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Plea Bargaining: A Comparative Analysis of India and the USA

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Today, the judicial system of India is overburdened with cases, and people have normalised it that a can easily take 15-20 years. The famous saying that “justice delayed is justice denied” is true, but people have normalised this delay because of this overburdened judiciary. ‘Justice clock’ is being installed in all the 24 high courts of India. Justice clocks show the number of cases pending in a state and the time they are pending for. Highlighting the purpose of the ‘Justice Clock’, Justice Chandrachud said, “Let there be no doubt about it that all these measures are now bringing focus on judges, how we conduct ourselves, how long we sit in courts, the seriousness with which courts are handled, and cases are conducted, the courtesy which judges show to members of the bar and litigants, particularly those lawyers who are not among the higher echelons in the hierarchy of the bar.”

Keywords: *plea, bargaining, crpc, comparative.*

INTRODUCTION

Nani Palkhivala, an Indian jurist and a leading lawyer, once quoted in his book, “the greatest drawback of the administration of justice in India today is because of delay of cases...The law may or may not be an ass, but in India, it is certainly a snail, and our cases proceed at a pace that would be regarded

as unduly slow in the community of snails. Justice has to be blind, but I see no reason why it should be lame. Here it just hobbles along, barely able to work.”¹

More than three-fourths of India's jail inmates are undertrial prisoners, according to data released by the National Crime Records Bureau (NCRB). Of the 554,034 prisoners, 427,165, or 77 percent, were undertrials in 2021.² A huge number of persons accused of an offence are not able to get bail because of many reasons, and one such reason is that they have been inside the jail for so many years as “undertrial prisoners and during the course of detention as under-trial prisoners they have to undergo a lot of mental stress and burden. One of the other reasons is that if there is no sufficient evidence to prove that the accused has done the offence, it ultimately results in acquittal of him.”³ To curb such problems, the concept of plea bargaining was adopted by India in 2005 on recommendations of the Law Commission report. This concept is dealt with under Chapter- XXIA of the Code of Criminal Procedure, 1973.

PLEA BARGAINING

The chronic delay in disposing of the cases and the growing number of criminal cases have overburdened the Indian judiciary. This has led to prisons filled with undertrial prisoners, which is a major problem for the accused, judiciary, and prisons. To resolve this problem and help the criminal system of the country, India adopted the plea bargaining system into CrPC. The then Chief Justice of India, Y.K Sabharwal, said, “*the introduction of plea bargaining in India would not only expedite the criminal system but also serve as a restorative form of justice where victims*

¹ Nani A Palkhivala, *We the nation...lost decade* (UBS Publications 1994) 215

² Krishna Kumar S, ‘77 Percent of India’s Prisoners Are Undertrials: NCRB’ (*Moneycontrol*) <<https://www.moneycontrol.com/news/india/77-percent-of-indias-prisoners-are-undertrials-ncrb-9142041.html>> accessed 16 November 2022

³ JEEVALAYA.V, “A Comparative Study On Plea Bargaining In India And Other Countries, *Paripex - Indian Journal Of Research(PIJR)*, *PIJR | World Wide Journals*” (*A Comparative Study On Plea Bargaining In India And Other Countries, Paripex - Indian Journal Of Research(PIJR)*, *PIJR | World Wide Journals*, January 1, 2018) <https://www.worldwidejournals.com/paripex/article/a-comparative-study-on-plea-bargaining-in-india-and-other-countries/MTAxNTQ=/?is=1> accessed November 16, 2022

would be equal stakeholders and get adequate compensation.”⁴ years after adoption, Plea bargaining has not been able to make an impact and resolve the problem existing in the system.

Plea bargaining simply means negotiating a defendant's sentence on the plea of guilt by the accused. The accused gets a shorter sentence, and the court can dispose of the case. This is a win-win situation for both parties. Plea bargaining is derived from the Latin phrase '*Nolo Contendere*', which means '*I do not wish to contend*', i.e. a plea of '*No contest*'.⁵ The story of plea bargaining's inception in America is fascinating. In 1692, plea bargaining's first instance took place. Here, the suspected witches were told they would get a lighter penalty if they confessed. They were required to testify in court against other accused witches. Those who admitted guilt were saved from prosecution, which gave others the incentive to indulge in this activity. Many plea-bargaining opponents reference this occurrence in their favor. India adopted the plea bargaining system from America. During 142nd, 154th, and 177th reports, the Law Commission established procedures for the adoption of plea-bargaining. Chapter XXIA was introduced in CrPC on the basis of the recommendations of the Law Commission.

PLEA BARGAINING IN AMERICA

The sixth amendment to the Constitution of America didn't recognise plea bargaining, instead, it was done by the American judiciary. Famous case law *Santobello v New York 1971*⁶, legitimised plea bargaining. Since this case, its prevalence has exploded. Today, 90% of criminal cases in the US are handled through plea bargains. Every minute one matter is disposed of by way of plea bargaining. This is an implied confession rather than a confession of guilt in front of the jury. This official statement that an accused will not fight presumes a contract between the accused and the prosecution for only the mentioned case and no other.

⁴ Aditi Roy & Sanjana Gupta, 'Plea Bargaining: A Comparison Between USA And India' (*The Criminal Law Blog*, May 20, 2022) <<https://criminallawstudiesnluj.wordpress.com/2022/05/20/plea-bargaining-a-comparison-between-usa-and-india/>> accessed 16 November 2022

⁵ Sharma M, 'Plea Bargaining in India and USA -A Comparative Study' (*Enhelion Blogs*, 18 February 2021) <<https://enhelion.com/blogs/2021/02/18/plea-bargaining-in-india-and-usa-a-comparative-study/>> accessed 16 November 2022

⁶ *Santobello v New York* 404 U.S. 257 (1971)

The court is not obligated to accept the plea of the accused and can decide whether to accept a plea on the basis of the facts and situation of the case. The court must guarantee that the defendant enters a plea willingly and without coercion. Because of prison congestion, plea bargaining became common in America. Indian legislators tried to adopt plea bargaining from American legislation, but they ignored what made it successful in the U.S. Another thing is that the court is not required to accept the prosecutor's consent, although it may affect whether the court accepts a plea.

*Lott v United States*⁷ shaped this field of law in plea bargaining. In this case, it was found that accepting a no-contest plea does not establish guilt, although it is a significant component.

In the U.S., a defendant can plead 3 types of pleas:

- Guilty;
- Not Guilty;
- Nolo Contendere.

In the U.S., unlike India, practically all federal offences are eligible for a plea bargain. The prosecutor negotiates the plea agreement using evidence and investigation reports. The judge's function is limited, which is only to accept or not the terms of the voluntary negotiation.

REASON BEHIND PLEA BARGAINING

Prosecutors work under a limited budget and a heavy caseload. Plea bargaining provides them with an easy and time-efficient way to dispose of the case. The provision that decreases the offence's severity if the offender submits a timely plea also encourages plea bargaining in defendants. The high risks of a trial in the U.S., where the court system favours retributive justice, also explain plea deals. The Alabama Criminal Code punishes theft with a maximum of 20 years and a minimum of 3 years in jail. Due to an insufficient legal aid system and high private attorney expenses in the U.S., the accused are forced to plead guilty. When integrating this tool

⁷ *Lott v United States* 367 US 421

into the U.S. criminal justice system, it's crucial to understand that its popularity isn't because it delivers optimal results, but because it favours those in control.

LANDMARK US CASES

1. *State exrel Clark Adams*⁸: This ruling explains "Nolo Contendere." The court found that the 'Nolo Contendere' plea suggests that the accused does not wish to contest.
2. *United States Risfield*: When a plea negotiating application is made, the court's guilty plea judgement is unnecessary. The court may punish the defendant quickly.
3. *Lott United States*⁹: The court stated that A guilty plea is not a conviction, but a choice of guilt.
4. *Bordenkircher Haynes*¹⁰: In this case, the US Supreme Court upheld plea bargaining and condemned the defendant to life in prison for declining a 5-year term. The Supreme Court agreed that a defendant might be forced to choose between two penalties. The Supreme Court highlighted that there is no compulsion or pressure if the defendant is free to accept or reject the prosecutor's plea offer.
5. *Brady United States*: In this case, the Supreme Court ruled that an agreement reached out of fear of the death penalty does not invalidate plea bargaining. If plea bargaining is managed, it's legal.

PLEA BARGAINING IN INDIA

In India, plea bargaining is not a feature of the constitution, but a response to a backlog of cases. The 154th Indian Law Commission proposed plea bargaining to speed up court proceedings. The Malimath Committee suggested the Criminal Law (Amendment) Bill of 2003. This revised the Indian Penal Code of 1860 (IPC), the Indian Evidence Act of 1873, and the Code of Criminal

⁸ *State ex Rel. v Clark* 148 Fla. 452

⁹ *Lott v United States* 367 US 421

¹⁰ *Bordenkircher v Hayes* [1978] 434 US 357

Procedure of 1973. (CrPC) in 2006. This was an attempt to remove all the problems and speed up the justice system.

CODE OF CRIMINAL PROCEDURE

Sections 265A to 265L of Chapter XXIA of India's 1973 Code of Criminal Procedure govern plea bargaining. This was added in 2005 by the recommendations of the Law Commission, it wasn't in the original law.

- Criminal Procedure Code section 265A outlines plea bargaining eligibility. Section 265A allows all offenders to plea bargain, except those facing the death penalty, life in prison, or sentences above seven years. A person charged with a crime against a woman, a child under 14, or the country's socioeconomic conditions cannot plea bargain. Section 265A of India's Criminal Procedure Code allows plea bargaining.
- Section 265B specifies plea-bargaining procedures. The application must include case details and a sworn affidavit. The court may then examine the accused to ensure he or she filed the application voluntarily. If the accused can prove voluntariness, the court allows for a mutually accepted resolution. If the defendant fails to satisfy the court that he filed the application freely or that he has been convicted of the same crime, the court may proceed with the application's filing.
- Section 265C outlines a mutually accepted resolution. If the case was launched based on a police complaint, the Court must invite the public prosecutor, the accused, and the victim to a conference to resolve the issue. The court must guarantee that the defendant is willing to engage and can do so with his attorney.
- Sections 265D to 265I include the report of mutually satisfactory disposition, the disposition of the case, the Court's judgement, the finality of the judgement, the Court's authority in plea bargaining, and the crediting of the defendant's detention time against the sentence.

LANDMARK CASE LAW REGARDING PLEA BARGAINING

Plea Bargaining is a new concept in India. Cases from various domains have changed its jurisprudence. Some notable cases in this part of the Criminal Justice System are listed below.

1. *Vijay Moses Das v CBI*: A man was accused of supplying inferior materials to ONGC, exacerbating the issue at the wrong port. ONGC suffered huge losses. The accused wanted to plead guilty to reduce his sentence. The other side acknowledged his argument and was eager to negotiate. The CBI probed under Indian Penal Code sections 420, 468, and 471. The CBI investigated plea bargaining and found no problems. In this case, the trial court rejected plea negotiating. Due to the defendant's lack of a 265B affidavit, plea bargaining was not allowed.

2. *Ranbir Singh v State*: In this case, the petitioner challenged the sentences of imprisonment for six months in addition to an Rs.5,000 fine under Section 304A IPC and, in default of payment of the fine to be subjected to additional simple imprisonment for one month, as well as the sentence to pay an Rs. 5,000 fine under Section 279 IPC and in default of payment to be subjected to additional simple imprisonment for one month.¹¹ The Trial Court can impose a quarter-of-the-sentence punishment. The trial court must still examine mitigating factors. Mitigating circumstances weren't considered before imposing the entire punishment. The petitioner supports two young children and elderly parents. Petitioner paid victims. In addition, he released the legal heirs' document saying that the parties have settled and no longer quarrel.

The prosecution maintained that homicides by reckless and careless driving are growing and that robust action is needed to deter perpetrators. Section 265E of the Criminal Procedure Code allowed the court to impose a one-fourth fine, including in a mutually agreed-upon deposition. Section 265G of the Code makes the trial court's verdict definitive and non-appealable. Despite mitigating circumstances, the Delhi High Court determined that the petitioner should not have received the maximum sentence. According to Section 304A of the Indian Penal Code, the court curbed the defendant's sentence to four months behind bars and a 1,000\$ fine.

¹¹ Vashisht T, 'Plea Bargaining Laws: India And United States of America' (*iPleaders*, 30 May 2020) <<https://blog.iplayers.in/plea-bargaining-laws-india-united-states-america/>> accessed 16 November 2022

3. *Rahul Kumpawat v Union Of India*: In this case, the petitioner challenged the trial court's decision to deny his plea deal. The counsel argued the dismissal order lacked merit. Its dismissal would contravene Section 265A of the Criminal Procedure Code. The lawyer contended. Section 265A was meant to abbreviate criminal proceedings. The trial court abused said Section by not following its spirit. The Rajasthan High Court accepted these arguments. The trial court's order was vacated for justice. So, the Supreme Court acted.

4. *Murlidhar Meghraj Loya State of Maharashtra*: Here, J. Iyer condemned plea bargaining. Since the Trial Magistrate is overworked, he agrees to Plea Bargaining's secret negotiations. "The businessman criminal, facing the misery and dishonour of a prison cell, "trades out" by pleading guilty in exchange for "no imprisonment." These arrangements in advance are favourable to all parties except the distant victim, the quiet society," he said.

5. *Kachhia Patel Shantilal Koderlal State of Gujarat and Anr*¹²: Again, the Supreme Court questioned plea bargaining. The court found that plea bargaining invites corruption and taints justice.

PLEA BARGAINING IN INDIA AND USA: COMPARATIVE ANALYSIS

Although the Indian legal system acquired "Plea Bargaining" from the U.S., it works differently from the system of America. Some of the differences between "Plea Bargaining" in India and the U.S. are listed below.

Criminality: In America, there is no bar to plea bargaining. An accused person can bargain on any offence. But, in India, Section 265A excludes some defendants from plea bargaining, e.g., an Accused person charged with an offence punishable with death, an offence punishable with imprisonment of more than seven years, an offence against women or a child below fourteen years of age or an offence that affects the socio-economic conditions of the country.

¹² *Kachhia Patel Shantilal Koderlal State of Gujarat and Anr* Special Leave Petition (Criminal) No. 3774/1999

Victim's Role: The victim plays an important role in Indian plea bargaining. The victim can refuse or veto an unsatisfactory resolution. But in America, the victim doesn't participate in Plea Bargaining.

Enforceability mechanisms: In the U.S., a plea bargain application is filed only once negotiations are complete. But, in India, the negotiation procedure with the accused does not begin before the plea bargaining application is submitted to ensure the accused files it freely. When submitting a plea bargaining application, the defendant is less likely to be pushed or involved in hidden negotiations.

Discretion of the Judge: In the U.S., the court has no discretion when accepting a plea deal. In India, the court might approve or reject a plea bargaining petition.

Finality: Suppose a court finds the punishment imposed in a Plea Bargaining case to be insufficient or unreasonable. In that case, it can be reversed by an SLP under Article 136 or a writ petition under Articles 226 and 227 of the Indian Constitution. It ends in America.

PLEA BARGAINING IN INDIA: A SUI GENERIS CONCEPT

The U.S. criminal court system relies heavily on plea bargaining. The Indian plea bargaining procedure is unique and different from the U.S. In India, a person accused of a crime with a maximum seven-year penalty can apply for plea bargaining in the court where his trial is ongoing. Following the application, the court notifies the prosecutor. In the U.S., the prosecutor submits the application after bargaining with the defendant (Rule 11). The court must then publicly review the accused and confirm their voluntary application. If the court believes the application is voluntary, the prosecutor, defendant, and victim can negotiate a resolution. The mutually acceptable conclusion decides the victim's compensation, while the court can impose punishments.

This provision departs significantly from U.S. plea bargaining. In the U.S. system, the court is a passive observer, with the judge having limited involvement in supervising rule compliance. Second, the U.S. uses a bipartite plea bargaining system in which the victim has little control

over the final agreement. In India, the victim, prosecutor, and defendant have equal stakes in plea bargaining. CrPC plea bargaining provisions provide procedural safeguards. First-time offenders are eligible for the programme. It can't be given for crimes that carry a sentence of more than seven years, harm the country's economy, or target women or children under 14.

INDIA'S PLEA BARGAINING: VICTORY OR DEFEAT?

The active participation of the judiciary and the treatment of victims as equal stakeholders ensure that the plea bargaining system is not exploited for hastened case resolution. The question is whether plea bargaining's ideal theoretical aspects work in practise. In India, plea bargaining isn't popular. NCRB released 2014 plea bargaining statistics. In 2014, the method resolved 35,000 IPC infractions. About 2% of cases were resolved via plea bargaining. In 2015 and 2016, plea deals resolved 0.045% and 0.043% of cases.¹³ The fault line is in the way plea bargaining is implemented in India and in the criminal justice system's structure.

AMERICAN JUSTICE

Indian legislators tried to adopt plea bargaining into American law, but they neglected its fundamental base. In the U.S., almost all federal crimes are eligible for a plea bargain, and there are few restrictions. He's the dealmaker. The judge approves the bargaining parameters after establishing that it's voluntary. The time-efficient procedure of plea-bargaining helps these prosecutors clear their caseload as swiftly as feasible. Prosecutors can impose fines at trial to secure plea bargains and threaten the defendant with a more serious penalty. The provision that decreases the offense's severity if the offender submits a timely plea also encourages plea bargaining. The high risks of a trial in the U.S., where the court system favours retributive justice, also explain plea deals. The Alabama Criminal Code punishes theft with a maximum of 20 years and a minimum of 3 years in jail. Due to an insufficient legal aid system and high private attorney expenses, the accused are forced to plead guilty. This weapon of the U.S. criminal

¹³Aditi Roy & Sanjana Gupta, 'Plea Bargaining: A Comparison Between USA And India' (The Criminal Law Blog, 20 May 2022) <<https://criminallawstudiesnluj.wordpress.com/2022/05/20/plea-bargaining-a-comparison-between-usa-and-india/>> accessed 16 November 2022

justice system is popular not because it provides optimal answers, but because it rewards the powerful.

INDIAN JUSTICE

Indian criminal justice differs from the U.S. The prosecution isn't very powerful. Unlike in the U.S., prosecutors in India play a small role in investigations, which are handled by police. The magistrate determines whether to prosecute, not the prosecutors. The prosecution's role in a plea negotiation motion begins when the judge authorises the defendant's request and notifies the state's attorney. Most criminal trials in India last over a year, during which the judge and prosecutor may be transferred. It prolongs the process and gives the prosecutor no incentive to resolve cases quickly. Given the accused-centric nature of the Indian criminal justice system, they have little incentive to plead guilty. The defendant can oppose the investigation, preventing the court from examining the claims. He or she can also make a move to transfer the matter at any moment. Unlike in the US, the punishment is not substantially disproportionate to the crime. In India, theft has a three-year maximum sentence. Thus, the Indian legal system does not incentivize plea bargaining.

RECOMMENDATIONS

Due to India's limited reach, it is not advisable to follow the American approach of plea bargaining, which helps only the powerful but adjustments and regulations have eliminated plea bargaining's core. A trial in India does not always result in a conviction, and an accused's rights have safeguards and protection, making it more desirable than a plea bargain. Instead of limiting plea bargaining to offences having a seven-year maximum sentence, the scope should be widened so the process can expedite case disposition. The U.S. model allows a reduction in the gravity of an offence if the accused signs a timely plea deal. Plea negotiation offers must be more appealing than the accused's penalty and trial flexibility. Even if one of the main purposes of establishing plea bargaining in India was to move towards restorative justice and satisfy the victim's demands, this could be the reason why the process fails. Punitive justice often motivates

victims, making it difficult for the prosecution and the accused to find a satisfactory resolution. Dismantling India's tri-partite system could help plea bargaining.

CONCLUSION

India's plea bargaining system has evolved over time. Indian Judiciary has accomplished much. In India, unlike the U.S., plea bargaining is restricted and regulated to benefit the system. Our competent judicial system has handled most anomalies. Faith in our court system will settle the remaining concerns, in my opinion. In the US, plea bargaining results in 90% of convictions, whereas in India, it's less than 10%. The US and India have different concepts of plea bargaining. Despite India's lower conviction rate than the U.S., it ensures that plea bargaining applications are presented freely. In India, an accused person does not take the course of Plea Bargaining to choose the lesser among the punishments but is a voluntary action. Hence, it is a high probability that an innocent person will not be awarded punishment in India by way of Plea Bargaining. Today, timely case resolution is essential. To minimize pre-trial detainees, the legislature must modernize and fund the judiciary.