Negotiated Justice in Criminal Law: A Critical Evaluation of Plea Bargaining and Procedural Safeguards

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ABSTRACT

The paper critically observes plea bargaining as a key characteristic of modern criminal justice administration and analyses it evolution from a historically discouraged practice to an accepted mechanism of 'negotiated justice'. The study looks at how rising caseloads, procedural delays and administrative pressures have helped to institutionalise plea bargaining in modern legal system. The paper provides a systematic review of the various types of plea arrangements such as charge bargaining. Sentence bargaining and fact bargaining. It also covers the strategic value of special pleas such as Alford Plea and Nolo contendere. Particular attention is paid to why defendants accept plea bargains, including the impact of the "trial penalty", the prospect of defendants receiving significantly more severe sentences after trial than through a plea bargain. The research paper provides a comparative analysis of the United States and India to understand the nature and extent of judicial oversight of plea bargaining. The study explores the evolution of plea bargaining in India through the amendments in the code of criminal procedure in 2005 and its continuation in the Bharatiya Nagarik Suraksha Sanhita, 2023. The American system provides for a wider scope of prosecutorial discretion while the Indian framework is comparatively restrictive and restorative through mutually satisfactory dispositions and statutory safeguards. The Plea Bargaining contributes to judicial efficiency and the reduction of case backlog. However, the research concludes that the Plea bargaining continues to raise concerns about coercion, unequal bargaining power and socio-economic disparities. Accordingly, the paper proposes a more robust form of judicial scrutiny, transparent procedures and effective legal aid mechanisms to ensure fairness and protection pf constitutional rights within negotiated justice systems.

Keywords: Negotiated Justice, Plea Taxonomy, Judicial Oversight, Trial Penalty, Restorative Justice.

INTRODUCTION

In simplest terms, plea bargaining is a deal struck between the prosecutor and the defendant where instead of going through a full trial, the accused agrees to plead guilty from not guilty. In exchange, the prosecution might drop some charges or recommend a lighter sentence in exchange for accepting the guilt. Sometimes, a judge might even drop a hint that being honest can lead to a more lenient punishment later for the defendant. While it may sound like a shortcut, but it serves as a highly practical purpose in our legal system as the trials are expensive and time consuming, plea deals save the government from expenditure of massive amount of money and legal fees whereas for the defendants it can act like a fresh start where it gives them chance to take responsibility and minimize their sentence rather than risking a much harsher punishment if they lose at trial. At times we can have high expectations for our courts and as a result, when we are disappointed A plea bargain often called a plea deal or a plea agreement is a type of an arrangement in a criminal law system where the accused agrees to plead guilty or no contest in return for certain concessions may include dropping of some allegations, reduction in charges or maybe a recommendation for lighter sentences. Also in the [1]Merriam-Webster dictionary, plea bargaining is defined as "*the negotiation of an agreement between a prosecutor and a defendant whereby the defendant is permitted to plead guilty to a reduced charge*". In criminal cases the concept of Plea Bargain helps to resolve

[1] Plea bargaining, Merriam-Webster, https://www.merriam-webster.com/dictionary/plea%20bargaining (last visited Mar.28, 2026).

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criminal cases more quickly, sparing both sides the cost, time and uncertainty of a full trial. In its original sense, a plea bargain is a type of a trade or maybe, can be called a negotiation. It's a practical middle ground in the criminal justice system where a defendant agrees to admit guilt instead of going under the trial process. Where in return, the prosecutor offers a discount in the form of seriousness of the charges, dropping some entirely or a lighter sentence recommendation. As the trials are long, expensive and unpredictable for everyone involved in it, a plea bargain provides a shortcut to a guaranteed outcome.

Those in favour of it argue that it is a common sense solution to an overwhelmed judiciary as by bypassing lengthy trials, the courts can clear backlogs and guarantee a conviction without the budgetary drain or the emotional toll which a full trial process takes on victims. For them, it's about certainty and efficiency which ensures that a criminal is held accountable quickly rather than risking an acquittal on a technicality.

Whereas on the flip side, critics argue that justice shouldn't be something which should be hammered out. They also feel worried that the pressure to "settle" can force innocent people to admit the crimes they never committed just to avoid the threat of massive sentencing. From this perspective, plea bargaining transforms the pursuit of truth into a business transaction, prioritizing a fast result over a fair one.

The Emergence of Plea Bargaining

Plea bargaining is not something we can call modern but it is a centuries old practice. It is an idea that has evolved gradually through civilizations as societies searched for quicker and more pragmatic ways to resolve growing criminal disputes.

[2]In the ancient legal system, the early forms of negotiated justice were already visible. The practice called **"in iure cessio"** was already prevalent in Roman Law which allowed an accused person to confess and submit to punishment to avoid a full trial, and often receiving a reduced penalty. Likewise, in ancient Athens, informal settlements enabled those on trial to admit wrongdoing and offer restitution, evading lengthy formal trials. These approaches focused on expediency and conciliatory elements. In European history during the medieval period, aspects similar to plea bargaining began to feature prominently in the history books. Under Germanic law, individuals had options to reach an agreement with their victims or authorities by offering compensation for their crimes. Compurgation is a process in which oath helpers vouched for an accused person's authenticity or blood money, the compensation offered to victims and combat in the courtroom all constituted forms or options that helped an accused person escape stricter penalties for their crimes. The Church's interventions towards reconciliation and confessions helped in providing a sense of balance in the history books.

The modern practice of plea bargaining emerged most clearly as a phenomenon of the 19th century in the U.S. largely as a result of increasing criminal rates and congestion of court dockets. The informal negotiations between prosecutors and criminal offenders become a common practice with a view to avoiding expensive and time consuming adjudications. In the 20th century, there were significant developments in plea bargaining, which includes the Prohibition period. The constitutional validity of plea bargaining, including during the prohibition period. The constitutional validity of plea bargaining emerged with the judgement of the U.S. Supreme Court in [3]Brady v. United States (1970) , in which it was held that plea bargaining is constitutionally valid. The guidelines on sentencing also resulted in establishing plea bargaining as a predominant practice.

Taxonomy of Plea arrangements

Plea Bargaining is not a one size fits all process. Depending on the legal system and the goals of the prosecution and defence, it generally falls into four main categories.

a. Charge Bargaining; this is the most common form of plea bargaining which involves a negotiation over the specific crimes the defendant is accused of such as

[2] *In jure cessio*, Britannica, https://www.britannica.com/topic/in-jure-cessio (last visited Mar. 28, 2026).
[3] Brady v. United States, 397 U.S. 742 (1970).

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- Unique Charge; In this case, a defendant enters a guilty plea to a charge that is less serious than the original charge he is faced with, for example, guilty to manslaughter rather than murder.

- Multiple Charge; or also known as Count Bargaining, this is a form of bargaining where the defendant is charged with multiple counts of the same or different crimes, the prosecutor may dismiss most of the charges in exchange for a guilty plea on only one or two counts.

b. Sentence Bargaining; In this scenario, the focus is not on changing the nature of the crime, but on the nature of punishment. The defendant pleads guilty to the original charge, but only after the prosecutor agrees to recommend a specific, more lenient sentence for example probation instead of jail time.

c. Fact Bargaining; This being a technical and sometimes controversial form of plea bargaining where the two sides agree to stipulate a certain version of the facts which needs to be presented before the court.

- Selective Presentation; The prosecutor might agree not to mention certain aggravating details like the use of weapons, or the specific amount of drugs involved in the crime which would otherwise trigger a mandatory minimum sentence or a harsher penalty.

- Special Pleas; In the legal world there is a unique category often called “Best Interest Pleas”. These are used when a defendant wants to resolve a case and accept a sentence, but they aren't willing to stand up in court and say that they committed the said offense. While these are very common in the United States, many other countries are more sceptical of them because they allow for a conviction without a clear confession of guilt.

- The Alford Plea; The Alford plea is essentially a strategic move. The defendant tells the judge, "I am innocent of this crime, but I realize the prosecution has enough evidence to convince a jury otherwise”. Rather than gambling on a trial where they could face a much harsher punishment, they choose to accept a deal while still maintaining their innocence. It is a way of saying that taking the plea in their own best interest given the evidence against them.

- Nolo Contendere (No Contest); This plea is a bit of a different kind. Instead of admitting guilt or maintaining innocence, the defendant simply stays neutral. They surrender themselves before the charges. Here, the end result is the same as the guilty plea where the judge moves straight to sentencing. However, there exist a major technical advantage i.e. since the defendant never actually admits fault, it becomes much harder for someone to use that plea against them in a future civil lawsuit as of a car accident victim suing for damages.

Advantages and Disadvantages of Plea Bargaining

In modern criminal justice systems, the decision for a defendant to waive their constitutional right to a trial is rarely a simple admission of guilt, rather it is a calculated response to the systematic pressures and trial penalties that characterize the contemporary legal landscape. A trial is inherently unpredictable, whereas a plea bargain transforms a high stakes gamble into a manageable contract with a known outcome. Particularly this is compelling when considering the “trial penalty” which is the statistically significant sentencing gap where defendants convicted at a trial often receive penalties which are three to eight times harsher than those offered in a plea deal. For many, the risk of a catastrophic, decade-long sentence after a trial outweighs the potential for an acquittal, leading even those with plausible claims of innocence to accept a low but certain punishment through a negotiated settlement.

Beyond the purely legal risks, the financial and psychological toll of protracted litigation accounts as a powerful catalyst for pleading. Living with a pending criminal case is an exhausting cycle of stress and anxiety for both the accused and their families. Choosing a plea bargain is often the only way to make that pressure stop. Majorly it offers a speedy disposal of the case giving everyone a chance to move on and find closure and basically becomes a form of damage control. A quick, quiet deal avoids the public embarrassment and social stigma that comes with a long, publicized trial, helping the person keep some of their private life intact.

Furthermore, the structure of plea itself offers tactical advantages that a trial cannot guarantee. Through mechanisms like “Fact Bargaining”, a defendant can negotiate a selective presentation of the case, ensuring that certain "aggravating circumstances” such as the presence of a weapon or a specific drug quality are omitted from the record to avoid mandatory minimum sentences. In places like India, [4]under the CrPC, this process even lets the defendant focus on making things right by offering “adequate compensation” to the victim. Ultimately, people choose pleas because the system is made in a way that it rewards those who cooperate and heavily penalises the uncertainty of a trial. In an overburdened legal system, a plea deal isn't just an option but a pragmatic tool for survival.

Judicial Oversight

The resolution of criminal cases through negotiated agreements rather than contested trials is no longer an exclusively American phenomenon. While plea bargaining originated and matured within adversarial framework of the united states., its formal introduction into the Indian criminal justice system through code of criminal procedure amendments of 2005 marked a significant procedural transplant which carries with it both the promise of efficiency and the unresolved tensions that have long shadowed the practice in its country of origin. A comparative examination of judicial oversight in both jurisdictions reveals not merely differences in legal design, but deeper divergence in how each system conceptualizes the relationship between adjudicative authority, prosecutorial power and the rights of the accused. Looking into the aspect of the United States, plea bargaining has evolved from a quietly tolerated practice into the operational backbone of the criminal justice system, accounting for roughly ninety to ninety-seven percent of all criminal convictions. The Supreme Court's observation in [5]Missouri v. Frye (2012) held “that plea bargaining is not some adjunct to the criminal justice system rather it is the criminal justice system” which reflects a reality that has accumulated over decades of expanding caseloads, mandatory minimum statutes and prosecutorial discretion largely insulated from judicial review. The formal structure of judicial oversight is anchored in federal rule of criminal procedure 11, which requires the court to conduct a colloquy before accepting any guilty plea. This inquiry is designed to ensure that the defendant understands the charges, appreciates the rights being waived, and is entering the plea voluntarily and without coercion. On its face the requirement appears robust. In practice, it has been widely characterized as a scripted ritual which is a checklist exchange in which defendants, coached by counsel, provide the expected affirmations and judges, conscious of institutional pressures and deferential norms, rarely interrogate the underlying conditions that produced the agreement. The structural problem lies upstream of the colloquy. Prosecutorial charging decisions which is the foundation upon which all plea negotiations are built on remain effectively unreviewable by courts. A prosecutor’s choice to stack charges carrying severe mandatory minimums creates a coercive framework within which a defendant’s subsequent “voluntary” plea must be assessed. The judge who reviews that plea had no role in constructing the conditions that rendered it rational, and possesses no authority to disturb them. [6]Federal Rule 11(c)(1) reinforces this separation by expressly prohibiting judicial participation in plea negotiations, which is a provision designed to protect impartiality but which simultaneously forecloses any proactive judicial role in ensuring that the bargaining environment is fair. Furthermore in the case of [7]Boykin v. Alabama (1969) established the requirement of an intelligent and voluntary waiver of trial rights.Also in [8]Santobello v. New York (1971) an obligation was imposed on the prosecution to honor its bargained commitments. The landmark 2012 decisions in [9]Lafler v. Cooper and Missouri v. Frye extended Sixth Amendment right-to-counsel protections into the negotiation phase itself, acknowledging that effective assistance of counsel is meaningless if it does not encompass the process through which the vast majority of cases are resolved. The risk of false guilty pleas occupies an increasingly prominent place in academic and policy discussions. Wrongful conviction research consistently identifies coercive plea dynamics as a contributing factor in documented exonerations, yet the standard Rule 11 colloquy includes no meaningful inquiry into actual innocence. The sentencing differential between a negotiated plea and a post-trial conviction which can sometimes be referred to as the trial penalty and can be severe enough that even innocent defendants calculate

[4] Code Crim. Proc. § 265C. Code Crim. Proc. § 265E subsequent to Bharatiya Nagarik Suraksha Sanhita, 2023, § 291
[5] Missouri v. Frye, 566 U.S. 134 (2012).
[6] Legal Information Institute (LII) at Cornell Law: https://www.law.cornell.edu/rules/frcrmp/rule_11
[7] Boykin v. Alabama, 395 U.S. 238 (1969).
[8] Santobello v. New York, 404 U.S. 257 (1971).
[9] Lafler v. Cooper, 566 U.S. 156 (2012).

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that accepting guilt is the rational choice. This is perhaps the most uncomfortable implication of a system in which judicial oversight is structurally confined to the terminal stage of a process it did not supervise.

Whereas India's formal engagement with plea bargaining came through [10]Chapter XXI-A of the Code of Criminal Procedure, introduced by the Criminal Law (Amendment) Act of 2005 and operative from July 2006. The same provision is now carried forward in the Bharatiya Nagarik Suraksha Sanhita (BNSS) of 2023, which reflect a deliberate legislative choice to address chronic case backlog in Indian courts.

The Supreme Court has disapproved of it in its judgment, namely, [11]Murlidhar Meghraj Loya v. State of Maharashtra, as follows: i.e. call it " 'plea bargaining', 'plea negotiation', 'trading out', 'compromise in criminal cases', the trial magistrate, burdened with a docket, nods assent to the sub rosa ante-room settlement. The businessman culprit, faced with the sure prospect of the agony and ignominy of tenancy of a prison cell, 'trades out' of the case, the bargain being a plea of guilt, coupled with a promise of 'no jail'. These ante-room arrangements please everyone except the distant victim, the silent society…"

The introduction of plea bargaining was thus framed primarily as an efficiency measure, and its design reflects that priority in both its possibilities and its limitations. The Indian framework differs from its American counterpart in several structurally important respects. On one side the scope of eligible offenses is narrowly defined. Plea bargaining under the CrPC was available only for offenses carrying a maximum punishment of seven years' imprisonment, expressly excluding offenses affecting the socioeconomic condition of the country, offenses against women, and offenses against children below fourteen years of age. This categorical restriction reflects both a normative judgment about the seriousness of certain offenses and a political caution about the optics of negotiating away accountability in high-visibility cases.

Whereas on the other side the Indian system assigns the court a more formally active role at the initiation stage. An application for plea bargaining must be filed by the accused, and the court is required to examine the accused in camera separately from the prosecution and the police which is done to satisfy itself that the application is voluntary and not the product of coercion, undue influence, or inducement. This in camera examination represents a more searching inquiry into voluntariness than the standard American colloquy, at least in formal design, and reflects a judicial scepticism about the conditions under which accused persons in India might be induced to waive their rights. The mutually satisfactory disposition process that follows involves the court convening a meeting of the parties to work out an agreed outcome, which may include compensation to the victim having a feature that has no direct parallel in the federal American framework and reflects the restorative dimension that Indian procedural law has sought to incorporate. Once an agreement is reached, the court is required to pronounce judgment in accordance with it, without the power to impose a sentence more severe than half the minimum prescribed for the offense. However, the practical experience of plea bargaining in India has fallen considerably short of its statutory promise. Utilization rates have remained low across most jurisdictions, attributable to a combination of inadequate awareness among accused persons and defence counsel, institutional reluctance among prosecutors and judges habituated to adversarial norms, and persistent concerns about police influence in the pre-charge phase. On the one side the in camera examination, is formally protective but it has been criticized as being insufficiently robust in practice, particularly given the power dynamics between accused persons and the state apparatus in a system where pre-trial detention is common and legal representation is uneven in quality. The restriction of plea bargaining to offenses below the seven-year threshold also means that the practice is unavailable precisely in those cases serious felonies which carry substantial penalties and where the sentencing differential creates the most acute pressure on defendants in the American context. Indian plea bargaining was designed, in a sense, for a different problem: reducing case backlog in the middle register of criminal offending, rather than managing the coercive dynamics of serious felony prosecution. This design choice has consequences for how judicial oversight functions, since the court's review of a plea in a relatively minor case carries a different weight than oversight of an agreement to resolve a serious violent offense.

[10] Bluebook Citation: > The Criminal Law (Amendment) Act, 2005, No. 2, Acts of Parliament, 2006 (India)
The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India).
[11] Murlidhar Meghraj Loya v. State of Maharashtra, (1976) 3 S.C.C. 684

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Socio- Legal Impacts

In the case of India, the socio-legal aspects of inequality in plea bargaining have their own specific texture. The accused individuals who are most likely to interact with the plea bargaining system are those who are already disadvantaged in the criminal justice system. They comprise pre-trial detainees who cannot afford to pursue their cases because of financial constraints and must rely on legal aid counsel whose commitment and competence vary. The formal protection of the in camera inquiry into the existence of police coercion and influence is to be evaluated in a context where the extent of control of the state apparatus over the accused is considerable and where the ability of the courts to detect such influence through this procedure is limited. The factors of caste, class, and geography operate in ways that the law does not recognize and that empirical research on the subject in the Indian context is only beginning to explore.

One of the most neglected aspects of plea bargaining from a socio-legal perspective is that of its impact on victims of crime. The negotiation between prosecutor and defense attorney which culminates in a plea agreement is, from a formal perspective, a two-party transaction. The victim of the crime in question, the party most directly affected by the actions to which he or she pleaded guilty has no say in the agreement and, in many jurisdictions, no enforceable right to be consulted about it prior to its negotiation.

The effects of this marginalization can have both practical and symbolic significance. Practically speaking, the victim may feel that the offense for which the defendant is entering a guilty plea is quite different from their own experiences. Symbolically, the exclusion of the victim from the plea bargain can signify that the criminal system is ultimately a system of interaction between the individual and the state, in which the interests of the harmed party in terms of acknowledgment and reparation are of secondary concern to the efficiency of the system. At the societal level, the dominance of plea bargaining also has implications for the legitimacy of the criminal justice system as a social institution. The legitimacy of the criminal justice system as a democratic institution, at least in part, rests upon the transparent character of the process of determining guilt and meting out punishment. Plea bargaining, as a private process, without public visibility, without the presence of a jury, and without any real oversight from the bench as to the circumstances which led to the bargaining, is a non-transparent process. The public cannot know what it cannot see, and a system which resolves the great majority of its cases through non-transparent negotiation cannot help but raise concerns about legitimacy. This legitimacy deficit, however, is far from academic. In communities where the criminal justice system has traditionally been understood as a tool of racial or class-based subordination, the mystery of plea bargaining simply serves to perpetuate the distrust. In a system where the rules of justice are negotiated behind closed doors, then rubber-stamped through perfunctory proceedings, the disconnect between the law as written and the law as practiced becomes all too apparent, fuelling the alienation of the communities most affected by crime and its control. The socio-legal critique of plea bargaining does not necessarily support abolition in a way that would, in the current institutional context, likely have consequences at least as undesirable as those we are attempting to remedy. What it does suggest is that we need to be more honest about what we are in fact doing, rather than what our procedures imply we should be doing. We need to think about reform in ways that engage both the rules surrounding plea acceptances and the broader context in which plea bargaining takes place including issues like mandatory minimum sentences, pre-trial detention, public defence resources, and prosecutorial accountability.

RECOMMENDATIONS BY THE LAW COMMISSION OF INDIA

The formal introduction of plea bargaining into Indian criminal procedure was neither sudden nor unconsidered. It emerged from a long process of institutional deliberation, and he most significant contribution to which came from the Law Commission of India. Across several reports spanning decades, the commission grappled seriously with whether a practice so deeply associated with the adversarial excesses of the American system could be adapted to serve the particular needs of Indian criminal justice which we can say a system burdened with extraordinary case backlogs, uneven access to legal representation and a constitutional framework that places significant emphasis on the rights of the accused.

To understand the commission recommendations, it is necessary to appreciate the problem that they were designed to address. By the late 1990s and early 2000s, Indian criminal justice was operating under conditions of case pendency that had long since crossed from crisis into a kind of normalized dysfunction. Trial courts

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across the country carried backlogs across the years and in many instances, decades. The under trial prisoners who were awaiting trial rather than serving sentences constituted a majority of prison population which is also a circumstance that inverted the presumption of innocence in everything but in a formal legal doctrine.

In the late 1990s, the law commission of India seriously examined plea bargaining often influenced by global practices, judicial pressures and the undertrain crises. It relatively made some bold recommendations to introduce the concept, while cautiously addressing constitutional and cultural concerns.

- The 142nd Report (1991)

[12]The Law Commission's 142nd Report, submitted in 1991, addressed plea bargaining in the context of a broader examination of the Code of Criminal Procedure. The Commission at this stage approached the subject with considerable caution. It acknowledged the efficiency arguments in favour of negotiated dispositions but expressed concern about the conditions under which plea agreements would be reached in the Indian context particularly the risk of police coercion, the inadequacy of legal aid, and the vulnerability of accused persons from marginalized social backgrounds.

This report did not recommend the introduction of a full plea bargaining system. Instead, it suggested that limited forms of charge negotiation might be explored, subject to robust judicial oversight and explicit statutory safeguards. The Commission was emphatic that any negotiated disposition framework would need to be insulated from police influence which is a concern rooted in the documented reality of custodial pressure on accused persons in India, and one that would continue to shape its recommendations in subsequent reports.

This early caution is significant not only because of its historical data point but as a reflection of the Commission's understanding that plea bargaining's social impact depends entirely on the institutional environment in which it operates.

- The 154th Report (1996)

By the time the Commission produced its [13]154th Report in 1996, the framing had shifted. The report addressed the Code of Criminal Procedure more comprehensively and returned to plea bargaining with a somewhat greater degree of institutional urgency. The pendency crisis had deepened, the under trial population in Indian prisons had grown, and the Commission was operating in an environment where the costs of inaction had become increasingly visible.

The 154th Report moved closer to a positive recommendation, suggesting that a structured plea bargaining mechanism limited in scope, judicially supervised, and accompanied by explicit protections for the accused should be introduced into the Code. The Commission recommended that the mechanism be confined to offenses below a specified sentencing threshold, reflecting a judgment that the most serious offenses required the full accountability of trial proceedings and that negotiated dispositions in such cases carried unacceptable risks of trivializing grave harms.

The report also emphasized victim participation, that was, at the time, somewhat ahead of mainstream procedural reform discourse in India. The Commission recognized that a plea bargaining framework that treated criminal resolution as a purely bilateral negotiation between prosecution and accused would fail to address the interests of those most directly harmed by the offense. This recommendation would eventually find partial expression in the statutory requirement of victim consent that appeared in the 2005 legislative framework, though its practical implementation has been a persistent point of concern.

- The Pivotal Recommendation of 177th Report (2001)

[12] Law Comm'n of India, 142nd Report on Concessional Treatment for Offenders who on their own initiative choose to plead guilty without any bargaining (1991).
[13] Law Comm'n of India, 154th Report on The Code of Criminal Procedure, 1973 (1996).

[14]The Law Commission's 177th Report, titled Law Relating to Arrest, submitted in 2001, is widely regarded as the most substantive and influential of the Commission's contributions to the plea bargaining debate. Although the primary focus of this report was the law of arrest and pre-trial detention, the report engaged extensively with plea bargaining as a mechanism for reducing the under trial population and linking the two issues in a way that gave the recommendation both analytical depth and institutional urgency.

The 177th Report made a direct and relatively unqualified recommendation for the introduction of plea bargaining into the Code of Criminal Procedure. It proposed a framework with several defining characteristics. Firstly, it talked about that the eligibility would be limited to offenses punishable with imprisonment of up to seven years, excluding offenses against women and children and offenses with broader socioeconomic consequences. Secondly, the application would be initiated by the accused and not the prosecution, pointing out a concern that a prosecution-initiated system would create additional coercive pressure on defendants. Thirdly, the court would be required to conduct an in camera examination of the accused to verify that the application was genuinely voluntary, specifically to screen for police coercion or inducement. Fourth, the victim would be required to be heard and, where appropriate, compensated as part of any mutually satisfactory disposition.

The Commission was careful to frame its recommendation because they identified the endorsement of American-style plea bargaining which had attracted significant criticism on grounds of inequality and coercion but as a specifically Indian adaptation, which was designed around the particular vulnerabilities of the Indian accused and the particular pressures of the Indian criminal justice system. This framing was both analytically honest and strategically necessary. Any proposal that appeared to be importing American prosecutorial power into the Indian context would have faced formidable opposition from civil liberties quarters and within the legal profession more broadly.

The 177th Report highlighted the risk of producing false guilty pleas, but also argued that the in camera examination requirement, combined with the restriction of the mechanism to less serious offenses can provide sufficient protection.

Key findings and Suggestions

The inclusion of plea bargaining in the Indian criminal justice system, as reflected in the 2005 amendments to the Code of Criminal Procedure, and its ratification in the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, is an important example of a procedural transplant, intended to address a backlog problem. An important observation has been that, unlike other countries, the Indian system has a uniquely "accused-led" approach, where initiation power is transferred from the prosecutor to the accused. While intended to be a protective measure, it has also created a "barrier" in that the system has remained "vastly underutilized" because many accused persons, particularly those from marginalized socio-economic groups, lack the legal literacy and quality representation to activate the system. Thus, plea bargaining in India has been more of a "survival tool" for those in pre-trial detention than a "conscious legal choice. "A pertinent observation in regard to the current framework is the apparent contradiction in terms of legal provisions and practical realities in regard to the Indian "trial penalty." While legal provisions dictate in-camera judicial inquiries into voluntariness, there is a constant apprehension of these trials becoming a mere ritual. In a system in which there is a significant power disparity between the state machinery and the individual, a "voluntary" confession may in fact become a result of exhaustion or a threat of a significantly more severe sentence in the event of a long-drawn trial. Further, a restriction on the scope of plea bargaining in cases in which the maximum sentence is seven years may protect the purity of serious felony trials while at the same time limiting the scope of de-clogging High Courts in regard to mid-level white-collar and property cases. To overcome these limitations, there are a number of strategic steps that need to be taken to make plea bargaining a functional limb of the Indian judicial system. Firstly, the role of the judiciary must be elevated from merely reviewing the plea bargain to one of gatekeeping. This can only be achieved by specifically training the judiciary to review the "custodial history" of the accused prior to accepting the plea bargain, to ensure that there has been no coercion in the pre-charge stages. Secondly, the creation of "Plea Clinics" within prisons by the National Legal Service Authority (NALSA) must be made a priority. This

[14] Law Comm'n of India, 177th Report on Law Relating to Arrest (2001).

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will ensure that the "accused-led" model of plea bargaining becomes more inclusive, regardless of the accused's economic or social standing.