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# THE EVOLUTION OF PLEA BARGAINING IN INDIA: LEGAL FRAMEWORK AND JUDICIAL RESPONSE

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## ABSTRACT

The increasing backlog of criminal cases and delays in judicial proceedings have necessitated the adoption of alternative mechanisms for efficient case disposal. Plea bargaining, introduced into the Indian criminal justice system through the Criminal Law (Amendment) Act, 2005, by inserting Chapter XXI-A into the Code of Criminal Procedure, 1973, serves as one such mechanism. It allows an accused person to voluntarily plead guilty in exchange for certain concessions, thereby facilitating the speedy resolution of criminal cases. This article examines the legal framework, scope, and procedural aspects of plea bargaining in India. It traces the evolution of the concept and analyses the recommendations of the Law Commission of India and the Malimath Committee that supported its introduction. The study also discusses key judicial decisions that initially opposed plea bargaining but later accepted its statutory validity. Further, the article evaluates the benefits of plea bargaining, including reduction of case pendency, efficient use of judicial resources, and relief from prison overcrowding. At the same time, it highlights concerns regarding fair trial rights, voluntariness of guilty pleas, and potential misuse. The study argues that although plea bargaining has emerged as a useful tool for improving judicial efficiency, its effectiveness is limited by restricted applicability, lack of awareness, and procedural challenges. The article concludes that greater transparency, awareness, and institutional reforms are necessary to strengthen its role in the Indian criminal justice system.

Keywords: Criminal Justice System, Criminal Procedure Code, Judicial Pronouncements, Plea Bargaining, Speedy Trial

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## INTRODUCTION

The famous maxim “Justice delayed is justice denied” highlights the importance of timely justice. The large number of pending cases in courts has become a serious concern, yet judicial delays are often accepted as a normal part of the legal system. To address this problem, alternative mechanisms such as plea bargaining have been introduced. Originating in the United States, plea bargaining gradually evolved into an important feature of the American criminal justice system. It enables an accused person to plead guilty in exchange for certain concessions, thereby helping to reduce delays and promote the speedy disposal of criminal cases.<sup>2</sup>The constitutional validity of plea bargaining was considered by the US courts in the landmark decision in *Brady vs. United states*<sup>3</sup> where the court upheld the constitutionality of plea bargaining. The court then continued to hold that plea bargaining is constitutional through its decisions in various subsequent cases.<sup>4</sup>

Plea bargaining was not originally recognized under Indian criminal law. However, with the increasing burden of pending cases and the need for speedy justice, legal scholars and policymakers advocated for its inclusion in the criminal justice system. As the term suggests, plea bargaining involves a negotiated agreement between the accused and the prosecution. Over time, many countries have adopted this mechanism to promote efficient case disposal. In India, the concept of plea bargaining is largely influenced by the doctrine of *nolo contendere*, which allows an accused person to accept conviction without expressly admitting guilt.<sup>5</sup>

## MEANING OF PLEA BARGAINING

Plea bargaining is a pretrial negotiation between the accused and the prosecution where the accused agrees to plead guilty in exchange for certain concessions by the prosecution.<sup>6</sup> It is a bargain where a defendant pleads guilty to a lesser charge and the prosecutors in return drop more serious charges. It is not available for all types of crime e.g. a person cannot claim plea bargaining after committing heinous crimes or for the crimes which are punishable with death or life imprisonment. In simple terms can be defined as the acceptance of the crime done by the accused so that his tenure or term of punishment will be reduced.

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<sup>2</sup> Sulabh rewari and Tanya Aggarwal (2006)2 SCC(Cri)J-12 wanna make a deal? The introduction of Plea Bargaining in India.

<sup>3</sup> 397 U.S 742.

<sup>4</sup> *Corbitt vs. New Jersey* 439 U.S 212; *Bordenkircher vs. Hayes* 434 U.S. 357.

<sup>5</sup> "The Defense Attorney's Role in Plea Bargaining," *Yale Law Journal* 84 (1975): 1179–1314.

<sup>6</sup> *ibid.*

For example, let's say Mr. x committed a crime and now to get lesser punishment he agrees that the offence was committed by him so in such cases his term of sentence can be reduced. This rule is basically followed in the united states irrespective of the type of offence but in our country this concept is not followed but it is still mentioned in the CRPC also it is initiated only at the stage of cognizance taken by the magistrate.

## **PLEA BARGAINING IN INDIA**

In the US , the accused has generally has 3 options with respect to plea: guilty, not guilty and plea of *Nolo Contendere* (Latin term is 'I do not wish to contest'). In plea of nolo contendere the defendant answers the charges made in the indictment by declining to dispute or admit the fact of his or her guilt. the defendant who pleads nolo contendere submits for a judgement fixing a fine or sentences the same as if he or she had pleaded guilty. The difference is that a plea of nolo contendere can not later be used to prove wrongdoing in a civil suit for monetary damages, but a plea of guilty can.<sup>7</sup>

Plea bargaining is not a traditional feature of the Indian legal system but a relatively recent addition to the Indian criminal justice framework. It was introduced to address the growing burden of pending cases and to promote speedy disposal of criminal matters. The concept traces its origins to the United States, where it emerged during the nineteenth century and gradually became an important aspect of criminal proceedings. Initially, judges encouraged guilty pleas to expedite trials and reduce judicial workload. Inspired by this practice, India incorporated plea bargaining as a mechanism to improve the efficiency of its criminal justice system.<sup>8</sup>

The law commission in its 142<sup>nd</sup> report had outlined a scheme for plea bargaining in India. In its report the commission pointed out that in several cases the time spent by the accused in jail before commencement of trial exceeds the maximum punishment which can be awarded them if found guilty.<sup>9</sup> Again the law commission in 254<sup>th</sup> report, reiterated the need for remedial legislative measures to reduce the delays in disposal of criminal trials and appeals and also to alleviate the suffering of under trial prisoners. The 177<sup>th</sup> report of the Law commission, 2001 also sought to incorporate the concept of plea bargaining as suggested in the 154<sup>th</sup> report. The report of the committee on reforms of the criminal justice system, 2003 stated that plea- bargaining being a means for thr disposal of

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<sup>7</sup> Rosie athulya Joseph, plea bargaining : a means to an end,(2006) available at: <https://www.manupatra.com/roundup/326/articles/plea%20bargaining.pdf> last visited on 10.05.2026 on 1. 23 Am.

<sup>8</sup> Indian Journal of Law and Human Behavior / Volume 5 Number 2 (Special Issue)/ May - August 2019

<sup>9</sup> Rudul shah vs. state of Bihar AIR 1981 SC 928.

accumulated cases and expediting the delivery of justice should be introduced. The committee thus reaffirmed the recommendations of the law commission of india in its 14<sup>th</sup>, 154<sup>th</sup>, 177<sup>th</sup> reports.

## **CRITICAL ANALYSIS OF THE STATUTORY FRAMEWORK OF PLEA BARGAINING**

### **CRIMINAL PROCEDURE CODE AND PLEA BARGAINING**

Plea bargaining was formally introduced into the Indian criminal justice system through the Criminal Law (Amendment) Act, 2005, which inserted Chapter XXI-A comprising Sections 265A to 265L into the Code of Criminal Procedure, 1973. The reform was influenced by the recommendations of the 154th Law Commission Report and the Malimath Committee, both of which emphasized the need to address mounting case pendency and delays in criminal trials. While the legislative initiative marked a significant departure from the traditional adversarial model, its practical effectiveness remains subject to debate.

Section 265A defines the scope of plea bargaining and restricts its application to offences punishable with imprisonment up to seven years. It excludes offences punishable with death, life imprisonment, or imprisonment exceeding seven years. Further, offences affecting the socio-economic condition of the country and offences committed against women and children below fourteen years are excluded. Although these restrictions safeguard public interest and protect vulnerable groups, they substantially limit the utility of plea bargaining in reducing the overall criminal caseload.<sup>10</sup>

Section 265B prescribes the procedure for filing an application for plea bargaining. The accused must voluntarily submit an application along with an affidavit affirming that the request is not made under coercion or undue influence. The provision seeks to protect the accused's autonomy through judicial scrutiny. However, the court's determination of voluntariness may not always detect subtle forms of pressure arising from prolonged detention, financial hardship, or fear of conviction.<sup>11</sup>

Section 265C provides guidelines for achieving a mutually satisfactory disposition between the accused and the victim. The court facilitates negotiations by involving the public prosecutor, investigating officer, victim, and accused. This provision introduces an element of restorative justice by encouraging compensation and settlement. Nevertheless, concerns remain regarding the unequal bargaining

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<sup>10</sup> The Code of Criminal Procedure, 1973, s 265A  
[https://www.indiacode.nic.in/bitstream/123456789/15272/1/the\\_code\\_of\\_criminal\\_procedure\\_1973.pdf](https://www.indiacode.nic.in/bitstream/123456789/15272/1/the_code_of_criminal_procedure_1973.pdf) last accessed on 13 June, 2026.

<sup>11</sup> Ibid s 265 B.

position of the parties and the possibility of victims accepting settlements due to social or economic pressures.<sup>12</sup>

Section 265D requires the preparation of a report recording the outcome of negotiations. If a mutually satisfactory disposition is reached, the report must be signed by all participants. If no agreement is reached, the matter proceeds through the regular trial process. This provision ensures transparency and maintains procedural fairness by preserving the accused's right to a full trial.<sup>13</sup>

Section 265E empowers the court to dispose of the case based on the negotiated settlement. The court may award compensation to the victim and impose a reduced sentence upon the accused. Where a minimum sentence is prescribed, the court may impose one-half of such punishment; in other cases, it may reduce the sentence to one-fourth of the prescribed punishment. While this serves as a strong incentive for plea bargaining, critics argue that it may encourage guilty pleas motivated by sentence reduction rather than genuine acceptance of responsibility.<sup>14</sup>

Section 265F mandates the pronouncement of judgment in accordance with the mutually satisfactory disposition. This provision provides legal finality to the settlement and ensures that the agreement is formally recognized by the court.<sup>15</sup>

Section 265G declares the judgment final and bars ordinary appeals. Only constitutional remedies, such as a Special Leave Petition under Article 136 or writ petitions under Articles 226 and 227 of the Constitution, remain available. Although this provision promotes speedy resolution, the absence of a regular appellate mechanism may restrict the accused's opportunity to challenge procedural irregularities.

Section 265H confers necessary powers upon the court concerning bail, trial-related matters, and disposal of cases under plea bargaining. This provision strengthens judicial control over the process and seeks to ensure that negotiated settlements remain consistent with legal principles and public interest.<sup>16</sup>

Section 265I applies the principle contained in Section 428 of the CrPC, allowing the period of detention already undergone by the accused to be set off against the sentence imposed. This provision promotes fairness by preventing excessive punishment.<sup>17</sup>

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<sup>12</sup> Ibid S 265 C.

<sup>13</sup> Ibid S 265 D.

<sup>14</sup> Ibid S 265 E.

<sup>15</sup> Ibid S 265 F.

<sup>16</sup> Ibid S 265 H

<sup>17</sup> Ibid S 265 I

Section 265J, the savings clause, gives overriding effect to the provisions of Chapter XXI-A in cases of inconsistency with other provisions of the Code. This ensures the effective implementation of plea bargaining without procedural conflicts.<sup>18</sup>

Section 265K protects the accused by providing that statements made during plea bargaining proceedings cannot be used for any purpose other than those contemplated under Chapter XXI-A. This safeguard encourages open participation in negotiations and protects the accused from self-incrimination if negotiations fail.<sup>19</sup>

Section 265L excludes juveniles from the ambit of plea bargaining by making the chapter inapplicable to children covered under juvenile justice legislation. This exclusion is consistent with the reformatory philosophy underlying the juvenile justice system.<sup>20</sup>

Overall, the statutory framework of plea bargaining reflects a careful attempt to balance efficiency with fairness. The provisions incorporate safeguards relating to voluntariness, judicial supervision, victim participation, and protection against self-incrimination. However, the limited range of eligible offences, inadequate awareness among litigants, concerns regarding unequal bargaining power, and the absence of a comprehensive appellate mechanism have restricted its effectiveness. Consequently, while plea bargaining has the potential to reduce delays and improve judicial efficiency, its success depends upon greater institutional support, procedural clarity, and robust safeguards to ensure that expediency does not compromise justice.

Types of Plea Bargaining -Plea Bargaining is generally of three types as mentioned below:

Concept	S. No.	Type	Meaning
Plea Bargaining	1.	Sentence bargaining	In this type of bargaining the main motive is to get a lesser sentence. In Sentence bargaining, the defendant agrees to plead guilty to the stated charge and in return, he bargains for a lighter sentence.
	2.	Charge bargaining	This kind of plea bargaining happens for getting less severe charges. This the most common form of plea bargaining in criminal cases. Here the defendant agrees to plead guilty to a lesser charge in

<sup>18</sup> Ibid S 265 J

<sup>19</sup> Ibid S 265 K

<sup>20</sup> Ibid S 265 L

		consideration of dismissing greater charges. E.g. Pleading for manslaughter for dropping the charges of murder.
3.	Fact bargaining	This is generally not used in courts because it is alleged to be against Criminal Justice System. It occurs when a defendant agrees to stipulate to certain facts in order to prevent other facts from being introduced into evidence.

## **BHARATIYA NAGARIK SURAKSHA SANHITA AND PLEA BARGAINING**

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) retains the concept of plea bargaining under Chapter XXIII, comprising Sections 289 to 300. The objective of these provisions is to reduce judicial delays, promote speedy justice, and facilitate the amicable resolution of less serious criminal cases. While the framework largely mirrors the earlier provisions of the Code of Criminal Procedure, 1973, it continues to represent a significant shift from the traditional adversarial model of criminal adjudication.

Section 289 defines the applicability of plea bargaining. It applies to offences punishable with imprisonment up to seven years and excludes offences punishable with death, life imprisonment, offences affecting the socio-economic condition of the country, and offences committed against women or children. While these restrictions protect public interest, they considerably narrow the scope of plea bargaining and limit its effectiveness in reducing the overall burden on courts.<sup>21</sup>

Section 290 permits an accused person to file an application for plea bargaining before the trial commences. The accused must submit an affidavit affirming that the application is voluntary and not the result of coercion. The provision seeks to safeguard the rights of the accused; however, concerns remain regarding indirect pressure arising from prolonged litigation and the desire to avoid uncertainty in criminal proceedings.<sup>22</sup>

<sup>21</sup> Bharatiya Nagarik Suraksha Sanhita 2023, s 289, India Code [https://www.indiacode.nic.in/show-data?abv=CEN&statehandle=123456789/1362&actid=AC\\_CEN\\_5\\_23\\_00049\\_202346\\_1719552320687&sectionId=91275&sectionno=289&orderno=289&orgactid=AC\\_CEN\\_5\\_23\\_00049\\_202346\\_1719552320687](https://www.indiacode.nic.in/show-data?abv=CEN&statehandle=123456789/1362&actid=AC_CEN_5_23_00049_202346_1719552320687&sectionId=91275&sectionno=289&orderno=289&orgactid=AC_CEN_5_23_00049_202346_1719552320687) accessed 13 June 2026.

<sup>22</sup> Bharatiya Nagarik Suraksha Sanhita 2023, s 289, India Code [https://www.indiacode.nic.in/show-data?abv=CEN&statehandle=123456789/1362&actid=AC\\_CEN\\_5\\_23\\_00049\\_202346\\_1719552320687&sectionId=91276&sectionno=290&orderno=290&orgactid=AC\\_CEN\\_5\\_23\\_00049\\_202346\\_1719552320687](https://www.indiacode.nic.in/show-data?abv=CEN&statehandle=123456789/1362&actid=AC_CEN_5_23_00049_202346_1719552320687&sectionId=91276&sectionno=290&orderno=290&orgactid=AC_CEN_5_23_00049_202346_1719552320687) Bharatiya Nagarik Suraksha Sanhita 2023, s 289, India Code

Section 291 lays down guidelines for arriving at a mutually satisfactory disposition. The court facilitates negotiations involving the accused, the victim, the prosecutor, and other relevant parties. The provision reflects restorative justice principles by encouraging dialogue and compensation. Nevertheless, the possibility of unequal bargaining power between the parties raises concerns about the fairness of negotiated outcomes.<sup>23</sup>

Section 292 requires the court to prepare a report recording the outcome of the negotiations. If an agreement is reached, the report is signed by all participants. In the absence of a settlement, the case proceeds through the ordinary trial process. This provision preserves procedural fairness and ensures that unsuccessful negotiations do not prejudice the accused.<sup>24</sup>

Section 293 empowers the court to dispose of the case based on the mutually satisfactory disposition. The court may award compensation to the victim and impose a reduced sentence. While sentence reduction serves as an incentive for settlement, critics argue that it may encourage guilty pleas even in doubtful cases merely to secure a lighter punishment.<sup>25</sup>

Section 294 provides for the pronouncement of judgment by the court in accordance with the settlement reached between the parties. The provision ensures judicial recognition of the negotiated resolution and gives legal finality to the proceedings.<sup>26</sup>

Section 295 declares the judgment final and generally bars appeals against it. Although this promotes speedy justice and reduces further litigation, the absence of a regular appellate remedy may limit opportunities to challenge procedural irregularities or unfair settlements. Constitutional remedies, however, remain available.<sup>27</sup>

Section 296 confers powers upon the court regarding bail, trial procedures, and disposal of cases under plea bargaining. Judicial supervision under this provision is essential to ensure that settlements are voluntary, lawful, and consistent with public interest.<sup>28</sup>

Section 297 allows the period of detention already undergone by the accused to be set off against the sentence imposed. This provision reflects the principle of fairness and prevents excessive punishment.<sup>29</sup>

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<sup>23</sup> Bharatiya Nagarik Suraksha Sanhita 2023, s 289, India Code [https://www.indiacode.nic.in/show-data?abv=CEN&statehandle=123456789/1362&actid=AC\\_CEN\\_5\\_23\\_00049\\_202346\\_1719552320687&sectionId=91275&sectionno=289&orderno=289&orgactid=AC\\_CEN\\_5\\_23\\_00049\\_202346\\_1719552320687](https://www.indiacode.nic.in/show-data?abv=CEN&statehandle=123456789/1362&actid=AC_CEN_5_23_00049_202346_1719552320687&sectionId=91275&sectionno=289&orderno=289&orgactid=AC_CEN_5_23_00049_202346_1719552320687) accessed 13 June 2026.

<sup>24</sup> Ibid s 292.

<sup>25</sup> Ibid s 293

<sup>26</sup> Ibid s 294

<sup>27</sup> Ibid s 295

<sup>28</sup> Ibid s 296

<sup>29</sup> Ibid s 297

Section 298, the savings clause, gives overriding effect to the plea bargaining provisions in cases of inconsistency with other provisions of the BNSS. It ensures the smooth implementation of the scheme and avoids procedural conflicts.<sup>30</sup>

Section 299 protects the accused by providing that statements made during plea bargaining proceedings cannot be used for any purpose other than those contemplated under the chapter. This safeguard encourages frank participation and protects the accused from self-incrimination if negotiations fail.<sup>31</sup>

Section 300 excludes juveniles from the scope of plea bargaining. This exclusion is consistent with the rehabilitative philosophy of the juvenile justice system, which prioritizes reform over punitive measures.<sup>32</sup>

In conclusion, the BNSS retains plea bargaining as an important mechanism for expediting criminal proceedings and reducing case backlog. However, its practical impact remains limited due to its restricted applicability, lack of awareness among litigants, concerns regarding unequal bargaining power, and limited judicial use. For plea bargaining to achieve its intended objectives, greater awareness, stronger legal aid mechanisms, and more robust procedural safeguards are necessary to ensure that efficiency does not come at the cost of justice and fairness.

## **PLEA BARGAINING AND JUDICIAL PRONOUNCEMENTS**

Before the Criminal Law (Amendment) Act, 2005 formally introduced plea bargaining into the Indian criminal justice system, Indian courts generally viewed the concept with skepticism. The judiciary consistently opposed any practice that appeared to involve negotiations regarding guilt or punishment, considering it inconsistent with the principles of fair trial and justice. Even though several Law Commission Reports recommended its adoption, courts remained hesitant to accept it. One of the earliest judicial pronouncements on the issue came in *Madanlal Ramachander Daga v. State of Maharashtra*, where the Supreme Court emphasized that criminal cases should be decided strictly on the basis of evidence and the guilt of the accused. The Court stated that judges should not engage in any form of bargaining concerning punishment. While courts may exercise discretion in awarding a lighter sentence where circumstances justify leniency, such decisions should not arise from negotiated agreements between the accused and the prosecution.

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<sup>30</sup> Ibid s 298

<sup>31</sup> Ibid s 299

<sup>32</sup> Ibid s 300

In *Murlidhar Meghraj Loya vs State of Maharashtra*<sup>33</sup> The Hon'ble Supreme Court expressed concern that guilty pleas might sometimes be influenced by informal understandings regarding reduced punishment. The Court cautioned against arrangements that encourage accused persons to admit guilt merely in anticipation of receiving a lighter sentence.

The Court further examined the issue in *Ganesbmal Jasraj v. Government of Gujarat*<sup>34</sup>. It observed that admissions of guilt obtained through bargaining could affect the objectivity of judicial evaluation of evidence. When an accused confesses guilt, there is a possibility that courts may become less rigorous in assessing the reliability and credibility of the evidence presented. Consequently, convictions based on such admissions may not always reflect a thorough judicial examination of the facts

In *Kasambhai vs State of Gujarat*<sup>35</sup> & *Kachhia Patel Shantilal Koderlal vs State of Gujarat and Anr*<sup>36</sup>, the Apex court said that the Plea Bargaining is against public policy. Moreover, it regretted the fact that the magistrate accepted the plea bargaining of accused. Furthermore, Hon'ble Court described this concept as a highly reprehensible practice. The Court also held that practice of plea bargaining as illegal and unconstitutional and tends to encourage the corruption, collusion and pollute the pure fount of justice.

*Thippaswamy vs State of Karnataka*,<sup>37</sup> the Court said that inducing or leading an accused to plead guilty under a promise or assurance would be violative of Article 21 of the Constitution. The Court also stated that "In such cases, the Court of appeal or revision should set aside the conviction and sentence of the accused and remand the case to the trial court so that the accused can, if he so wishes defend himself against the charge and if he is found guilty, proper sentence can be passed against him".

In *State of Uttar Pradesh vs Chandrika*<sup>38</sup> the Apex Court disparaged the concept of plea bargaining and held this practice as unconstitutional and illegal. Here the Hon'ble Court was of the view that on the plea bargaining Court cannot basis of disposing of criminal cases. The case has to be decided on the merit. In furtherance of the same, court said that if the accused confesses his guilt, he must be given the appropriate sentence as required by the law.

In the *State Of Gujarat vs Natwar Harchandji Thakor*<sup>39</sup>, the Court acknowledged the importance of plea bargaining and said that every "plea of guilty" which is construed to be a part of the statutory process

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<sup>33</sup> AIR 1976 SC 1929.

<sup>34</sup> AIR 1980 SC 264.

<sup>35</sup> 1980 AIR 854

<sup>36</sup> (1980) 3 SCC 120.

<sup>37</sup> [1983] 1 SCC 194

<sup>38</sup> 2000 Cr.L.J. 384(386)

<sup>39</sup> (2005) 1 GLR 709

in the criminal trial, should not be understood as a “plea bargaining” ipso facto. It is a matter of matter and has to be decided on a case to case basis. Considering the dynamic nature of law and society, the court said that the very object of the law is to provide an easy, cheap and expeditious justice by resolving disputes.

## **ARGUMENTS AGAINST PLEA BARGAINING IN INDIA**

*Voluntarily adopted Mechanism-* As per the legal provision dealing with Plea bargaining, it is a voluntary mechanism which is only entertained when accused opts it willingly. But the law is silent on the point that in case, the settlement reached is contrary to the purpose of the legal system.

*Involvement of Police-* The Involvement of the police in plea bargaining also attracts criticism. As India is infamous for the custodial torture by police. In such scenario, the concept of Plea Bargaining is more likely to aggravate the situation.

*Corruption-*The role of victims in plea bargaining process is also not appreciated. The role of victim in this process would attract corruption which is ultimately defeating the purpose which is sought to be achieved by such action.

*Independent Judicial Authority-* The provisions of Plea Bargaining do not provide for an independent judicial authority to evaluate plea-bargaining applications. This is one of the glaring reasons for its criticism. The in camera examination of the accused by the court attract may lead to public cynicism and distrust for the plea-bargaining system. The failure to make confidential any order passed by the court rejecting an application could also create biases towards the accused.

*Not the Final Solution-*The reasons given for the introduction of plea-bargaining are the tremendous overcrowding of jails, high rates of acquittal, torture undergone by under trial prisoners etc. But the main factor behind all these reasons is a delay in the trial process. In India, the reason behind the delay in trials is many e.g. the operation of the investigative agencies as well as the judiciary, personal interest of lawyers etc. Therefore, the need of the hour is not a substitute for trial but an overhaul of the system which can be in terms of structure, composition and its work culture. All these measures would ensure reasonably fast trials.<sup>40</sup>

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<sup>40</sup> K N Chandrasekharan Pillai, *R V Kelkar's Criminal Procedure* (7th edn, Eastern Book Company 2018) 523–531.

## ARGUMENTS FOR PLEA BARGAINING IN INDIA

Fast disposal of cases-The plea bargaining is beneficial for both the prosecution and the defense because there is no risk of complete loss at trial. It helps the attorneys to defend their clients in an easy way because both the parties possess bargaining power. This is how the long-standing disputes can be resolved and the court would also not need to face encumbrance of case files. Moreover, Plea bargaining helps the courts in preserving scarce resources for the cases that need them most.<sup>41</sup>

Less serious offenses on one's record- In a country like India, society plays a vital role. Once a person is stigmatized by society it becomes very difficult for that person to survive. Many a time stigmatization leads to ostracization. In such scenario, Plea Bargaining allows a person to plead guilty or no contest in exchange for a reduction in the number of charges or the seriousness of the offenses.<sup>42</sup> This results in recording less serious offenses on the official court records of an accused. This can be good for the accused when he is convicted in the future.

A hassle-free approach- Indian is known for its long-standing case. Many cases proceedings go for 8-10 year thereby both the parties suffer. There have been instances where accused spent more time in jail than the maximum punishment for which he was accused. Such instances show a grave infringement of their human rights. Plea bargaining allows a person to plead guilty without hiring a lawyer. But If they waited to go to trial, they would have to find and hire a lawyer, and in that process, they have to spend at least some time working with the lawyer to prepare for trial and pay the lawyer. The concept of plea bargaining safeguards the interest of such persons by avoiding the hassles that they face when the case remains pending.<sup>43</sup>

It avoids publicity- Moreover, Plea Bargaining is also a good mechanism to avoid publicity because the longer the case goes the more publicity the accuses gets. Therefore plea bargaining avoids such publicity by a fast settlement of the case. Famous and ordinary People who depend on their reputation in the community for their living, and those people who want to escape any unnecessary stigmatization. Although the news of the plea itself may be public yet it stays only for a short time when compared to news of a trial.

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<sup>41</sup> Law Commission of India, *Concessional Treatment for Offenders who on their own Initiative Choose to Plead Guilty without any Bargaining* (1991).

<sup>42</sup> Milton Humann, *Plea Bargaining : The Experiences of Prosecutors, Judges and Defence Attorneys* ( Boston G.K. Hall 1977)

<sup>43</sup> K I Vibhute and P S A Pillai, *Criminal Procedure* (13th edn, LexisNexis 2020) 614–625.

## RECOMMENDATIONS

Although the incorporation of plea bargaining through Chapter XXI-A of the Code of Criminal Procedure represents an important reform, several improvements are necessary to ensure its effective implementation.<sup>44</sup>

A major concern is the lack of awareness among undertrial prisoners regarding the benefits available under plea bargaining. Many accused persons remain unaware that they may be eligible for relief under provisions such as the Probation of Offenders Act and the set-off provisions relating to pre-trial detention. Therefore, prison authorities and probation officers should be legally obligated to conduct awareness programmes and counseling sessions within correctional institutions to educate inmates about these legal remedies.

Another important reform would be the introduction of a definite time limit for the commencement of criminal trials. If a trial does not begin within a prescribed period, appropriate relief should be granted to undertrial prisoners. Delays caused by the police, prosecution, or judiciary should not result in prolonged detention of individuals who are presumed innocent until proven guilty. Accountability mechanisms should therefore be established to address institutional delays.<sup>45</sup>

The scope of plea bargaining should also be extended to cases that were pending in appellate courts before the 2005 Amendment came into force. Allowing such accused persons to access this alternative mechanism would contribute to reducing the burden on higher courts and facilitate quicker resolution of pending cases.

Greater clarity is required regarding offences categorized as socio-economic offences, which are currently excluded from the ambit of plea bargaining. The legislation should provide clear criteria and guiding principles for determining which offences fall within this category. Such guidelines would help prevent arbitrary classifications and ensure consistency in application.<sup>46</sup>

The present framework, which largely determines eligibility for plea bargaining based on the maximum prescribed punishment, should be reconsidered. Instead of relying solely on the duration of punishment, lawmakers should also evaluate the actual seriousness and social impact of the offence. A broader and more nuanced approach would enhance the utility of plea bargaining.

Additionally, a specialized mechanism or separate forum may be established to deal exclusively with plea bargaining cases. Such a body could focus on facilitating negotiations and reaching mutually

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<sup>44</sup> K I Vibhute and P S A Pillai, *Criminal Procedure* (13th edn, LexisNexis 2020) 614–625.

<sup>45</sup> C K Takwani, *Criminal Procedure* (9th edn, Eastern Book Company 2023) 401–410.

<sup>46</sup> Muralidhar Miryala, 'Plea Bargaining in India: A Critical Appraisal' (2009) 51(4) *Journal of the Indian Law Institute* 568.

satisfactory settlements without burdening regular courts. Only when settlement efforts fail should the matter be returned to the trial court for continuation of proceedings.<sup>47</sup>

Finally, the law should prescribe a specific time frame within which negotiations and discussions relating to plea bargaining must be completed. The absence of a fixed timeline may undermine the objective of speedy justice, which is one of the principal reasons for introducing plea bargaining into the criminal justice system.<sup>48</sup>

## CONCLUSION

The concept of plea bargaining is not entirely new in India. Indian has already recognized it when it got its constitution in 1950. Article 20(3) of Indian constitution prohibits self-incrimination. People accuse plea bargaining of violatory of the said article. But with the passage of time the considering the encumbrance on the courts, the Indian court has felt the need of Plea bargaining in Indian legal system.<sup>49</sup> When a change is brought it is hard to accept it initially but society needs to grow so is our legal system. Everything has advantages and disadvantages and both have to be analyzed in order reach a sound conclusion. Rejecting something only on the basis of its disadvantages would not be justified in any case. The concept of plea bargaining is evolving in India and it is not appropriate to expect it to be perfect. As a final word, this transformation is neither intrinsically good nor bad. Rather, the question is whether, given a range of different ways of reducing the huge backlog of cases in the Indian Courts, incorporation of plea bargaining will enable decisions to be made in a manner that effectively advances the underlying goals of the criminal justice system.<sup>50</sup>

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<sup>47</sup> Ibid.

<sup>49</sup> Bibek Debroy, 'Plea Bargaining: Why and How' (2005) 40(24) *Economic and Political Weekly* 2603.

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