

PLEA BARGAINING UNDER CRIMINAL LAW AND CRIMINAL JUSTICE ADMINISTRATION

AUTHOR – ATHUL S, LLM STUDENT AT CRIMINAL LAW AND CRIMINAL JUSTICE ADMINISTRATION, TAMILNADU
DR. AMBEDKAR LAW UNIVERSITY, SCHOOL OF EXCELLENCE IN LAW – CHENNAI

BEST CITATION – ATHUL S, PLEA BARGAINING UNDER CRIMINAL LAW AND CRIMINAL JUSTICE
ADMINISTRATION, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (9) OF 2026, PG. 459-472, APIS – 3920 –
0001 & ISSN – 2583-2344.

Abstract

The concept of plea bargaining represents one of the most transformative and controversial developments within the modern criminal justice system. Originating in the United States and rooted in principles of negotiated justice, plea bargaining has evolved into a globally recognized mechanism for resolving criminal disputes efficiently. Its introduction in India through the Criminal Law (Amendment) Act, 2005 marked a significant departure from the rigid adversarial system historically practiced in the country. This research paper examines the conceptual foundations, statutory framework, and judicial interpretation of plea bargaining in India, along with its practical implications on the criminal justice administration. The paper also studies the evolution of plea bargaining, its applicability, advantages, challenges, and comparative perspectives from other jurisdictions. Through an extensive doctrinal methodology, it critically assesses whether plea bargaining has achieved its intended objectives of decongesting courts, ensuring speedy trials, and promoting restorative justice. The paper concludes with recommendations for strengthening the system and ensuring that plea bargaining operates fairly while balancing the interests of victims, society, and the accused.

Keywords – Plea bargaining, criminal justice, negotiated justice, restorative justice, guilty plea, speedy trial, CrPC, judicial administration.

Introduction

Justice P.N. Bhagwati in *Maneka Gandhi v. Union of India*⁷⁵⁰ expanded the scope of Article 21, holding that personal liberty is of the widest amplitude and includes a variety of rights essential to human dignity, many of which also receive protection under Article 19. One such implicit but crucial right is the right to speedy justice, later expressly recognized as a fundamental right in *Hussainara Khatoon v. State of Bihar*⁷⁵¹.

Despite this constitutional guarantee, the Indian criminal justice system suffers from chronic delays, leading to prolonged trials and extensive under-trial detention. A large number of

accused persons remain in prison for years due to delays in investigation and trial, inability to secure bail, and systemic inefficiencies. This situation causes severe emotional, psychological, and social hardship, often defeating the very purpose of justice. Where evidence is weak or insufficient, prolonged incarceration itself becomes unjust punishment.

To address these concerns, the legislature introduced mechanisms aimed at expeditious disposal of criminal cases. One such measure is plea bargaining, inspired by global practices, particularly the American system where a majority of criminal cases are resolved through negotiated pleas. Plea bargaining aims to

⁷⁵⁰ AIR 1978 SC 597

⁷⁵¹ AIR 1979 SC 1360 / 1369

reduce case backlog, ensure speedy trials, and alleviate prison overcrowding.

In India, plea bargaining was formally introduced through the Criminal Law (Amendment) Act, 2005, which inserted Chapter XXIA (Sections 265A–265L) into the Code of Criminal Procedure, 1973. However, Indian courts historically viewed plea bargaining with skepticism due to concerns over coercion, violation of fair trial rights, and erosion of public confidence in the justice system. As a result, its application was restricted and accompanied by strict safeguards.

With the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), plea bargaining provisions have been retained and reorganized under Chapter 23 (Sections 289–300). These provisions largely mirror the CrPC framework but reflect legislative continuity with procedural refinement. Plea bargaining under BNSS remains applicable only to less serious offences, excludes socio-economic offences, and mandates voluntariness, judicial supervision, and victim participation.

Thus, while plea bargaining is now a recognized statutory mechanism under both CrPC and BNSS, its role in India remains cautious and limited, balancing the need for speedy justice with constitutional guarantees of fairness, due process, and protection against coercion. The evolving framework seeks to harmonize efficiency with justice, ensuring that expeditious disposal does not come at the cost of fundamental rights.

Concept and Meaning of Plea Bargaining

Plea bargaining is a term including two components: 'plea', which signifies a request. Prayer or an emotional appeal can be viewed as a form of negotiation or settlement, often evident in daily life when bargaining over prices with a shopkeeper. In criminal law, the objective of this notion remains consistent; however, the

defendant negotiates a plea to receive a reduced or more lenient charge in exchange for a guilty plea⁷⁵².

The Indian notion of plea bargaining is derived from the United States idea of *nolo contendere*, which translates to "I do not wish to contest." This doctrine has been evaluated and applied in a manner that considers the prevailing social and economic situations in our nation. Plea negotiating enables both parties in a criminal case to circumvent an extended trial and may permit defendants to evade the possibility of conviction on more severe charges. A definitive definition of plea bargaining does not exist. Plea bargaining refers to a negotiation procedure in which an offender may admit guilt in court in return for a reduced sentence compared to what would typically be imposed for the offence. Plea bargaining typically transpires at any point prior to the court's pronouncement of judgement.

The definition of plea bargaining differs according on jurisdiction and contextual use. **Black's Law Dictionary** describes it as "The process by which the accused and the prosecutor in a criminal case negotiate a mutually agreeable resolution, pending court approval." The accused typically pleads guilty to a lesser offence or to only one or a subset of the charges in a multi-count indictment in exchange for a more lenient sentence than that associated with the serious accusation⁷⁵³.

The **Oxford Dictionary** defines plea bargaining as "an arrangement between prosecutor and defendant whereby the defendant pleads guilty to a lesser charge in exchange for a more lenient sentence or an agreement to dismiss other charges⁷⁵⁴." Plea bargaining entails the exchange of official concessions for a defendant's admission of guilt⁷⁵⁵. It is a pact wherein the defendant consents to plead guilty in exchange for the assurance of a certain advantage⁷⁵⁶. The parties involved in the

⁷⁵² Plea Bargaining: A Silver Lining or a Compromised Mockery Indian Journal of Law and Human Behavior Volume Number 2 (Special Issue)

⁷⁵³ 5BryamA Garner and Honey Campbell "Blacks Law Dectinory"^{8th Ed.} (2004)

⁷⁵⁴ Oxford Dictionary. Fourth Edition, Oxford University Press, 1995

⁷⁵⁵ Alschuler, A. W. (1979). Plea bargaining and its history. Columbia Law Review

⁷⁵⁶ Clark, P. (1986). The public prosecutor and plea bargaining. Australian Law Journal

agreement typically include the accused and the prosecution; however, it is also feasible for the police or the court to participate in plea bargaining.

Categories of Plea Bargaining

Plea bargaining is broadly classified into three distinct categories based on the nature of negotiation between the prosecution and the accused⁷⁵⁷.

• Sentence Bargaining

Sentence bargaining refers to a negotiated agreement in which the accused pleads guilty to the offence charged in exchange for a reduced or lenient sentence. In this form, the charge itself remains unchanged only the quantum of punishment is subject to negotiation.

Under sentence bargaining, the accused accepts responsibility for the offence, and in return, the prosecution or the court agrees to recommend or impose a lesser sentence than what would ordinarily be awarded after a full trial. This reduction may take the form of:

- A shorter term of imprisonment
- Probation instead of incarceration
- Reduced fines
- Compensation to the victim

This form of plea bargaining is recognized in India and England, subject to strict judicial supervision. In the Indian context, sentence bargaining operates within the framework of Chapter XXIA of the CrPC and now Chapter 23 (Sections 289–300) of the BNSS, where the court ensures that:

- The plea is voluntary
- The accused understands the consequences
- Victim compensation is adequately addressed

Sentence bargaining is considered relatively less controversial because it does not dilute the

seriousness of the offence; instead, it balances punishment with efficiency and rehabilitation.

• Charge Bargaining

Charge bargaining involves negotiation over the nature or severity of the charges brought against the accused. In this process, the accused agrees to plead guilty to a lesser or fewer charges, and in return, the prosecution drops more serious charges.

For example, an accused initially charged with murder may plead guilty to culpable homicide not amounting to murder, resulting in a significantly lower punishment. Similarly, multiple charges may be reduced to a single charge upon a guilty plea.

This form of plea bargaining is predominantly practiced in the United States, where prosecutors enjoy wide discretionary powers. It allows the prosecution to secure a conviction without the uncertainty of trial, while the accused benefits from reduced criminal liability.

However, charge bargaining is not permitted in India. Indian law prohibits the reduction or withdrawal of serious charges through negotiation, primarily due to concerns that such practices:

- Undermine the gravity of offences
- Encourage coercive pleas
- Erode public confidence in the justice system

Indian courts have consistently emphasized that altering charges through negotiation could compromise fair trial rights and victim justice.

• Fact Bargaining

Fact bargaining is the least common and most controversial form of plea bargaining. It involves an agreement where the accused admits to certain facts while the prosecution agrees to withhold or not present other incriminating facts that could lead to harsher sentencing.

⁷⁵⁷ Quest Journals Journal of Education, Arts, Law and Multidisciplinary Volume 15

In essence, both parties stipulate which facts will be placed on record, thereby influencing the legal outcome, particularly the sentencing decision. For instance, the prosecution may agree not to present evidence of prior criminal conduct in exchange for the accused admitting key elements of the offence.

This form of bargaining directly interferes with the fact-finding function of the court, as it restricts the court's access to the complete factual matrix of the case. Due to this reason, fact bargaining is generally discouraged or expressly prohibited in many jurisdictions, including India.

Indian criminal jurisprudence rejects fact bargaining because:

- It compromises judicial truth-finding
- It allows manipulation of evidence
- It threatens the integrity of criminal trials

As a result, fact bargaining has no statutory recognition under CrPC or BNSS.

Origin of Plea Bargaining

Plea bargaining has a longstanding history in India, originating from the Vedic period. The Dharmasastras contain a chapter called Prayaschitta, which outlines corrective methods for Atmashanti, or self-purification by the confession of faults. Plea bargaining was prevalent during the post-Vedic period, specifically in the Mauryan era, where it manifested as conciliation, and in the Mughal period, where it took the form of the Quisas system, requiring an accused to compensate the next of kin of a homicide victim⁷⁵⁸. Subsequently, in the post-independence era, the concept of plea bargaining was officially instituted based on the recommendations of the Law Commission's reports through The Criminal Law (Amendment) Act, 2005.

Observations of the Law Commission Regarding Plea Bargaining⁷⁵⁹

The Law Commission of India endorsed the notion of plea bargaining in its 142nd, 154th, and 177th reports. The 142nd report of the Law Commission of India advocated for the implementation of "concessional treatment for individuals who opt to plead guilty without negotiation⁷⁶⁰," under legal authority, aiming to introduce remedial legislative measures to mitigate delays in the resolution of criminal trials and appeals, as well as to alleviate the hardships faced by under-trial prisoners in custody awaiting trial commencement. This report addressed multiple concerns pertaining to the concept of plea bargaining. The study also analyzed the notion of plea bargaining implemented in the United States and Canada. The paper also considered the concerns to the implementation of plea bargaining in the Indian legal system for all offences⁷⁶¹.

Five reasons are presented to substantiate this concept:

- Many individuals who are arrested admit their guilt, rendering a trial seemingly unnecessary.
- why should we squander public funds?
- Plea bargaining is a negotiation in which both parties concede certain aspects to achieve mutual benefit.
- Trials incur time and expenses.
- Plea bargaining benefits both sides by saving time and resources and often reduces the defendant's punishment.

This study presents two questions for discussion. The initial inquiry pertains to the appropriateness of incorporating plea bargaining into Indian Criminal Jurisprudence. The subsequent inquiry, contingent upon a favorable response to the initial issue, pertains to whether the scheme should be universally applicable to all types of offences without discrimination, or only to the

⁷⁵⁸ Jain, H., & Rautela, M. (2018). Overview of Plea Bargaining in India

⁷⁵⁹ Quest Journals Journal of Education, Arts, Law and Multidisciplinary Volume 15

⁷⁶⁰ 142nd Law Commission of India Report, "Concessional Treatment for Offenders who on their own initiative choose to plead guilty without any Bargaining"

⁷⁶¹ Ibid, at Chapter VII

designated offence⁷⁶². The majority of judicial officers advocated for the implementation of plea bargaining; nevertheless, most opposed its application to all types of offences, suggesting it should be limited to less serious offences. "The report presents several objections to the incorporation of plea bargaining within Indian criminal jurisprudence."

The nation's social circumstances do not warrant the implementation of the notion as:

- Plea bargaining may elevate the frequency of criminal activity.
- The nation's socioeconomic circumstances do not warrant the implementation of the concept.
- Pressures from prosecutorial entities may lead to the wrongful convictions of the innocent.
- Criminals may evade accountability.
- The impoverished will ultimately suffer from this concept.

The Law Commission suggested that the scheme could be extended to offences punishable by imprisonment of 7 years or more, following a thorough evaluation of the scheme's application to offences punishable by less than 7 years of imprisonment⁷⁶³. The plan may be rendered inapplicable to socio-economic offences and offences against women and children.

The Law Commission of India, in its 154th report, advocated for the implementation of plea bargaining inside the Indian criminal court system. The report stated that the rationale for implementing the idea of Plea Bargaining is best articulated in the 142nd report of the Law Commission of India. The court, after considering the arguments of the public prosecutor and the accused, may approve the plea-bargaining application and impose a sentence of up to one-half of the minimum prescribed penalty⁷⁶⁴. A

distinct chapter XXIA on Plea Bargaining should be included in the Code of Criminal Procedure.

The Law Commission of India, in its 177th report, recommended the prompt implementation of the 14th Law Commission's suggestions from the 154th report regarding plea bargaining in Chapter 13 of the Criminal Procedure Code. The report recommended including plea bargaining measures in accordance with the 142nd and 154th reports and other Supreme Court judgement decisions.

Plea Bargaining in Common Law Systems

• United States

The United States is often regarded as the birthplace of modern plea bargaining. Although early American legal systems emphasized full jury trials, the explosive growth in population, urbanization, and crime rates in the 19th and 20th centuries led to an unsustainable burden on courts. Prosecutors and judges began informally negotiating guilty pleas in exchange for concessions.

The U.S. Supreme Court eventually recognized the constitutionality of plea bargaining in seminal decisions like:

- *Brady v. United States* (1970)⁷⁶⁵ – Voluntary guilty pleas are valid if made with knowledge of consequences.
- *Santobello v. New York* (1971)⁷⁶⁶ – Plea bargaining is an essential component of justice administration.
- *Missouri v. Frye* (2012)⁷⁶⁷ – Ineffective assistance of counsel during plea offers violates Sixth Amendment rights.

Today, more than 90–95% of criminal cases in the U.S. are resolved through plea agreements, making it the dominant mode of adjudication.

• United Kingdom

The UK has traditionally opposed bargaining but eventually adopted a structured form of

⁷⁶² Ibid, at Chapter IV

⁷⁶³ Ibid at Chapter VII

⁷⁶⁴ 154th Law Commission of India Report, "The Code of Criminal Procedure", 1973.

⁷⁶⁵ 397 U.S. 742

⁷⁶⁶ 404 U.S. 257 (1971)

⁷⁶⁷ 566 U.S. 134

“sentence discounting” for early guilty pleas. The Criminal Justice Act, 2003 formalized sentence reductions up to one-third for timely pleas. Unlike the U.S., private negotiations are discouraged; judges maintain strict oversight.

Other Jurisdictions

- Canada – Allows plea negotiations but requires court approval.
- Australia – Similar to Canada; focuses on transparency.
- Germany & Italy – Have adopted limited negotiated procedures within inquisitorial systems.

Plea bargaining Under Bharatiya Nagarik Suraksha Sanhita (BNSS)

Plea bargaining within the Bharatiya Nagarik Suraksha Sanhita herein referred as (BNSS) is governed by Chapter 23, particularly from section 289 to 300 which has been enforced from first of July 2024. It permits a defendant to enter a guilty plea in return for a mitigated punishment or a lesser offence. The BNSS underscores a time-sensitive procedure, stipulating that applications for plea negotiation must be submitted within 30 days of the charge being established.

• **Section 289: implementation of chapter.**

It covers accused individuals who have been reported by the police station officer under section 193 for an offence not punishable by death, life imprisonment, or more than seven years or taken cognizance by a Magistrate. It does not apply to crimes against women or children or that affect the country's socioeconomic status⁷⁶⁸.

• **Section 290: Application Procedure**

Within thirty days of the charge being presented in court, an individual who has been accused of an offence is eligible to submit an application for plea bargaining. The application must contain a concise case description and an affidavit that

certifies the voluntary nature of the plea, the comprehension of the punishment, and the absence of any prior convictions for the same offence. The court notifies the Public Prosecutor or complainant and the accused to appear on the fixed date upon receiving the application. The court conducts a private examination of the accused on that date to verify their voluntariness. If satisfied, it establishes a date for a subsequent hearing and provides a maximum of sixty days to negotiate a mutually acceptable resolution, which may include compensation for the victim. The court will proceed with the trial in accordance with the law if the application is determined to be involuntary or if the accused has a prior conviction⁷⁶⁹.

• **Sections 291: Disposition**

To achieve a mutually agreeable resolution under section 290(4)(a), the Court, in instances involving a police report, must inform the Public Prosecutor, investigating officer, accused, and victim to participate in a meeting, ensuring the process is voluntary, with the accused permitted to bring legal counsel. In instances not predicated on a police report, the Court is obligated to inform the accused and the victim to partake in such a meeting, guaranteeing voluntariness and for either side to enlist an advocate if desired⁷⁷⁰.

• **Section 292: Reporting the Result**

If a satisfactory disposition of the case is reached in a meeting under section 291, the Court shall prepare a report of such disposition, which shall be signed by the presiding officer and all other persons who participated in the meeting. If no such disposition is reached, the Court shall record such observation and proceed further in accordance with this Sanhita from the stage the application under sub-section (1)⁷⁷¹.

• **Section 293: Case Disposition**

Upon achieving a mutually agreeable resolution pursuant to section 292, the Court shall conclude the matter by granting compensation to the

⁷⁶⁸ Section 289, Bharatiya Nagarik Suraksha Sanhita 2023

⁷⁶⁹ Section 290, Bharatiya Nagarik Suraksha Sanhita 2023

⁷⁷⁰ Section 291, Bharatiya Nagarik Suraksha Sanhita 2023

⁷⁷¹ Section 292, Bharatiya Nagarik Suraksha Sanhita 2023

victim and evaluating alternatives such as probation or admonition in accordance with section 401 of the Probation of Offenders Act or other applicable statutes. Should probation be deemed suitable, the Court may release the defendant accordingly. If the minimum penalty is applicable, the Court may mitigate it to fifty percent, or twenty-five percent if the defendant is a first-time offender. In other instances, the Court may impose one-fourth, or one-sixth for first-time offenders, of the required punishment⁷⁷².

• Section 294: Judgement of Court

Corresponds with Section 265F of CrPC wherein the Court shall deliver its judgement in the open Court and the same shall be signed by the presiding officer of the Court⁷⁷³.

• Section 295: Finality of judgment

Corresponds with Section 265G of CrPC. The judgment delivered by the Court under this Section shall be final and no appeal can be made against such judgment in any Court except the SLP under Article 136 and Writ Petition under Articles 226 and 227 of the Constitution⁷⁷⁴.

• Section 296: Compliance

When it comes to the arena of plea bargaining, the court has the authority to exercise all of the powers that are outlined in the BNSS with regard to bail, the trial, and the ultimate resolution of the case⁷⁷⁵.

• Section 297: Duration of Detention

The stipulations of section 468 shall be applicable for offsetting the duration of detention experienced by the accused against the imposed sentence of imprisonment under this Chapter, analogous to their application to incarceration under other sections of this Sanhita⁷⁷⁶.

• Section 298: The Act's Savings Clause

No other provision of this Sanhita shall be deemed to restrict the interpretation of any provision within this Chapter. Clarification. This

chapter delineates "Public Prosecutor" as clause (v) of section 2 and encompasses an Assistant Public Prosecutor appointed pursuant to section 19⁷⁷⁷.

• Section 299: Declarations by Defendants

Notwithstanding any existing legislation, the statements or facts provided by an accused in a plea bargaining application filed under section 290 shall be utilized solely for the purposes of this Chapter⁷⁷⁸.

• Section 300: Exclusion of Minors

The sections of the chapter related to plea bargaining are inapplicable to juveniles or children, as delineated by the Juvenile Justice (Care and Protection of Children) Act of 2015⁷⁷⁹.

Comparative Analysis of Criminal Procedure Code (CrPc) and Bharatiya Nagarik Suraksha Sanhita (BNSS):

- **CrPc:** In accordance with the Criminal Procedure Code, there is no time limit for the submission of an application for the negotiation of a plea bargain.

BNSS: In order for the accused to be in compliance with the provisions of the BNSS, they are required to file an application for plea negotiating within thirty days of the date when the charges were formed.

- **CrPc:** As a general rule, the Criminal Procedure Code (CrPC) allows for the practice of plea bargaining, which makes it simpler for the accused and the prosecution to discuss the charge, the punishment, or both between them individually.

BNSS: Sentence negotiation is the only form of plea bargaining that is permitted by the BNSS. This is a process in which an accused individual can request a lesser sentence in exchange for pleading guilty.

⁷⁷² Section 293, Bharatiya Nagarik Suraksha Sanhita 2023

⁷⁷³ Section 294, Bharatiya Nagarik Suraksha Sanhita 2023

⁷⁷⁴ Section 295, Bharatiya Nagarik Suraksha Sanhita 2023

⁷⁷⁵ Section 296, Bharatiya Nagarik Suraksha Sanhita 2023

⁷⁷⁶ Section 297, Bharatiya Nagarik Suraksha Sanhita 2023

⁷⁷⁷ Section 298, Bharatiya Nagarik Suraksha Sanhita 2023

⁷⁷⁸ Section 299, Bharatiya Nagarik Suraksha Sanhita 2023

⁷⁷⁹ Section 300, Bharatiya Nagarik Suraksha Sanhita 2023

Constitutional Validity of Plea Bargaining in India

• Article 21 – Right to Fair Trial and Speedy Justice

Article 21 of the Constitution guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law, which must be fair, just, and reasonable, as held in *Maneka Gandhi v. Union of India*⁷⁸⁰. The right to a fair trial, which includes the right to legal representation, voluntariness, and informed decision-making, is an integral component of Article 21⁷⁸¹.

From the perspective of plea bargaining, constitutional validity depends upon whether the process:

- Is voluntary, free from coercion or inducement
- Is entered into with full awareness of legal consequences
- Ensures access to competent legal counsel
- Is supervised by a judicial authority

Under Chapter XXIA of the CrPC and now Chapter 23 of the BNSS, plea bargaining proceedings are conducted in-camera, and the court is required to satisfy itself that the accused has voluntarily opted for the process. This safeguard prevents undue pressure by the prosecution or investigating agencies.

Furthermore, plea bargaining advances the right to speedy trial, which was explicitly recognized as a fundamental right in *Hussainara Khatoon v. State of Bihar*⁷⁸². By enabling early resolution of criminal cases, plea bargaining reduces prolonged incarceration of under-trial prisoners and ensures quicker justice, thereby reinforcing the objectives of Article 21 rather than violating them.

• Article 14 – Right to Equality before Law

Article 14 guarantees equality before the law and equal protection of the laws, while permitting reasonable classification. The classification must be based on an intelligible differentia and must have a rational nexus with the object sought to be achieved⁷⁸³.

Plea bargaining in India applies only to less serious offences and excludes:

- Offences punishable with death or life imprisonment
- Offences affecting socio-economic conditions of the country
- Offences committed against women and children

This classification is neither arbitrary nor discriminatory. It is based on the severity and societal impact of offences, which constitutes a valid intelligible differentia. The objective behind this classification is to:

- Preserve public confidence in the justice system
- Prevent dilution of punishment for grave crimes
- Ensure victim protection in sensitive cases

Thus, the limitation on eligibility under plea bargaining satisfies the test of reasonable classification and does not violate Article 14.

• Article 20(3) – Protection against Self-Incrimination

Article 20(3) provides that no person accused of an offence shall be compelled to be a witness against himself. A major concern regarding plea bargaining is whether a guilty plea amounts to compelled self-incrimination⁷⁸⁴.

⁷⁸⁰ AIR 1978 SC 597

⁷⁸¹ Article 21 of the Constitution of India, 1950.

⁷⁸² AIR 1979 SC 1360 / 1369

⁷⁸³ Article 14 of the Constitution of India, 1950.

⁷⁸⁴ Article 20(3) of the Constitution of India, 1950.

From a constitutional standpoint, plea bargaining does not violate Article 20(3) for the following reasons:

- The process is initiated voluntarily by the accused
- The accused is under no legal obligation to opt for plea bargaining
- Statements made during plea bargaining proceedings are confidential

Under Section 265K of the CrPC (corresponding provisions under BNSS), statements or admissions made during plea bargaining cannot be used for any purpose other than the plea bargaining proceedings. If the process fails, such statements are inadmissible during trial.

Therefore, since there is no element of compulsion and adequate safeguards exist to protect the accused, plea bargaining does not amount to unconstitutional self-incrimination.

• **Article 38 – Promotion of Social Justice**

Article 38 mandates the State to strive to promote the welfare of the people by securing and protecting a social order based on justice social, economic, and political⁷⁸⁵.

From the perspective of plea bargaining:

- Prolonged criminal trials disproportionately affect economically weaker sections, who lack resources to engage in long-drawn litigation.
- Under-trial prisoners often belong to marginalized communities and remain incarcerated for extended periods due to procedural delays.
- Plea bargaining provides a pragmatic solution by allowing early resolution of cases without compromising judicial oversight.

By facilitating quicker disposal of cases, plea bargaining reduces the socio-economic burden on accused persons and prevents unnecessary incarceration. This contributes to the realization

of social justice, as envisioned under Article 38, by ensuring that justice is not delayed or denied due to systemic inefficiencies.

• **Article 39A – Equal Access to Justice and Legal Aid**

Article 39A obligates the State to ensure that the legal system promotes justice on the basis of equal opportunity and provides free legal aid to ensure that justice is not denied to any citizen due to economic or other disabilities⁷⁸⁶.

Plea bargaining supports Article 39A in several ways:

- It reduces the cost of litigation, making justice more accessible to indigent accused persons.
- It shortens trial duration, minimizing legal expenses and emotional stress.
- The statutory framework mandates the presence of legal counsel, ensuring informed and voluntary participation by the accused.

Through judicial supervision and legal assistance, plea bargaining prevents exploitation while enabling economically disadvantaged individuals to access timely justice. Hence, it strengthens the constitutional commitment to equal justice under law.

Case Law Analysis on Plea Bargaining in India

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

Facts of the Case

In *Murlidhar Meghraj Loya v. State of Maharashtra* (1976), the accused was prosecuted for offences under the relevant criminal law. During the trial proceedings, the accused pleaded guilty to the charges framed against him⁷⁸⁷. The trial court, taking note of the plea of guilt, awarded a reduced sentence to the accused. The reduction in punishment appeared to be influenced by the accused's willingness to admit guilt rather than a full judicial evaluation of the seriousness of the offence. The matter was

⁷⁸⁵ Article 38 of the Constitution of India, 1950.

⁷⁸⁶ Article 39A of the Constitution of India, 1950.

⁷⁸⁷ 3 SCC 684

subsequently brought before the Supreme Court, where the legality of reducing sentence solely on the basis of a guilty plea was questioned.

Issues

1. Whether a guilty plea by the accused can be a valid ground for awarding a reduced sentence.
2. Whether reduction of punishment on the basis of guilty plea amounts to indirect recognition of plea bargaining.
3. Whether such practice is consistent with the principles of criminal justice and fair trial.

Judgment

The Supreme Court held that a plea of guilty cannot, by itself, justify the reduction of sentence. The Court observed that sentencing must be determined in accordance with statutory provisions and judicial discretion, taking into account the gravity of the offence and the circumstances of the case. It cautioned that awarding leniency solely because an accused pleads guilty would indirectly introduce plea bargaining into the criminal justice system, which was impermissible under Indian law at that time. The Court emphasized that criminal justice must not be administered on the basis of convenience or compromise, as offences are committed against society at large. Accordingly, the Supreme Court disapproved of the trial court's approach and reaffirmed that plea bargaining had no place in Indian criminal jurisprudence prior to statutory recognition.

- **Kasambhai Abdul Rehman Bhai Sheikh v. State of Gujarat (1980) 3 SCC 120**

Facts of the Case

In *Kasambhai Abdul Rehman Bhai Sheikh v. State of Gujarat (1980)*, the accused was charged with offences under the Prevention of Food Adulteration Act. During the trial, the accused pleaded guilty to the charges⁷⁸⁸. The trial court, considering the plea of guilt, imposed a lenient sentence instead of the punishment prescribed

under the statute. The decision to reduce the sentence appeared to be influenced mainly by the accused's admission of guilt rather than a strict application of statutory sentencing requirements. The matter was later brought before the Supreme Court, which examined whether such reduction of sentence was legally permissible.

Issues

1. Whether a plea of guilt by the accused can justify reduction of sentence below the statutory minimum.
2. Whether acceptance of guilty plea with reduced punishment amounts to plea bargaining.
3. Whether such a practice is consistent with the object of penal statutes and principles of criminal justice.

Judgment

The Supreme Court strongly disapproved of the practice adopted by the trial court and held that plea bargaining has no place in Indian criminal jurisprudence. The Court observed that offences under social welfare legislations such as the Prevention of Food Adulteration Act are committed against society at large and cannot be treated lightly. It emphasized that statutory minimum punishments must be strictly enforced and cannot be reduced merely because the accused pleads guilty. The Court warned that encouraging guilty pleas in exchange for leniency would lead to abuse of the criminal justice system and defeat the legislative intent behind such statutes. Accordingly, the Supreme Court set aside the reduced sentence and reaffirmed that sentencing must strictly conform to statutory mandates, irrespective of any plea of guilt.

- **Kachhia Patel Shantilal Koderlal v. State of Gujarat, (1990) 4 SCC 653**

Facts of the Case

In *Kachhia Patel Shantilal Koderlal v. State of Gujarat (1990)*, the accused was prosecuted for offences of an economic nature under the

⁷⁸⁸ 3 SCC 120

relevant statutory provisions⁷⁸⁹. During the pendency of the criminal proceedings, the accused entered a plea of guilty before the trial court. This plea was made with the expectation that the court would take a lenient view while awarding punishment. The trial court appeared to have accepted the guilty plea and imposed a comparatively lesser sentence, seemingly influenced by the accused's admission of guilt. The legality and propriety of such a plea-based conviction and sentence were later questioned, and the matter ultimately reached the Supreme Court for authoritative determination.

Issues

1. Whether plea bargaining had any legal recognition in Indian criminal law at the time.
2. Whether a conviction or reduction of sentence based on a negotiated guilty plea was permissible.
3. Whether plea bargaining violated the right to a fair trial guaranteed under Article 21 of the Constitution.
4. Whether acceptance of plea bargaining undermined the integrity of the criminal justice system and public confidence in judicial processes.

Judgment

The Supreme Court categorically rejected the practice of plea bargaining and held that it was illegal and opposed to public policy, as Indian law did not recognize plea bargaining at the relevant time. The Court observed that criminal offences are offences against society and cannot be treated as matters of private compromise between the prosecution and the accused. It emphasized that a guilty plea influenced by the expectation of leniency could not be regarded as truly voluntary and posed a serious threat to the fairness of criminal trials. The Court further warned that plea bargaining could lead to coercion, especially affecting accused persons from weaker socio-economic

backgrounds, and could create an impression that justice is negotiable. The Supreme Court concluded that sentencing must be determined solely on judicial principles and statutory provisions, and not through bargaining, and therefore strongly disapproved of the practice of plea bargaining.

- **State of Uttar Pradesh v. Chandrika, (2000) 7 SCC 759**

Facts of the Case

In *State of Uttar Pradesh v. Chandrika* (2000), the accused was charged with serious criminal offences under the Indian Penal Code⁷⁹⁰. During the course of the trial, the accused pleaded guilty before the trial court. Taking into consideration the plea of guilt, the trial court convicted the accused and awarded a lesser sentence, apparently on the ground that the accused had admitted his guilt. The State of Uttar Pradesh challenged this approach, contending that the trial court had improperly reduced the sentence merely because the accused pleaded guilty, without independently assessing the gravity of the offence and the relevant sentencing principles. The matter was therefore brought before the Supreme Court for clarification on whether a guilty plea by itself could justify a reduced punishment.

Issues

1. Whether a plea of guilt by the accused automatically entitles him to a lesser sentence.
2. Whether sentencing can be influenced solely by the accused's admission of guilt.
3. Whether such an approach amounts to indirect recognition of plea bargaining in Indian criminal law.
4. Whether reduction of sentence on the basis of guilty plea violates principles of fair trial and justice.

⁷⁸⁹ 4 SCC 653

⁷⁹⁰ 4 SCC 653

Judgment

The Supreme Court firmly held that mere pleading guilty does not entitle an accused to a lesser sentence. The Court clarified that Indian criminal jurisprudence does not recognize plea bargaining, and any reduction of sentence solely on the basis of a guilty plea would amount to introducing plea bargaining indirectly, which is impermissible. The Court emphasized that sentencing is a judicial function and must be based on the nature of the offence, the manner of its commission, statutory provisions, and relevant aggravating or mitigating circumstances, rather than on the accused's willingness to admit guilt. It observed that while a plea of guilt may be a relevant factor, it cannot be the sole ground for imposing a lighter punishment. The Supreme Court warned that encouraging sentence reduction merely because of guilty pleas would undermine public confidence in the criminal justice system and could lead to coercion and injustice. Accordingly, the Court disapproved the approach of the trial court and reaffirmed that plea bargaining had no place in Indian criminal law at that time.

- **State of Gujarat v. Natwar Harchanji Thakor, (2005) 4 Guj LR 2952**

Facts of the Case

In *State of Gujarat v. Natwar Harchanji Thakor*, the accused was charged with criminal offences under the Indian Penal Code⁷⁹¹. During the course of the trial, the accused expressed his willingness to plead guilty. The trial court accepted the plea of guilt and imposed a comparatively lenient sentence, taking into account the accused's admission and the objective of expeditious disposal of cases. The State of Gujarat challenged the trial court's approach, arguing that reduction of sentence on the basis of a guilty plea amounted to impermissible plea bargaining and was contrary to the established principles of criminal law. The matter came before the Gujarat High Court at a time when the Criminal Law (Amendment) Act, 2005,

introducing plea bargaining into the CrPC, had recently been enacted.

Issues

1. Whether acceptance of a guilty plea with reduced sentence amounts to illegal plea bargaining.
2. Whether courts can take a pragmatic approach towards guilty pleas in light of mounting case backlog.
3. Whether leniency based on voluntary admission of guilt violates principles of criminal justice.
4. Whether the evolving legislative policy justified a shift from earlier rigid judicial opposition to plea bargaining.

Judgment

The Gujarat High Court adopted a progressive and pragmatic approach, distinguishing earlier Supreme Court decisions that had rejected plea bargaining when there was no statutory framework. The Court observed that the criminal justice system was facing an acute crisis of delay, pendency, and overcrowded prisons, and therefore a rigid rejection of negotiated justice was no longer practical. It held that where an accused voluntarily pleads guilty, fully understands the consequences, and where the offence is not of a grave or heinous nature, courts may consider imposing a lesser sentence to serve the ends of justice. The Court emphasized that such an approach does not amount to coercive plea bargaining but rather reflects a judicially supervised settlement, consistent with emerging legislative intent. The High Court upheld the reduced sentence and recognized that plea bargaining, if regulated and voluntary, could serve as an effective tool for speedy justice.

- **Rajinder Singh v. State (UT of Chandigarh), (2015) 6 SCC 477**

Facts of the Case

In *Rajinder Singh v. State (UT of Chandigarh)*, the accused was convicted for criminal offences under the Indian Penal Code and was awarded

⁷⁹¹ 4 Guj LR 2952

a sentence by the trial court⁷⁹². During the appellate proceedings, the accused expressed remorse and sought reduction of sentence, contending that he was willing to accept guilt and that prolonged incarceration would serve no useful purpose. The accused relied upon mitigating circumstances such as his conduct, the passage of time, and his willingness to reform. The appellate court considered whether leniency in sentencing could be granted in light of these submissions. The matter ultimately reached the Supreme Court, where the scope of sentence reduction and its relationship with plea bargaining principles came under examination.

Issues

1. Whether admission of guilt or willingness to accept responsibility can be a ground for reduction of sentence.
2. Whether reduction of sentence on such grounds amounts to impermissible plea bargaining.
3. Whether courts can adopt a reformatory and pragmatic approach in sentencing while maintaining the rule of law.
4. Whether such sentencing discretion is consistent with principles of criminal justice and public interest.

Judgment

The Supreme Court adopted a balanced and reformatory approach and held that sentence reduction based on mitigating circumstances does not amount to plea bargaining. The Court clarified that plea bargaining involves a negotiated agreement prior to conviction, whereas post-conviction sentencing discretion exercised by a court is a judicial function grounded in law. The Court observed that factors such as remorse, acceptance of responsibility, conduct of the accused, and the possibility of reformation are legitimate considerations in determining punishment. It emphasized that criminal law is not merely punitive but also reformatory, and sentencing should aim to achieve proportionality and justice rather than mechanical severity. The Court cautioned,

however, that such discretion must be exercised carefully and should not dilute the seriousness of the offence or undermine societal interest. Accordingly, the Supreme Court upheld the principle that leniency granted through judicial assessment is distinct from plea bargaining and does not violate established criminal jurisprudence.

• Re: Policy Strategy for Grant of Bail (2022)⁷⁹³

In *Re: Policy Strategy for Grant of Bail (2022)*, the Supreme Court of India took suo motu cognizance of the severe issues of overcrowded prisons, prolonged under-trial detention, and pendency of criminal cases. The Court observed that a large number of prisoners were under-trials whose continued incarceration due to delays in investigation, trial, and bail proceedings amounted to a violation of the right to personal liberty under Article 21.

The Court noted that Indian bail jurisprudence had become overly restrictive and inconsistent, making incarceration the norm rather than the exception. To address this systemic problem, the Supreme Court proposed a policy-oriented reform approach aimed at reducing unnecessary detention and expediting criminal justice.

As part of this strategy, the Court emphasized the effective use of plea bargaining, compounding of offences, and the Probation of Offenders Act, 1958. It recognized plea bargaining as a statutory mechanism capable of ensuring speedy disposal of minor criminal cases, reducing judicial backlog, and alleviating prison overcrowding, provided it is voluntary and judicially supervised.

The Court further highlighted compounding of offences as a means to resolve minor and private disputes efficiently, promoting reconciliation and reducing prolonged litigation. Additionally, it stressed the liberal application of probation for first-time and youthful offenders to

⁷⁹² 6 SCC 477

⁷⁹³ (Cr.L.J.) No. 529 of 2021

advance the reformative and rehabilitative objectives of criminal law.

Overall, the judgment reflects a shift from a purely punitive model to a reform-oriented and pragmatic criminal justice framework, reinforcing the principle that pre-trial detention should be an exception and that alternative mechanisms must be actively employed to uphold the spirit of Article 21.

CONCLUSION

Plea bargaining in India represents a calibrated shift from a rigid trial-centric criminal justice system towards a more pragmatic and efficiency-oriented framework. Rooted in the constitutional mandate of Article 21, particularly the right to a fair and speedy trial, plea bargaining seeks to address systemic issues such as judicial delay, under-trial detention, and prison overcrowding. Although Indian courts initially rejected the concept due to concerns of coercion, inequality, and dilution of justice, legislative recognition through the Criminal Law (Amendment) Act, 2005 and its continuation under Chapter 23 (Sections 289–300) of the BNSS, 2023 has provided a structured and safeguarded mechanism.

The present framework limits plea bargaining to less serious offences, ensures voluntariness, judicial supervision, victim participation, and protects against self-incrimination, thereby maintaining constitutional compatibility with Articles 14, 20(3), and 21. Judicial developments and policy initiatives, particularly Re: Policy Strategy for Grant of Bail (2022), further affirm its role in promoting reformative justice and reducing unnecessary incarceration. When applied cautiously and transparently, plea bargaining serves as a valuable tool for expeditious justice without compromising fairness, reinforcing the principle that efficiency in criminal adjudication must operate within constitutional boundaries.

REFERENCES

- Plea Bargaining: A Silver Lining or a Compromised Mockery Indian Journal of

Law and Human Behavior Volume Number 2 (Special Issue)

- 5BryamA Garner and Honey Campbell "Blacks Law Dectinory"8th Ed. (2004)
- Oxford Dictionary. Fourth Edition, Oxford University Press, 1995
- Alschuler, A. W. (1979). Plea bargaining and its history. Columbia Law Review
- Clark, P. (1986). The public prosecutor and plea bargaining. Australian Law Journal
- Quest Journals Journal of Education, Arts, Law and Multidisciplinary Volume 15
- Jain, H., &Rautela, M. (2018). Overview of Plea Bargaining in India
- 142nd Law Commission of India Report
- 154th Law Commission of India Report
- The Bharatiya Nagarik Suraksha Sanhita 2023
- The Constitution of India, 1950

Case Laws

- Murlidhar Meghraj Loya v. State of Maharashtra, (1976) 3 SCC 684
- Kasambhai Abdul Rehman Bhai Sheikh v. State of Gujarat (1980) 3 SCC 120
- Kachhia Patel Shantilal v. State of Gujarat, (1990) 4 SCC 653
- State of Uttar Pradesh v. Chandrika, (2000) 7 SCC 759
- State of Gujarat v. Natwar Harchanji Thakor, (2005) 4 Guj LR 2952
- Rajinder Singh v. State of Chandigarh, (2015) 6 SCC 477
- Re: Policy Strategy for Grant of Bail (2022)