargaining.

In India, victims are heavily involved in the plea negotiating process. They are granted certain rights to safeguard their interests and are not entirely shut out of the proceedings.

1. Details for the Victim: ¹¹The victim should be notified when a plea bargaining application is made in a case that is based on a police report. This enables the victim to understand that the accused is attempting to resolve the issue through plea negotiations.
2. Possibility of Participation: Participation in the settlement process is permitted for the victim or their representative. They are welcome to attend the meeting and voice any concerns, objections, or opinions they may have about the proposed settlement.
3. Payment to the Victim: A settlement between the parties may include compensation. The victim may be entitled to damages or compensation from the accused. This promotes the concept of restorative justice and aids in addressing the victim's loss or harm.
4. Ignorance: The fact that many victims are unaware of these rights is a significant issue. In certain situations, they might not be adequately involved by the prosecution, and others might not have an attorney to help them through the process.

¹⁰ IC art. 14, 20(3), 21, and 39A
India code-<https://indiacode.gov.in/>

¹¹ Bharatiya Nagarik Suraksha Sanhita, 2023, Section 291(4)(a) and Section 292.

5. Potential for Pressure: In comparison to the accused or other parties, a victim may occasionally be in a weaker position. As a result, it's possible that the victim will be coerced into taking less money than what might be fair given the harm they endured.

Appropriate Court Supervision Is Needed. Therefore, it is crucial for courts to guaranty that the victim's rights are adequately upheld during plea negotiations. The process should consider the victim's suffering, interests, and right to just compensation in addition to providing relief to the accused.

In India, victims can participate in the process and seek compensation through plea bargaining. However, these safeguards can only be effective if victims are adequately informed, given a real chance to voice their opinions, and the court takes great care to protect their interests.

ADVANTAGES

Under Bharatiya Nagarik Suraksha Sanhita, 2023, Section 291(4)(a) and Section 292, Plea bargaining has several advantages for the criminal justice system such as:

1. Fast Case Disposal

Eligible criminal cases can be settled more quickly through plea bargaining than through a drawn-out trial. This helps courts administer justice more quickly and minimizes needless delays.

2. Decrease in Case Pendency

There are still a lot of criminal cases pending in court. Courts' workload can be decreased by using plea bargaining to resolve appropriate minor cases, freeing them up to focus more on serious and complicated cases.

3. Conserving Resources, Money, and Time

Repeated hearings, witness examinations, police work, evidence gathering, and forensic procedures may all be part of a typical criminal trial. Many of these procedures can be avoided through plea bargaining, saving the parties and the legal system time, money, and resources.

4. Increased Confidence in the Outcome

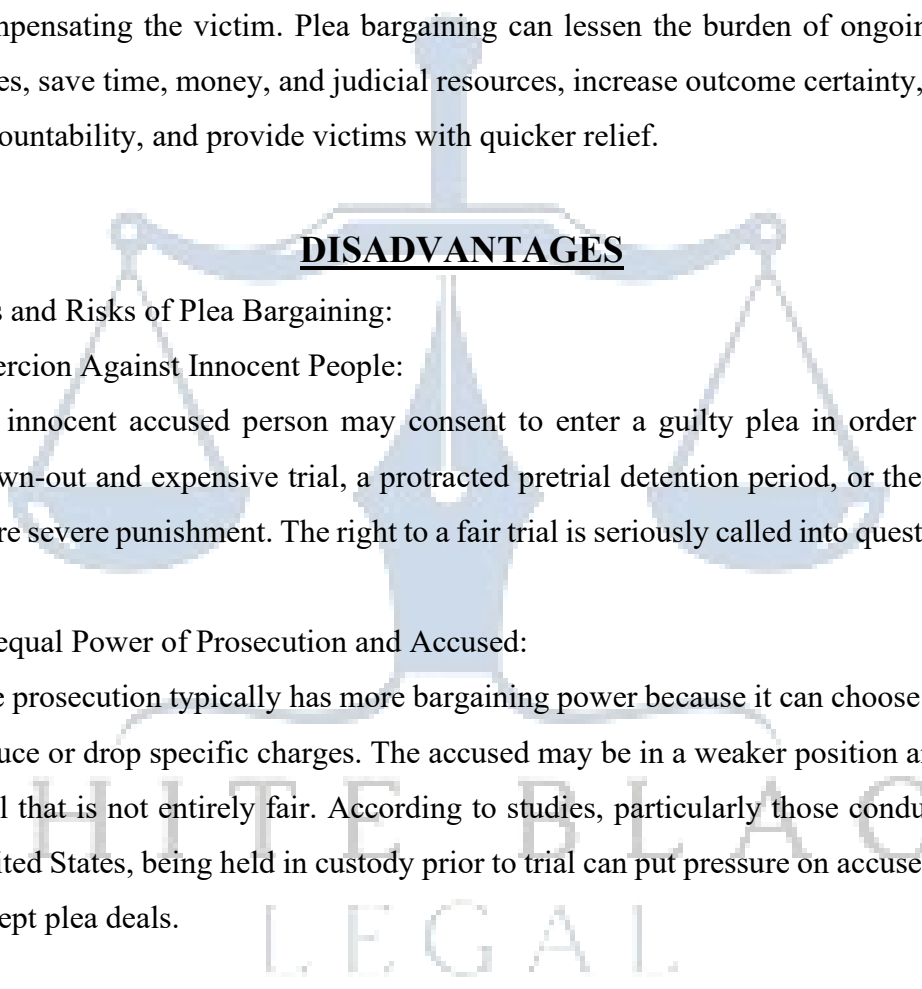
Plea bargaining increases the likelihood of a case's outcome. The prosecution can obtain a conviction without the risks and delays associated with a protracted trial, while the accused can avoid the uncertainty of a full trial and the potential for a harsher punishment.

5. More Cases Resulting in Conviction

Because the accused agrees to submit a guilty plea under the conditions permitted by law, the case may result in a conviction without a full trial. This can improve accountability and guaranty that the accused will be held legally responsible for their actions.

6. Quicker Victims' Relief

Instead of waiting for a trial that might take a long time, plea bargaining can help victims get justice and closure sooner. When allowed, the process may also include compensating the victim. Plea bargaining can lessen the burden of ongoing criminal cases, save time, money, and judicial resources, increase outcome certainty, encourage accountability, and provide victims with quicker relief.



DISADVANTAGES

Drawbacks and Risks of Plea Bargaining:

1. Coercion Against Innocent People:

An innocent accused person may consent to enter a guilty plea in order to avoid a drawn-out and expensive trial, a protracted pretrial detention period, or the threat of a more severe punishment. The right to a fair trial is seriously called into question by this.

2. Unequal Power of Prosecution and Accused:

The prosecution typically has more bargaining power because it can choose whether to reduce or drop specific charges. The accused may be in a weaker position and accept a deal that is not entirely fair. According to studies, particularly those conducted in the United States, being held in custody prior to trial can put pressure on accused people to accept plea deals.

3. Possibility of excessive leniency:

There is concern that some offenders may receive less punishment than they deserve due to reduced charges or incomplete consideration of certain facts. Even though Indian law restricts plea bargaining to specific cases, there may still be concerns about changing or reducing charges. This may affect victims' interests and rights.

4. Lack of transparency:

Plea negotiations may take place with limited public participation. This reduces public scrutiny of prosecutors' decisions. If there are no clear standards, similar cases may yield different plea agreements, resulting in inconsistency.

5. Impact on Justice Principles:

Plea bargaining may make the typical adversarial trial process—in which both sides submit their evidence to the court less important. Some observers contend that it might transform justice into a sort of deal or compromise. Additionally, the Supreme Court has warned against using plea bargaining as a mechanical replacement for a traditional trial.

6. Restricted Use in India

Only specific offenses are eligible for plea bargaining, and there are number of limitations. Because of this, very few accused people in India actually, use it. The anticipated benefit of lessening the burden and backlog of courts has not been fully realized due to its restricted use.

7. Equality and Fair Procedure Concerns:

Issues like racial disparities and the relationship between pre-trial detention and decisions to accept plea deals have been brought to light in a Vera Institute report from the United States. These issues highlight how unfair circumstances can affect plea decisions, despite the fact that the legal systems in the United States and India differ.

8. Potential Violation of Fundamental Rights:

Article 14's guaranty of equality as well as the right to life and personal freedom under Article 21, including the right to a just and appropriate legal process may be affected if plea bargaining is misused or utilized unfairly, Indian legal pundits claim.

The main problem with plea bargaining is that justice shouldn't be compromised in order to speed up the cases' resolution. It shouldn't undermine the rights of the accused and victim, give an offender unwarranted preference, or force an innocent person to pleading guilty.

AWARENESS OF PLEA BARGAINING

Many lawyers, judges, police officers, accused individuals, and victims are still unaware of how plea bargaining works and the rights involved. In India, however, it is still used in a few cases. Many defense lawyers focus on obtaining bail or proving the accused is not guilty rather than advising them to consider plea bargaining. Courts rarely take the initiative to notify parties about this option. Victims may also be unaware of their role and rights in the process, such as their ability to participate and receive compensation. As a result, raising awareness among lawyers, judges, police, accused individuals, and victims is critical to making plea bargaining more effective and accessible in India.

Analysis of plea Bargaining concept india

In India, plea bargaining is intended to be a workable substitute for the drawn-out criminal trial procedure. It seeks to resolve some cases more quickly while upholding the victim's and accused's legal rights. By resolving appropriate cases without a full trial, courts can better manage their workload, especially in less serious criminal matters. At the same time, the law includes several conditions and safeguards to ensure that the procedure is not abused.

One significant limitation of the 20 Indian system is its limited application. Plea bargaining is most commonly used in cases involving relatively minor offenses, while several serious offenses and specific economic offenses are excluded.

¹²Another important consideration is the process's voluntary nature. An accused person cannot be forced or pressured into accepting plea bargaining. The court must determine whether the accused chose the process voluntarily and understands its consequences. The victim is also given the opportunity to take part in the proceedings.

These safeguards are necessary to ensure fairness, though they may occasionally add additional procedural steps to the process. the accused is generally required to accept responsibility for the offense, some accused persons may be hesitant to choose plea bargaining if they believe they will be acquitted after a regular trial. As a result, even when plea bargaining is legally permitted, an accused may choose to contest the case rather than accept a conviction.

¹² analysis 9 Kachhia Patel Shantilal Koderlal v. State of Gujarat, (1980) 3 SCC 120; Thippaswamy v. State of Karnataka, (1983) 1 SCC 194.
20 BNSS, 2023, Sections 291–294

PRACTICAL CHALLENGES AND REASONS FOR FAILURE

¹³Although plea bargaining is recognized in Indian criminal law, its practical application remains limited. Several issues impede its effective implementation

1. Limited Use: There are extremely few instances where plea bargaining is utilized. Many attorneys do not actively suggest this option to those who are accused. Furthermore, many criminal cases are excluded by the law because it only permits plea bargaining in specific categories of offenses.
2. ¹⁴Procedural Difficulties: Judges and lawyers may not always be familiar with the specific procedures involved. The requirement for notices, hearings, and other formal steps may also add to courts' already heavy workload rather than simplifying it.
3. Ensuring Free Consent: One of the most important requirements is that the accused enter the plea bargaining process voluntarily. The court must therefore, ensure that the decision is not the result of a threat, pressure, or undue influence. Verifying this may sometimes necessitate additional time and judicial oversight.
4. However, victims can be difficult to contact and may be unaware of this legal mechanism. Furthermore, some victims may prefer a regular trial over a plea bargain.
5. Administrative and Implementation Issues: The system also has issues with inadequate training, a lack of uniform procedures and forms, limited monitoring, and insufficient reliable data on its actual use. In some cases, plea-bargaining applications may be handled through brief orders without detailed reasoning.

To sum up the gap between the law and practice is large. Plea bargaining has a legal framework in India, but its practical applications are limited. Its limited availability, lack of awareness, procedural requirements, concerns about voluntary consent, difficulties with victims, and limited benefits for accused people have all contributed to this situation.

FINDINGS

According to this report, plea bargaining is still not common in India, despite the fact that there is a ¹⁵legal framework in place to protect both the accused and the victim. According to the legislation, the court must make sure the victim has a chance to take part and that the accused

¹³ BNSS, 2023, Sections 291–292

¹⁴ practical challenges 2 Albert W. Alschuler, The Prosecutor's Role in Plea Bargaining, 36 University of Chicago Law Review 50 (1968).

¹⁵ findings 4 Bharatiya Nagarik Suraksha Sanhita, 2023, Chapter XXIII, Sections 289–300. And Code of Criminal Procedure, 1973, Chapter XXI-A, Sections 265A–265L,

consents to the procedure freely.

However, plea bargaining is primarily available for less serious offences, and a lack of awareness among accused persons and victims contributes to its low use. Courts and lawyers continue to rely more on the traditional trial process. It may also allow victims to receive compensation or other forms of restitution, while the accused may receive a lesser punishment if allowed by law. At the same time, the procedure may appear complicated to the parties, discouraging eligible accused persons from pursuing it. Plea bargaining, when done correctly, can speed up the resolution of criminal cases and cut down on the number of hearings. According to the report, courts typically take precautions to prevent coercion or duress when entering a guilty plea. India approaches plea bargaining in a more constrained manner than nations like the United States.

The mechanism may therefore be employed more often, but any future advancements must continue to uphold the rights of the accused to a fair trial, guaranty free and voluntary consent, and safeguard the interests of victims.

CONCLUSION AND RECOMMENDATIONS

Plea bargaining is a tool with significant potential for easing India's overloaded criminal justice system, but its current design and implementation limit that potential.¹⁶ The concept of an accused pleading guilty for concessions is not inherently contrary to justice. Indeed, when properly executed, it can speed justice, spare victims lengthy trials, and allocate resources to more serious cases. However, if done carelessly it risks trimming procedural protections and coerces defendants, which the courts have rightly guarded against.

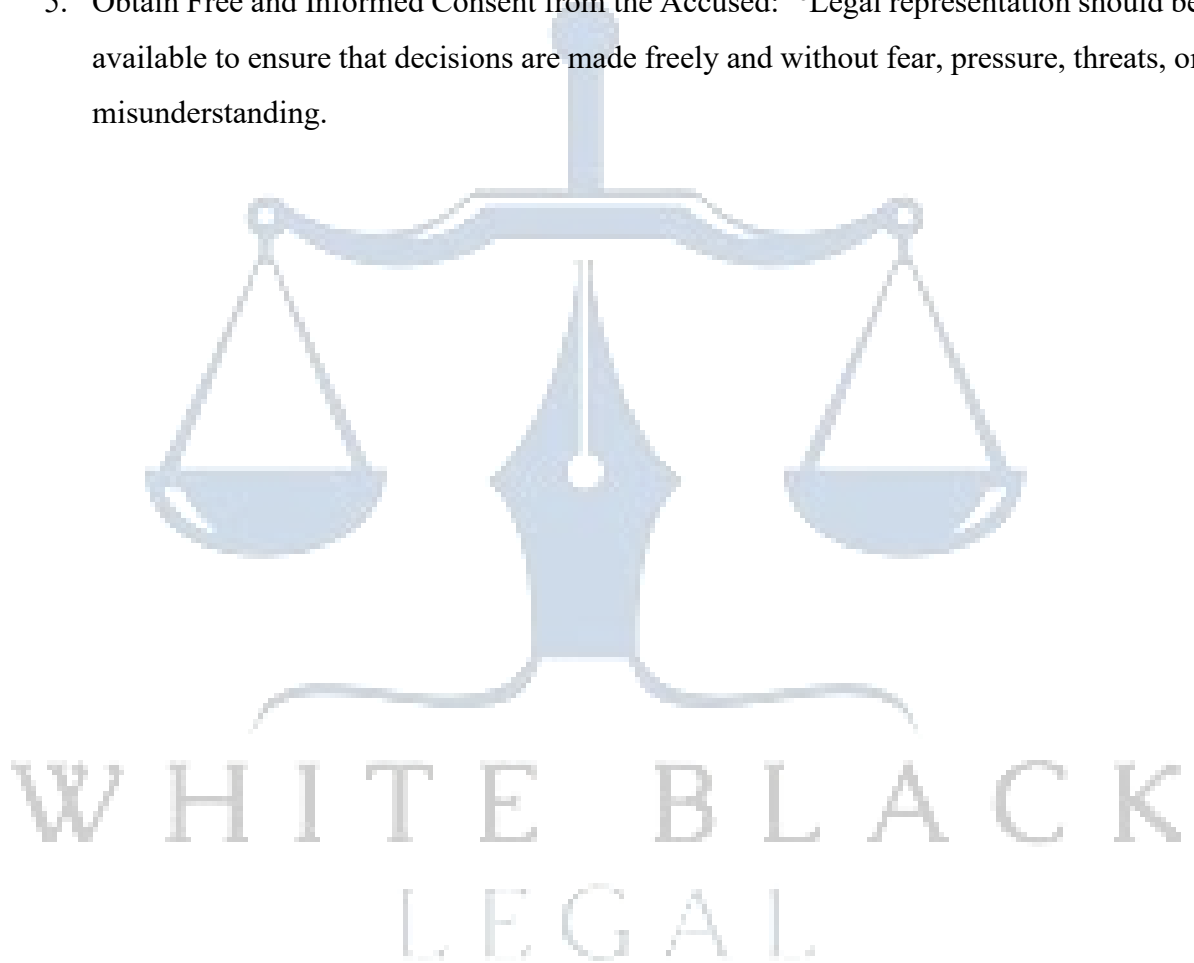
Recommendations

1. Increase awareness and training: Judges, advocates, police officers, prosecutors, and legal aid authorities should all be properly trained on the plea-bargaining process and the legal safeguards.
2. Create the Procedure. Simple and efficient: The procedure should be made easier to understand and completed within the timeframe specified by the BNSS. Clear guidelines and standard forms can reduce confusion and help courts handle plea-bargaining applications more efficiently.
3. Examine the Scope Carefully. The possibility of expanding plea bargaining to some

¹⁶ Bharatiya Nagarik Suraksha Sanhita, 2023, Chapter XXIII, Sections 289–300.

additional offenses may be considered in the future, but this should be done cautiously and with adequate safeguards. Serious offenses should continue to be excluded wherever the law requires.

4. ¹⁷Protect the Interests of Victims: Victims should be properly informed before a plea-bargaining agreement is reached, and they should be given a reasonable opportunity to express their views. They should also be given adequate legal representation and guidance regarding compensation and other forms of relief.
5. Obtain Free and Informed Consent from the Accused: ¹⁸Legal representation should be available to ensure that decisions are made freely and without fear, pressure, threats, or misunderstanding.



¹⁷ Constitution of India, arts. 14, 20(3), 21 and 39A.

¹⁸ BNSS – India Code <https://indiacode.gov.in/>