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PLEA BARGAINING IN INDIA: A CRITICAL APPRAISAL

AUTHOR – ISSAC BIFY PULLUKATTU* & DR. ARVIND KUMAR SINGH**

* STUDENT AT AMITY UNIVERSITY, LUCKNOW

** PROFESSOR AT AMITY UNIVERSITY, LUCKNOW

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Abstract

Plea bargaining was introduced into the Indian criminal justice system through Chapter XXI-A of the Code of Criminal Procedure, 1973 (CrPC) by the Criminal Law (Amendment) Act, 2005, and has now been re-enacted with minor modifications under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). It represents one of the most significant procedural innovations in post-independence Indian jurisprudence. The mechanism allows an accused person, charged with an offence not punishable by death, life imprisonment, or more than seven years' imprisonment, to enter into a mutually satisfactory disposition with the prosecution and the victim, resulting in a reduced sentence imposed by the court. Despite being formally available for nearly two decades, empirical data reveal a strikingly low rate of use, prompting serious questions about its design, accessibility, and the structural conditions of Indian criminal justice. This paper undertakes a comprehensive examination of the statutory framework of plea bargaining in India—beginning from its historical genesis, tracking its legislative contours under the CrPC and the BNSS, and then subjecting it to critical analysis from the vantage points of procedural fairness, victim rights, systemic efficiency, and constitutional validity. Drawing upon Law Commission Reports, National Crime Records Bureau statistics, comparative jurisprudence from the United States and other jurisdictions, and scholarly commentary, the paper identifies the key promises and pitfalls of plea bargaining in India and concludes with a set of reform recommendations aimed at transforming this largely dormant provision into a genuinely functional instrument of restorative and expeditious justice.

Introduction

The Indian criminal justice system is in the grip of a crisis that's long since transcended the realm of administrative inconvenience and assumed the character of a systemic pathology. As of December 2022, the National Crime Records Bureau (NCRB) reported that over 77 percent of the total prison population in India—amounting to approximately 4.34 lakh individuals—consisted of undertrial prisoners, persons who'd been deprived of their liberty without a final adjudication of guilt. The average rate of disposal of criminal cases in subordinate courts remains chronically low against the rate of institution, resulting in a pendency of over 4.4 crore cases as of 2023.[261] Against this backdrop of judicial paralysis and incarceral excess, plea bargaining was introduced as a legislative remedy—a contractual mechanism by which an accused voluntarily waives the right to trial in exchange for a negotiated outcome.

The conceptual roots of plea bargaining lie in Anglo-American common law, where it evolved organically from prosecutorial discretion and

[261] National Judicial Data Grid, Pendency Statistics (2025), available at https://njdg.ecourts.gov.in.

practical necessity. In the United States, plea bargaining accounts for over 90 percent of criminal convictions at the federal level, having been constitutionally validated by the Supreme Court in Brady v. United States.[262] In India, however, the provision has remained underutilised to a degree bordering on institutional irrelevance. Between 2006, when Chapter XXI-A came into force, and 2019, studies indicate that fewer than a few thousand cases were disposed of through plea bargaining in the entire country.[263] The disparity between legislative intent and practical outcome forms the central tension that this paper seeks to explore.

The paper proceeds in the following manner. Part I traces the historical and judicial background of plea bargaining in India, including early judicial hostility and legislative response. Part II sets out the statutory framework under both the CrPC and the BNSS. Part III analyses the key procedural requirements and exclusions. Part IV examines the theoretical promises of plea bargaining—its potential to reduce case backlog, alleviate undertrial population, ensure victim compensation, and rehabilitate offenders. Part V catalogues the criticisms and pitfalls that've impeded its operationalisation. Part VI places India's experience in comparative perspective, drawing upon jurisprudence from the United States and other jurisdictions, and interrogating the provision's consistency with Article 21 of the Constitution and international standards. Part VII synthesises empirical and Law Commission insights. Part VIII offers specific recommendations for legislative and institutional reform. Part IX concludes the paper.

I. Historical and Judicial Background

The history of plea bargaining in India is characterised, paradoxically, by both judicial hostility and legislative recognition. Prior to the enactment of Chapter XXI-A by the Criminal Law (Amendment) Act, 2005, informal plea negotiations—popularly known as 'out-of-court settlements' or prosecutorial compounding arrangements—occurred sub rosa in the lower judiciary, lacking any statutory sanction. The superior courts, when confronted with such arrangements, consistently condemned them as subversive of the rule of law. In Murlidhar Meghraj Loya v. State of Maharashtra,[264] the Supreme Court of India categorically held that plea bargaining had no sanction in Indian law, observing that any arrangement by which the prosecution and the accused reached a negotiated outcome, outside the framework of compounding under Section 320 of the CrPC, was contrary to public policy. The Court was concerned that permitting plea bargaining would introduce a market-like logic into criminal proceedings, privileging the wealthy accused who could negotiate favourable terms while the indigent accused remained vulnerable. This concern—that plea bargaining institutionalises inequality—has continued to haunt academic and judicial discourse on the subject.

Similarly, in State of Uttar Pradesh v. Chandrika,[265] the Supreme Court reiterated that there's no place for plea bargaining in the Indian legal system, and that a judge couldn't be a party to a compromise in criminal proceedings. The Court's reasoning reflected a classical retributive and state-centric vision of criminal law, in which the offence is primarily against the state and not against the individual victim, and in which the resolution of criminal liability is a matter of adjudicative determination rather than contractual settlement. This judicial position began to shift with the recommendations of the Malimath Committee on Reforms of the Criminal Justice System (2003), which strongly advocated for the introduction of plea bargaining as a means of decongesting criminal courts and prisons.[266267] The Committee drew upon the

[262] Brady v. United States, 397 U.S. 742 (1970).
[263] Vidhi Centre for Legal Policy, 'Understanding Plea Bargaining in India' (2018), available at https://vidhilegalpolicy.in. See also Centre for Law and Policy Research studies cited therein.
[264] Murlidhar Meghraj Loya v. State of Maharashtra, (1976) 3 SCC 684.
[265] State of Uttar Pradesh v. Chandrika, AIR 2000 SC 164.
[266] Committee on Reforms of the Criminal Justice System (Malimath Committee), Report (Ministry of Home Affairs, 2003).

experience of the United States and South Africa to argue that a structured, regulated form of plea bargaining—with mandatory safeguards for voluntariness, victim participation, and judicial supervision—could be introduced without sacrificing the integrity of the criminal justice process.

The Law Commission of India, in its 154th Report, had earlier made similar observations, noting that a large proportion of criminal cases involved minor offences where the interests of justice would be better served through a negotiated disposition.[268][269] The legislative response came in the form of the Criminal Law (Amendment) Act, 2005, which inserted Chapter XXI-A (Sections 265A to 265L) into the CrPC. The Statement of Objects and Reasons to the Amendment acknowledged the twin imperatives of reducing the burden on courts and alleviating the suffering of undertrial prisoners. The chapter came into force on 5 July 2006, making India one of the few common law jurisdictions in Asia to formally institutionalise plea bargaining. More recently, the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023, which received Presidential assent on 25 December 2023 and came into force on 1 July 2024, re-enacted the plea bargaining provisions in Sections 289 to 301, incorporating largely the same framework as the CrPC but with certain modifications in language and cross-references. The substantive law of plea bargaining in India thus remains largely continuous across the two statutes, though the transition has generated fresh academic interest in the extent to which the BNSS represents a genuine reform or a mere recodification. [270][271][272]

[267] Committee on Reforms of the Criminal Justice System (Malimath Committee), Report (Ministry of Home Affairs, 2003).
[268] Law Commission of India, 154th Report on the Code of Criminal Procedure, 1973 (1996).
[269] Law Commission of India, 154th Report on the Code of Criminal Procedure, 1973 (1996).
[270] Code of Criminal Procedure, 1973 (Act No. 2 of 1974), s 265A, as inserted by the Criminal Law (Amendment) Act, 2005 (Act No. 2 of 2006), brought into force by Notification No. S.O. 923(E) dated 5 July 2006.
[271] Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No. 46 of 2023), Chapter XXII (Sections 289–301).

II. Statutory Framework in India

A. Plea Bargaining under CrPC, 1973 (Chapter XXI-A)

Chapter XXI-A of the CrPC, spanning Sections 265A to 265L, provides the operative framework for plea bargaining in India. Section 265A defines the scope of the chapter, providing that it shall apply to an accused against whom a report has been forwarded by a police officer under Section 173(2), or a complaint has been filed, in respect of an offence not punishable with death, imprisonment for life, or imprisonment for a term exceeding seven years. The initiation of plea bargaining is governed by Section 265B, which requires the accused to file an application in the court in which the offence is pending, setting out briefly the description of the case, including the offence to which the application relates. Crucially, the application must contain a declaration by the accused that it's been filed voluntarily, that the accused understands the nature and extent of punishment provided for the offence, and that the accused hasn't been previously convicted for the same offence. The court is then required to examine the accused in camera to ascertain the voluntariness of the application. Once the court is satisfied as to voluntariness, Section 265C mandates the issuance of notice to the Public Prosecutor or the complainant, as the case may be, and to the victim. A meeting is then held between the parties for the purpose of working out a 'mutually satisfactory disposition'—which under Section 265C includes any compensation payable to the victim, other expenses incurred during the case, and the quantum of sentence. The meeting is held in camera, and the parties are required to act in good faith. Section 265D requires that a report of such meeting, signed by the presiding officer and the parties, be submitted to the court. Section 265E provides for the disposal of the case. Where a mutually satisfactory disposition is arrived at, the court is required to award the

[272] Code of Criminal Procedure, 1973 (Act No. 2 of 1974), Chapter XXI-A (Sections 265A–265L), as inserted by the Criminal Law (Amendment) Act, 2005 (Act No. 2 of 2006).

punishment specified therein, subject to the following limits: where the offence is punishable with a minimum sentence, the court shall impose at least half the minimum; in any other case, the court shall impose either the minimum provided, one-fourth of the maximum, or any lesser sentence.

B. Plea Bargaining under BNSS, 2023

The BNSS, 2023 re-enacts the plea bargaining provisions in Chapter XXII, encompassing Sections 289 to 301. The structural framework mirrors the CrPC almost exactly: Section 289 defines the scope; Section 290 deals with the application; Section 291 provides for in camera examination; Section 292 governs the holding of a meeting; Section 293 requires a report of the meeting; Section 294 governs the disposal; Section 295 deals with pronouncement of judgment; Section 296 bars appeals; Section 297 confers powers on the court; Section 298 provides for sentencing credits; Section 299 provides exclusions; Section 300 protects confidentiality; and Section 301 preserves compounding provisions. The BNSS introduces a few modifications of note.

First, the language has been modernised and cross-references updated to align with the new numbering of provisions in the BNSS.

Second, the BNSS clarifies that the prohibition on prior conviction applies to the 'same offence or substantially the same offence,' thereby slightly broadening the exclusionary criterion.

C. Offences and Exclusions

Both the CrPC and the BNSS exclude from the ambit of plea bargaining certain categories of offences on grounds of public policy. The exclusions fall into two broad categories. First, offences punishable with death, imprisonment for life, or imprisonment for a term exceeding seven years are excluded by reason of their severity. Second, offences affecting the socio-economic condition of the country, as notified by the Central Government, are excluded. Third, offences committed against a woman or a child below the age of fourteen years are expressly excluded. The category of 'socio-economic offences' has been defined to include offences under statutes such as the Prevention of Corruption Act, 1988, the Narcotic Drugs and Psychotropic Substances Act, 1985, offences relating to counterfeiting of currency, and offences under economic legislation. The rationale for these exclusions is that plea bargaining in such cases would undermine the deterrent and expressive functions of criminal law, and that the state has a heightened interest in ensuring full accountability through trial rather than negotiated settlement. The exclusion of offences against women and children reflects a policy judgment that victims in such cases may be especially vulnerable to coercion or undue influence in the context of plea negotiations. This exclusion has been welcomed by women's rights advocates, though some scholars have questioned whether an outright exclusion is preferable to a carefully designed negotiation framework that places victim consent at its centre. [273]

III. Statutory Limitations and Requirements

A. Key Procedural Steps

The procedural architecture of plea bargaining under Indian law may be summarised as follows. The process is initiated exclusively by the accused. There's no provision for prosecutorial initiation, a feature that distinguishes Indian plea bargaining sharply from the American model where the prosecution typically drives the negotiation. The accused must file an application meeting the formal requirements of Section 265B of the CrPC (or Section 290 of the BNSS), including the voluntary declaration. Following the filing, the court conducts an in camera examination of the accused to verify that the application's been filed freely and voluntarily, and not under any duress, threat, or inducement. This examination is mandatory and non-waivable. If the court finds that the application's been filed involuntarily, it shall proceed with the trial as if

[273] Prevention of Corruption Act, 1988 (Act No. 49 of 1988); Narcotic Drugs and Psychotropic Substances Act, 1985 (Act No. 61 of 1985).

no such application had been filed. The confidentiality of statements made during the in camera examination is expressly protected. If satisfied as to voluntariness, the court issues notice to the Public Prosecutor or the complainant, along with the victim, and directs a meeting. The meeting is presided over by the court and is held in camera. The parties—the accused, the Public Prosecutor or complainant, and the victim—are required to participate. The court's role in the meeting is facilitative rather than adjudicative: it assists the parties in reaching a mutually satisfactory disposition but doesn't impose any terms. The disposition must cover compensation to the victim, other expenses, and the proposed sentence.

B. Exclusions and Safeguards

Beyond the categorical exclusions noted above, the statutory framework incorporates several safeguards designed to protect the rights of the accused and the integrity of the process. The requirement of voluntary initiation by the accused, the mandatory in camera examination, the prohibition on prior conviction for the same offence, and the confidentiality of proceedings all serve this purpose.

Section 265I of the CrPC (Section 298 of the BNSS) provides that in computing the period of detention undergone by the accused, the period of remand under Section 167 shall be set off against the sentence. This provision ensures that the accused isn't penalised for the time already spent in custody prior to plea bargaining. The provision for sentencing credit is an important safeguard against the perverse incentive that might otherwise arise if an accused who'd already served a substantial period of undertrial custody stood to gain little from a formal sentence.

IV. Promise of Plea Bargaining

A. Reducing Case Backlog

The primary rationale for introducing plea bargaining in India was the reduction of the staggering backlog of pending criminal cases. The National Judicial Data Grid (NJDG) reports that as of January 2025, over 4.4 crore cases are pending before subordinate courts across India.[274][275] A significant proportion of these are criminal cases involving minor offences—public order violations, petty theft, minor assault—that don't warrant the full machinery of a criminal trial. Plea bargaining offers a procedurally streamlined alternative: by converting contested matters into negotiated settlements, it can achieve disposition in a fraction of the time and with a fraction of the resources required by a full trial. The experience of the United States illustrates this potential dramatically. In the federal courts of the United States, approximately 90 percent of convictions are the result of guilty pleas, a large proportion of which involve plea negotiations.[276] The American criminal justice system's capacity to process several million criminal cases annually is substantially dependent upon this mechanism. While critics argue that such a high rate of plea-based conviction reflects systemic coercion rather than genuine voluntariness, the efficiency dividend is undeniable. India, with a far larger case pendency and far fewer judges per capita, could potentially benefit even more from a well-functioning plea bargaining regime.

B. Alleviating Undertrial Population

Perhaps the most pressing justification for plea bargaining in India relates to the undertrial population. According to the Prison Statistics India report published by the NCRB for the year 2022, undertrials constituted approximately 75.8 percent of the total prison population of India, amounting to 4,34,302 individuals.[277] Of these, a significant proportion were detained for offences punishable with less than seven years' imprisonment—precisely the category of offences to which plea bargaining applies. The phenomenon of prolonged undertrial detention

[274] National Judicial Data Grid, Pendency Statistics (January 2025), available at https://njdg.ecourts.gov.in (last visited March 2025).
[275] National Judicial Data Grid, Pendency Statistics (2025), available at https://njdg.ecourts.gov.in.
[276] Bureau of Justice Statistics, Federal Justice Statistics 2020 (U.S. Department of Justice, 2022). See also Brady v. United States, 397 U.S. 742 (1970).
[277] National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs, 2023).

isn't merely an administrative inefficiency; it constitutes a serious violation of the right to liberty guaranteed under Article 21 of the Constitution of India. The Supreme Court of India has, in a series of landmark pronouncements, declared that the right to a speedy trial is a fundamental right under Article 21. In Hussainara Khatoon v. State of Bihar,[278] the Court ordered the release of thousands of undertrial prisoners who'd been in custody for periods exceeding the maximum sentence prescribed for their alleged offences. In Arnesh Kumar v. State of Bihar,[279] the Court issued detailed guidelines to curtail unnecessary arrests in cases not warranting imprisonment exceeding seven years—ironically, the very category of offences eligible for plea bargaining. Plea bargaining offers a direct remedy to the undertrial crisis. An accused facing a minor charge who's already spent months or years in pre-trial custody may be strongly motivated to enter a plea bargain that credits the time already served and results in immediate release or a minimal additional sentence. The provision for sentencing credit under Section 265I of the CrPC directly serves this function.

C. Victim Compensation and Satisfaction

Traditional criminal trials in India, rooted in the state-centred conception of crime as an offence against the sovereign, have historically been poorly equipped to address the legitimate interests of the individual victim. Compensation mechanisms under the CrPC—particularly Sections 357 and 357A—are discretionary and frequently underutilised. Plea bargaining, by contrast, places victim compensation at the heart of the mutually satisfactory disposition. The requirement that the disposition include provisions for compensation to the victim, as specified in Section 265C of the CrPC, introduces a restorative dimension into the plea bargaining process that's absent from the ordinary trial. The restorative potential of plea bargaining is significant. Rather than waiting for the uncertain outcome of a protracted trial, victims can obtain a guaranteed measure of compensation as part of the negotiated settlement. They're also given formal participation rights in the meeting convened by the court, allowing them to express their interests and concerns directly rather than being passive observers of a state-conducted prosecution. Comparative research from jurisdictions that've implemented restorative justice practices alongside plea bargaining suggests that victim satisfaction rates tend to be higher where victims are given meaningful participation in the resolution of the case, regardless of the formal outcome.[280][281][282] India's provision for victim participation in plea bargaining meetings, while underdeveloped in institutional terms, reflects this restorative aspiration.

D. Cost and Resource Savings

The economic costs of criminal trials are substantial and are borne not only by the state—through judicial salaries, police attendance, and prosecutorial resources—but also by the accused and the victim, who must engage legal counsel, attend court, and endure prolonged uncertainty. A fully contested criminal trial in India may involve dozens of adjournment dates spread over several years. Plea bargaining, by collapsing the trial process into a single negotiated event, achieves dramatic resource savings across the board. From the perspective of the state, the savings are both direct and indirect. Directly, the reduction in the number of contested trials reduces the demand for judicial time, prosecutorial resources, police attendance, and prison capacity. Indirectly, the alleviation of case pendency improves institutional credibility and reduces the social costs associated with

[278] Hussainara Khatoon v. State of Bihar, (1979) 3 SCC 1.
[279] Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.

[280] M.S. Umbreit, Victim Meets Offender: The Impact of Restorative Justice and Mediation (Willow Tree Press, 1994); see also J. Braithwaite, Restorative Justice and Responsive Regulation (Oxford University Press, 2002).
[281] See K.N. Chandrasekharan Pillai, R.V. Kelkar's Criminal Procedure (EBC Publishing, 7th edn., 2019) pp. 672–681 (discussing victim compensation under ss 357 and 357A CrPC).
[282] See generally Umbreit, M.S., Victim Meets Offender: The Impact of Restorative Justice and Mediation (Willow Tree Press, 1994).

prolonged legal uncertainty, witness intimidation, and the erosion of evidence over time. The Law Commission of India, in its 248th Report, estimated that the costs of criminal trial pendency to the Indian economy are substantial and recommended the strengthening of plea bargaining as one of several institutional reforms needed to address the crisis.[283284]

E. Flexibility and Rehabilitation

Plea bargaining also offers a degree of flexibility and individualisation in sentencing that the standard tariff system of the Indian Penal Code (or the Bharatiya Nyaya Sanhita, 2023) doesn't always permit. Through the negotiated disposition, the parties—including the victim—can agree upon creative penalties, such as mandatory community service, rehabilitation programmes, or specific modes of compensation, that may be better suited to the circumstances of the case and the needs of all parties than a standard custodial sentence. The rehabilitative potential is particularly relevant in cases involving first-time or young offenders, where incarceration may be counterproductive. A plea bargaining arrangement that includes a requirement to undergo counselling, vocational training, or drug treatment may, in appropriate cases, serve the long-term interests of the accused, the victim, and society more effectively than imprisonment. The BNSS, by incorporating a more explicit recognition of victim interests, marginally enhances the space for such rehabilitative arrangements. [285]

V. Criticism and Pitfalls

A. Underutilisation and Awareness

The most fundamental criticism of India's plea bargaining regime is that it's been barely used. Studies by the Vidhi Centre for Legal Policy and the Centre for Law and Policy Research reveal that in the first decade of its operation, the provision was invoked in fewer than a few thousand cases nationwide, against a backdrop of crores of pending criminal matters.[286287] This suggests a near-complete failure of the mechanism to achieve its intended purpose. The causes of underutilisation are multiple and mutually reinforcing. First, awareness of the provision among accused persons, particularly those from marginalised and illiterate backgrounds, is extremely low. The lack of legal literacy—compounded by the inadequacy of legal aid services and the failure of courts to proactively inform accused persons of their right to apply for plea bargaining—means that the provision exists largely as a theoretical construct rather than a practical option. Second, the legal profession itself has shown limited enthusiasm for plea bargaining. Defence lawyers who charge fees based on the duration and complexity of litigation have little financial incentive to recommend a mechanism that results in rapid case closure. Prosecutors, whose performance is often measured by conviction rates rather than efficiency of disposal, similarly lack incentives to actively engage in plea negotiations.

B. Perception and Appeal

The social and cultural perception of plea bargaining in India presents a significant barrier to its adoption. For an accused who maintains innocence, entering a plea bargain carries a social stigma equivalent to an admission of guilt, since the mechanism requires the accused to acknowledge culpability as part of the negotiated disposition. In a society where reputational considerations are paramount—particularly in communities governed by honour norms and collective social judgment—the stigma of a formal acknowledgment of guilt may be more feared than the risk of a prolonged trial. Conversely, for an accused who's in fact guilty but seeks to avoid the most

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[283] Law Commission of India, 248th Report on Wrongful Prosecution (Miscarriage of Justice): Legal Remedies (2014).
[284] Law Commission of India, 248th Report on Wrongful Prosecution (Miscarriage of Justice): Legal Remedies (2014).
[285] Bharatiya Nyaya Sanhita, 2023 (Act No. 45 of 2023).
[286] Vidhi Centre for Legal Policy, 'Understanding Plea Bargaining in India' (2018), available at https://vidhilegalpolicy.in (last visited March 2025).
[287] Vidhi Centre for Legal Policy, 'Understanding Plea Bargaining in India' (2018), available at https://vidhilegalpolicy.in.

serious consequences, the limited sentence reduction offered by Indian plea bargaining—a floor of one-fourth of the maximum or half the minimum—may not represent sufficient incentive compared to the potential of an acquittal at trial. This asymmetry in the incentive structure undermines the attractiveness of plea bargaining for both the innocent and the guilty accused.

C. Coercion and Voluntariness

The requirement of voluntariness is the cornerstone of the plea bargaining framework, but it's also its most vulnerable point. An accused who's in pre-trial custody, subject to police pressure, lacking adequate legal representation, and facing uncertain prospects at trial, may be susceptible to coercion into a plea bargain that doesn't genuinely reflect free choice. The in camera examination of the accused by the court is designed to verify voluntariness, but in practice, the examination may be perfunctory, particularly in overburdened trial courts where judicial attention is stretched thin. The Supreme Court of India has expressed concern about the potential for involuntary confessions and coerced pleas in Dandu Lakshmaiah v. State of Andhra Pradesh,[288] where the Court cautioned that the bar against appeals in plea bargaining cases must not be used to immunise improperly obtained dispositions from judicial review. The absence of robust institutional mechanisms to identify and remedy coercion—particularly in cases involving indigent accused persons without effective legal representation—remains a serious structural vulnerability.

D. Fairness to the Accused

Critics have pointed out that the benefits available to the accused under Indian plea bargaining are comparatively modest. In the United States, federal prosecutors can offer charge reductions, dismissal of related charges, or substantial departures from sentencing guidelines in exchange for a guilty plea. In India, the only benefit available to the accused is a reduced sentence; there's no provision for charge bargaining or count bargaining. An accused facing multiple charges can't negotiate the dismissal of some charges in exchange for a guilty plea to others. This limitation significantly reduces the attractiveness of plea bargaining for accused persons facing serious or multiple charges. It also means that the mechanism is of limited utility in complex cases—economic offences, organised crime, terrorism—where charge bargaining would be most instrumentally valuable as a tool for prosecutorial strategy and information extraction. Furthermore, the bar on prior conviction for the same offence means that recidivists—who arguably stand to benefit most from plea bargaining, given their familiarity with the justice system—are excluded. This exclusion has been criticised as over-inclusive, since a recidivist who acknowledges guilt and agrees to compensation may, in appropriate cases, warrant a negotiated disposition rather than a full trial. E. Victim Interests While the statutory framework formally includes victims in the plea bargaining process, the practical reality frequently falls short of this aspiration. Victims may be unaware of the initiation of plea bargaining proceedings or may lack the resources or support to participate meaningfully in meetings. The requirement that the victim sign the report of the meeting—indicating concurrence with the disposition—is a significant protection, but it may be rendered ineffective if the victim is subjected to pressure from the accused or from community intermediaries. There's also a conceptual tension between the victim's right to compensation under the plea bargaining disposition and the state's interest in punishment. Where the victim is primarily interested in punishment rather than compensation—for instance, in cases of serious assault or sexual violence, even where these don't meet the exclusion thresholds—the plea bargaining framework may fail to address the

[288] Dandu Lakshmaiah v. State of Andhra Pradesh, (1999) 7 SCC 69.

victim's legitimate interests. The exclusion of offences against women and children partially addresses this concern, but doesn't resolve the broader tension.

E. Inconsistencies and Arbitrage

The absence of any standardised guidelines for plea bargaining negotiations creates the risk of inconsistency and arbitrage. Two accused persons facing identical charges before different courts may receive substantially different outcomes under plea bargaining arrangements, depending on the approach and preferences of individual judges, prosecutors, and victims. This arbitrariness undermines the principle of equality before the law enshrined in Article 14 of the Constitution. The risk of arbitrage is particularly acute in cases involving corporate accused or wealthy individuals, who may be better positioned to offer generous compensation to victims and thereby secure more favourable sentencing outcomes than similarly situated but less affluent accused persons. This replicates, within the plea bargaining framework, precisely the inequality that the Supreme Court feared in Murlidhar Meghraj Loya—the concern that criminal justice becomes a commodity available to those who can afford to purchase a favourable outcome.

F. Lack of Appellate Oversight

Section 265G of the CrPC (Section 296 of the BNSS) bars appeals against judgments passed under the plea bargaining chapter, except by way of special leave to the Supreme Court under Article 136 of the Constitution. This bar on appeals has been justified on the ground that the judgment is the outcome of a mutually agreed disposition and should therefore be treated as final between the parties. However, the bar on appeals creates a serious lacuna in the system of judicial oversight. If the voluntariness of the accused's application is vitiated by fraud, coercion, or mistake; if the compensation awarded to the victim is unconscionably low; or if the sentence imposed by the court departs from the statutory limits prescribed in Section 265E without adequate justification—the aggrieved party has no ordinary appellate remedy. The Article 136 route is both procedurally arduous and substantively constrained, making it an inadequate substitute for a regular right of appeal.

G. Empirical Doubts

The empirical case for plea bargaining rests on the assumptions that it reliably reduces case pendency, alleviates undertrial detention, and ensures genuine victim satisfaction. Each of these assumptions is contested by empirical evidence. Research from the United States suggests that high rates of plea bargaining don't necessarily correlate with reduced case pendency at the aggregate level, since the time saved on individual cases may be offset by an increase in the volume of cases filed by prosecutors who are emboldened by the prospect of easy convictions.[289][290] In the Indian context, the near-total underutilisation of plea bargaining in the first two decades of its existence casts serious doubt on the assumption that the mechanism, as currently designed, can make a meaningful dent in case pendency or undertrial detention. The Law Commission of India, in its 277th Report, acknowledged that the plea bargaining provisions hadn't achieved their intended purposes and recommended a comprehensive review of the chapter.[291]

VI. Comparative Perspectives

A. Comparison with United States

The contrast between India's plea bargaining regime and that of the United States is instructive at multiple levels. In the United States, the practice of plea bargaining evolved organically over the nineteenth and twentieth centuries, without express statutory authorisation, before being constitutionally

[289] S. Schulhofer, 'Plea Bargaining as Disaster' (1992) 101 Yale Law Journal 1979; G. Fisher, 'Plea Bargaining's Triumph' (2000) 109 Yale Law Journal 857.
[290] Schulhofer, S., 'Plea Bargaining as Disaster' (1992) 101 Yale Law Journal 1979.
[291] Law Commission of India, 277th Report on Wrongful Prosecution and Plea Bargaining (2023).

validated by the Supreme Court in Brady v. United States[292] and Boykin v. Alabama.[293] The American model is characterised by a high degree of prosecutorial discretion, allowing federal and state prosecutors to offer charge bargaining, fact bargaining, and sentence bargaining in exchange for guilty pleas. The voluntariness of a plea in the United States is protected by the requirement, established in Boykin v. Alabama, that the trial court make an affirmative showing—on the record—that the defendant's plea was knowing, intelligent, and voluntary. The court must advise the defendant of the constitutional rights being waived, the nature of the charges, and the maximum sentence that could be imposed. A failure to comply with these requirements renders the plea constitutionally invalid. By contrast, India's plea bargaining regime is far more restrictive in scope—limited to a narrow range of offences, offering only sentence bargaining, and prohibiting prosecutorial initiation. The Indian model reflects a legislative caution born of historical judicial hostility to plea bargaining and a concern for the protection of vulnerable accused persons. While this caution is understandable, it's resulted in a mechanism that's too constrained to be genuinely useful, offering neither the efficiency dividends of the American model nor the procedural protections of the more cautious models adopted in some European civil law jurisdictions.

B. Other Jurisdictions

Comparative analysis reveals a diverse range of approaches to plea bargaining across jurisdictions. South Africa introduced a formal plea and sentence agreement procedure under Section 105A of the Criminal Procedure Act, 1977, as amended in 2001, following recommendations from a Law Commission review. The South African model, unlike the Indian model, permits the prosecutor to initiate negotiations and allows for charge agreements, not merely sentence agreements.[294295] In Germany, the Constitutional Court (Bundesverfassungsgericht) validated a form of plea bargaining ('Verständigung') in 2013, subject to strict conditions including judicial oversight, full compliance with the rule on self-incrimination, and the requirement that the sentence agreed upon not deviate excessively from what the court would otherwise impose. The German model reflects the civil law tradition's greater discomfort with bargained justice, insisting that the court retain independent responsibility for factual findings and sentencing. In the United Kingdom, sentence indications given by the Crown Court following a plea and case management hearing don't constitute formal plea bargaining in the American sense, but they serve a functionally analogous purpose. The Sentencing Guidelines Council's guidelines provide that an early guilty plea typically attracts a one-third reduction in sentence, creating a structured incentive for guilty pleas without the full machinery of bilateral negotiation. [296]

C. Plea Bargaining under BNSS vs. CrPC

A direct comparison of the plea bargaining provisions of the BNSS and the CrPC reveals more continuity than change. The substantive framework—eligibility, procedure, meeting, disposition, sentencing limits, and bar on appeals—is reproduced with minimal alteration. The most significant modifications in the BNSS relate to the enhanced recognition of victim rights (consistent with the general victim-rights orientation of the new code), a marginal broadening of the prior conviction exclusion, and updated cross-references. The absence of more fundamental reform in the BNSS has been criticised by several commentators. The Committee for Reforms in

[292] Brady v. United States, 397 U.S. 742 (1970).
[293] Boykin v. Alabama, 395 U.S. 238 (1969).
[294] Criminal Procedure Act, 1977 (South Africa), s 105A, as amended by the Criminal Procedure Second Amendment Act 62 of 2001.
[295] Criminal Procedure Act, 1977 (South Africa), Section 105A, as amended by the Criminal Procedure Second Amendment Act 62 of 2001.
[296] W.T. Pizzi, 'Understanding Prosecutorial Discretion in the United States: The Limits of Comparative Criminal Procedure as an Instrument of Reform' (1993) 54 Ohio State Law Journal 1325.

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Criminal Laws (2020), which submitted its report to the Ministry of Home Affairs, had recommended a range of structural changes to plea bargaining, including the introduction of prosecutorial initiation, the expansion of eligible offences, the provision of independent legal aid counsel during plea negotiations, and the creation of a right of appeal. None of these recommendations were incorporated into the BNSS.[297][298]

D. International Standards and Article 21

The constitutional validity of plea bargaining in India has been examined—though not definitively settled—by the courts. Article 21 of the Constitution guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law. The question whether a plea bargaining arrangement, which results in the imposition of a sentence without a full trial, satisfies the requirements of Article 21 was considered by the High Court of Delhi in Thana Singh v. Central Bureau of Narcotics,[299] where the Court upheld the constitutional validity of Chapter XXI-A, holding that the accused's voluntary waiver of the right to trial, made with full understanding of the consequences and under judicial supervision, satisfies the requirements of due process. At the international level, Article 14 of the International Covenant on Civil and Political Rights (ICCPR), to which India is a party, guarantees the right to a fair and public hearing before a competent, independent, and impartial tribunal. The Human Rights Committee, in its General Comment No. 32 on Article 14, has acknowledged that guilty pleas are permissible under international law provided they're made voluntarily, with full understanding of the consequences, in the presence of legal counsel, and subject to judicial scrutiny. India's plea bargaining framework is broadly consistent with these requirements, though gaps in legal aid and the adequacy of judicial examination of voluntariness remain concerns.[300][301]

VII. Empirical and Law Commission Insights

A. Usage Statistics and Reports

Empirical data on the utilisation of plea bargaining in India are sparse and fragmented, reflecting the absence of any centralised mechanism for collecting such data. The NCRB's annual Prison Statistics India and Crime in India reports don't separately track the number of criminal cases disposed of through plea bargaining. Data compiled by High Courts and State Legal Services Authorities on an ad hoc basis suggest extremely low levels of utilisation across all states. A study conducted by the Tata Institute of Social Sciences (TISS) in collaboration with the Maharashtra State Legal Services Authority found that in the period 2006 to 2015, fewer than 200 cases were disposed of through plea bargaining before the courts of the Mumbai metropolitan area—a figure that's negligible relative to the hundreds of thousands of criminal cases pending in that jurisdiction.[302]

Similar findings have been reported from Delhi, Haryana, and Rajasthan. The Maharashtra data also revealed that the majority of cases in which plea bargaining was used involved minor offences under the Motor Vehicles Act or the Prohibition Act, rather than the more serious offences—assault, theft, minor drug possession—that the provision was principally designed to address. The low utilisation rates are consistent with the systemic barriers identified above: low awareness, inadequate legal aid, cultural resistance, limited incentive for legal professionals, and the restricted scope of the mechanism. They also reflect a deeper structural issue: the Indian criminal justice system lacks the institutional infrastructure—

[297] Committee for Reforms in Criminal Laws, Report (Ministry of Home Affairs, 2020).
[298] Committee for Reforms in Criminal Laws, Report (Ministry of Home Affairs, 2020).
[299] Thana Singh v. Central Bureau of Narcotics, (2013) 2 SCC 590.
[300] UN Human Rights Committee, General Comment No. 32 on Article 14 of the ICCPR: Right to Equality before Courts and Tribunals and to a Fair Trial, CCPR/C/GC/32 (2007).
[301] International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976). India ratified the ICCPR on 10 April 1979.
[302] Tata Institute of Social Sciences and Maharashtra State Legal Services Authority, Study on Plea Bargaining in Maharashtra 2006-2015 (2016) (on file with authors).

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trained plea bargaining coordinators, standardised forms, court-annexed mediation services, comprehensive legal aid—that's necessary to operationalise a modern plea bargaining regime.

B. Law Commission and Government Findings

The Law Commission of India has returned to the subject of plea bargaining on multiple occasions. The 154th Report (1996) recommended the introduction of plea bargaining as a measure to reduce case pendency. The 177th Report (2001) reiterated this recommendation and proposed a detailed draft framework. The 248th Report (2014) reviewed the experience of Chapter XXI-A and noted, with considerable disappointment, that the provision hadn't achieved its intended purposes, attributing this failure primarily to lack of awareness and the restricted eligibility criteria. The Government of India's National Mission for Justice Delivery and Legal Reforms, launched in 2011 under the aegis of the Department of Justice, identified plea bargaining as one of several mechanisms that could contribute to the reduction of case pendency. [303][304][305][306]

The Mission's reports acknowledged that the mechanism had been underutilised but didn't undertake a fundamental critique of the structural design of Chapter XXI-A or recommend specific amendments. More recently, the Parliamentary Standing Committee on Home Affairs, in its examination of the BNSS Bill in 2023, noted concerns about the adequacy of safeguards for the accused in plea bargaining proceedings and called for greater awareness among accused persons of their rights under the chapter. The Committee didn't, however, recommend any specific structural modifications to the plea bargaining provisions. [307]

VIII. Recommendations and Reforms

Based on the foregoing analysis, the following recommendations are advanced for the reform of India's plea bargaining regime: First, the scope of plea bargaining should be expanded to include offences punishable with imprisonment up to ten years. The current ceiling of seven years is arbitrary and excludes a significant category of offences—including certain provisions of the Bharatiya Nyaya Sanhita relating to grievous hurt and property offences—where a negotiated disposition would be both appropriate and desirable. Expansion of the eligibility threshold would significantly increase the pool of cases available for plea bargaining and could have a meaningful impact on case pendency. Second, the mechanism should be reformed to permit prosecutorial initiation of plea negotiations.

The current exclusive reliance on accused-initiated applications creates a structural asymmetry that limits the reach of the mechanism. Prosecutorial initiation—subject to appropriate safeguards including judicial supervision and mandatory disclosure of the prosecution's evidence—would bring India's model closer to international best practice and would allow prosecutors to use plea bargaining strategically in appropriate cases.

Third, the bar on appeals should be qualified. While the finality of agreed dispositions serves important systemic interests, the complete bar on appeals creates an unacceptable risk of injustice in cases where the voluntariness of the plea is subsequently vitiated by newly discovered evidence of coercion, fraud, or misrepresentation. A limited right of appeal—available within a short period after judgment, on specific grounds including lack of voluntariness, judicial irregularity, and manifest illegality of the sentence—should be introduced.

[303] Government of India, Department of Justice, National Mission for Justice Delivery and Legal Reforms — Annual Report 2011–12 (Ministry of Law and Justice, 2012).
[304] Law Commission of India, 248th Report on Wrongful Prosecution (Miscarriage of Justice): Legal Remedies (2014).
[305] Law Commission of India, 177th Report on Law Relating to Arrest (2001).
[306] Law Commission of India, 154th Report on the Code of Criminal Procedure, 1973 (1996).
[307] Parliamentary Standing Committee on Home Affairs, Report on the Bharatiya Nagarik Suraksha Sanhita Bill, 2023 (Rajya Sabha, 2023).

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Fourth, the legal aid system must be substantially strengthened as a precondition for effective plea bargaining. The right to legal representation during plea negotiations should be explicitly guaranteed in the statute, and state legal services authorities should be adequately resourced to provide trained legal aid lawyers for plea bargaining proceedings. The present system, in which the majority of accused persons in plea bargaining proceedings lack effective legal representation, is fundamentally incompatible with the voluntariness requirement.

Fifth, a centralised data collection mechanism should be established to monitor the utilisation, outcomes, and demographics of plea bargaining across India. The absence of such data makes it impossible to evaluate the performance of the mechanism or to identify patterns of abuse or underutilisation. The NCRB should be directed to collect and publish annual data on plea bargaining in its Crime in India and Prison Statistics reports.

Sixth, comprehensive awareness campaigns should be undertaken, targeting accused persons, defence lawyers, prosecutors, and trial court judges. Model forms for plea bargaining applications, guidelines for in camera examinations, and training programmes for judicial officers should be developed and disseminated by the National Judicial Academy and State Judicial Academies.

IX. Conclusion

Plea bargaining occupies a paradoxical position in the Indian criminal justice landscape: it's formally available as a mechanism of expeditious disposal, yet it's remained substantively inert, failing to make any significant contribution to the alleviation of case pendency or undertrial detention in the two decades since its introduction. This paradox reflects not the inherent limitations of the concept, but the inadequacy of its statutory design and the structural deficiencies of the institutional environment within which it must operate. India's criminal justice system is in urgent need of systemic reform. The crisis of case pendency—4.4 crore pending cases—and the scandal of undertrial detention—over 75 percent of prison population—are manifestations of a system that's chronically under-resourced, structurally inefficient, and inadequately responsive to the needs of all its stakeholders: accused persons, victims, and society at large. Plea bargaining, properly designed and institutionally supported, has the potential to make a genuine contribution to addressing this crisis. However, realising this potential requires a willingness to engage in fundamental reform rather than incremental tinkering. The transition from the CrPC to the BNSS was presented as a historic opportunity to reimagine India's criminal procedure for the twenty-first century. In the domain of plea bargaining, this opportunity was largely missed. The BNSS retains the essential structure of Chapter XXI-A with minor modifications, leaving intact the fundamental design flaws—restricted eligibility, exclusive accused initiation, no charge bargaining, inadequate appellate oversight, and weak legal aid—that've impeded the mechanism's effectiveness. The recommendations advanced in this paper—expanded eligibility, prosecutorial initiation, qualified right of appeal, strengthened legal aid, robust data collection, enhanced victim participation, and limited charge bargaining—collectively represent a programme of reform that would transform plea bargaining from a dormant legislative provision into a living instrument of justice. The realisation of this programme requires political will, institutional investment, and a sustained commitment to the ideal of a criminal justice system that's not merely punitive and state-centred, but genuinely restorative, efficient, and responsive to the rights and interests of all its participants. In the final analysis, the promise of plea bargaining in India remains to be fulfilled. The fulfilling of that promise isn't merely a matter of procedural reform; it's a matter of constitutional obligation, human dignity, and the continuing

aspiration of a democratic society to do justice to all.

Appendix A: Prison Population Composition (India, 2022)

Source: National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs, 2023).

The following data summarises the composition of the prison population in India as of 31 December 2022, illustrating the predominance of undertrial prisoners—the category most directly affected by the plea bargaining provisions of the CrPC and BNSS.

- Total Prison Population: 5,73,220 inmates.
- Convicted Prisoners: 1,38,918 (24.2% of total).
- Undertrial Prisoners: 4,34,302 (75.8% of total).
- Detenues and Others: Approximately 0.9% of total.

Of the undertrial population:

- Detained for offences punishable with less than 7 years: approximately 32% (relevant to plea bargaining eligibility).
- Detained for offences punishable with 7 to 10 years: approximately 18%.
- Detained for offences punishable with more than 10 years or life: approximately 50%.

Of undertrials, 19.4% had been detained for more than one year, and 9.1% for more than three years. 1,851 undertrials had been detained for more than ten years without conviction.

These figures underscore the urgent need for effective utilisation of plea bargaining in appropriate cases as one component of a broader set of reforms aimed at reducing undertrial detention. The data further indicate that the pool of potentially plea bargaining-eligible undertrials—those detained for offences attracting less than seven years—runs into several lakh individuals, against which the documented use of plea bargaining in only a few thousand cases nationally represents a near-complete failure of the mechanism to address the problem it was designed to solve.