KnowLaw

KnowLaw Journal on Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 03 KnowLaw

A Critical Analysis of the Complexities of Plea–Bargaining Practices

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Abstract

In this research article, a comprehensive analysis of plea-bargaining practices is provided by tracing its origins from American criminal jurisprudence to its adaptation in India. Plea bargaining, which aimed to expedite the judicial process and reduce the burden on courts, has produced mixed results and reactions in India compared to its widespread acceptance in the United States. The study explores the ethical and socio-legal challenges associated with plea bargaining. It examines the differences in provisions and procedures under India's Criminal Procedure Code (CrPC), 1973, and the newly introduced Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. Further, this aspect has been examined by comparing the US and India legal frameworks. Lastly, suggestions for legislative reforms, improved judicial oversight, and the need for accessible legal representation to enhance the effectiveness and fairness of plea bargaining in India are some key concepts that can be incorporated to strengthen the plea bargaining system in India.

Introduction

To overcome the hurdles caused by the overburdening of cases and the lack of representation of thousands of undertrials violating their legal and fundamental rights, plea bargaining was introduced through amendments

in Indian legislation and statutes. This concept first originated from American criminal jurisprudence. It proved to be a significantly successful mechanism in resolving criminal cases and reducing the burden of courts. Inspired and borrowed from Americans, plea bargaining was also introduced in India but failed to be as successful as it was for the citizens of America. It was brought into effect as an attempt to mainstream and fasten the judicial process of criminal administration, reduce the burden on the judiciary, and expedite criminal cases so that there is no pendency in courts and justice is provided to all. As it is famously said, justice delayed is justice denied. Hence, this concept was brought into India to benefit from the same and alleviate challenges faced by the Indian criminal jurisprudence.

Plea Bargaining was introduced under the *Criminal Procedure Code (CrPC) in 1973 and 2006 in India*.[1] It deals with the rights of the accused and relies on the system of providing justice to the accused and its efficiency in doing so. Multiple intricate complexities prevented this concept from flourishing, which is why this practice has been adopted in India carefully and at the courts' discretion, along with certain restrictions to avoid any loopholes or misuse of such provisions. Under the *Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023*, though plea bargaining was retained, it reduced the scope, limiting it to sentence bargaining, one of the available types. [2]

RESEARCH QUESTIONS

1. How did plea bargaining in American criminal jurisprudence originate, and how has this concept been adapted and implemented within the Indian legal framework under the CrPC, 1973?

[1] Criminal Procedure Code, 1973, Act No. 2 of Parliament, 1974.
[2] Bharatiya Nagarik Suraksha Sanhita, 2023, Act No. 46 of Parliament, 2023.

2. What are the ethical and socio-legal challenges associated with plea bargaining, and how do these challenges impact the criminal justice system's efficiency, fairness, and transparency?
3. What are the key provisions and procedures governing plea bargaining in the CrPC 1973, and how do they differ from the newly introduced provisions under the BNSS, 2023? What are the potential implications for the legal system compared to the provisions under the CrPC, 1973?

RESEARCH OBJECTIVES

1. To trace the historical origins and evolution of plea bargaining in American criminal jurisprudence and analyze its adaptation and implementation within the Indian legal framework under the Criminal Procedure Code (CrPC) 1973.
2. To identify and examine the ethical and socio-legal challenges of plea bargaining and evaluate their impact on the criminal justice system's efficiency, fairness, and transparency.
3. To analyze the key provisions and procedures governing plea bargaining in the CrPC 1973 and to compare them with the newly introduced provisions under the BNSS 2024, focusing on understanding the potential implications for the legal system.

RESEARCH METHODOLOGY

The research methodology used doctrinal. The article is entirely doctrinal, using secondary sources such as articles, research papers, law reviews, legal databases, statutes, and various legislations to analyze the topic critically.

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Plea Bargaining – Meaning and Origin

Simply put, this concept derived from the American criminal legal system refers to the negotiation between the prosecutor and the accused by entering into an agreement wherein the accused agrees to plead guilty to offenses he is charged with in exchange for more lenient or simpler punishments for agreeing to plead guilty. The legal doctrine of *Nolo Contendere* has been incorporated into the concept of Plea Bargaining in India.

Plea Bargaining as a legal framework has been in practice since the 19th century, originating in the United States, before which this practice used to be seen as inappropriate. The earliest practice dates back to the Salem Trials in the US in the late 1600s, when the same practice was considered unethical. Witches were given a concession of being saved from the death penalty if they confessed and helped the authorities track down others as well by their confession.[3] Such confessions saved them from being executed. Only when a researcher from New York analyzed the statistics of plea bargaining, showing positive responses to the use of this practice, did it start to become acceptable. More such instances took place and aided in the evolution of plea bargaining into the modern criminal jurisprudence of America, showing successful and positive responses.[4]

Plea Bargaining in the Indian Context

This concept was brought into India by incorporating Plea Bargaining as an alternative legal framework in the Indian criminal jurisprudence. This was done by incorporating this concept into the Criminal Procedure Code,

[3] Jon'a F. Meyer (2009) Plea bargaining, Encyclopædia Britannica.
[4] *SUPRA NOTE 3*

1973,[5] By way of an amendment, namely the Criminal Amendment Act of 2005.[6] Plea bargaining is dealt with under sections 265A to 265L under chapter XXI-A of the CrPC.[7] Recommendations were also given by the Law Commission in its 142nd report and backed by the 154th and 177th reports under chapter XXI-A, sections 265A to L. The benefits arising out of the use of this practice and the need to implement this practice was observed by the Law Commission as frequent increases in pending cases were reported, leading to injustice to thousands of undertrials serving time in jail more than the offense they are accused of before even being convicted. Plea bargaining is a practice that provides an alternative to the long and time-consuming trial process and ensures speedy justice.

ANALYSIS AND JUDICIAL PRONOUNCEMENT

Constitutionality and Validity of Plea Bargaining in the United States

The practice of plea bargaining majorly deals with criminal trials and convictions in the US. 98% of federal and 95% of state convictions are dealt with through plea bargaining.[8] This method has become so dominant in the American criminal justice system that the US Supreme Court affirmed that their "criminal system is not a system of trials but a system of pleas[9]." However, this popularity is relatively recent, since the early 20th century. Before his period, courts had a somewhat opposing view, declaring the same practice unethical and violating criminal justice.

[5] *SUPRA NOTE 1*
[6] The Criminal Amendment Act, 2005, Act No. 2 of Parliament, 2006.
[7] Criminal Procedure Code, 1973, §265A, Act No. 2 of Parliament, 1974
[8] Dervan, Lucian, Fourteen principles and a path forward for plea bargaining reform, Criminal Justice Magazine, American Bar Association, 2024
[9] Missouri v. Frye, 566 U.S. 134, 143–44 (2012).

The constitutionality of plea bargaining was first recognized in the case of ***Brady v. United States***. It marked the beginning of the legal validity of this practice in the American criminal justice system. It also promised to ensure that all agreements or negotiations for plea bargaining are fair and transparent. Pleading guilty in fear of getting a death sentence does not renounce the practice.[10]

In the landmark judgment of ***Santobello v. New York***, The US Supreme Court explored the availability of any relief to be made to criminal defendants when a plea bargain is broken. Santobello was charged with two offenses and agreed to plead guilty to one of them. Considering the same, the prosecutor promised not to recommend maximum punishment. At the time of sentencing six months later, a new prosecutor arrived on behalf of the prosecutor's office and failed to uphold his end of the bargain. Santobello also refused to perform his end of the promise, but the courts denied it, and he was sentenced to the maximum punishment. He appealed to higher courts, and none ruled in his favor. When the matter went to the US Supreme Court, it was held that the judgment should be vacated and other views should be analyzed before giving the judgment.[11]

Another judgment where the constitutionality was recognized and the benefits of using pela bargaining to dispose of cases were confirmed by the Supreme Court of the USA in **Chaffin v. Stynchcombe.**[12]

Such a situation may arise when the accused claims he was unaware of the consequences of choosing to plea bargain. The courts held that such circumstances do not change the validity of the same.[13] Similarly, when the accused rejects the plea, and accordingly, a harsher punishment is given to him on account of his non-

[10] 397 U.S. 742 (1970)
[11] 404 U.S. 257 (1971)
[12] 412 US 17 (1973)
[13] Weatherford v. Bursey, 429 U.S. 545 (1977)

acceptance of pleading guilty and, in consideration, a lenient sentence, the same has to be thus accepted by the accused, leaving him no other option.[14] After the accused has chosen to accept the plea, he cannot refuse to accept or withdraw the same at a later stage. [15]

Constitutionality and Validity of Plea Bargaining in India

India significantly hampers their work efficiency with its ever-increasing pendency of cases and the burdens of the judiciary. Not only does it create problems for India's judiciary, but it also gravely affects citizens by not safeguarding their justice. Plea bargaining was, thus, borrowed from the American criminal system selectively after looking at its success in the United States. The Indian Courts have taken this practice into cognizance as well, along with the recommendations of the Law Commission of India through their reports. However, while the Law Commission was researching how to bring this practice under the aegis of Indian criminal legislation, the courts were against the idea. Various cases questioned and criticized this practice based on morality and other circumstances, such as ***Murlidhar Meghraj Loya v. State of Maharashtra*.**[16] There was another judgment where plea bargaining as a practice under the Indian criminal system was heavily condemned and contented that it is unconstitutional, illegal, and would only lead to injustice and would be a blot on the justice system of India. This was given in ***Kachhia Patel ShantilalKoderlal v. State of Gujarat*.**[17]

[14] Bordenkircher v. Hayes, 434 U.S. 357 (1978)
[15] Tollett v. Henderson, 411 U.S. 258 (1973)
[16] AIR 1976 SC 1929
[17] 1980 CriLJ553

Over the years, it was legally recognized when its aim to overcome the pendency and arrears of the case came to light. Judgments like the ***State of Gujarat v. Natwar Harchandji Thakor*** emphasized the objective of the Indian judiciary, which is to provide easy and expeditious justice to one and all.[18]

Lastly, another judgment held that the mere practice of plea bargaining is not adequate to dispose of cases based on mere admission of guilt.[19]

The Motor Vehicles Act of 1988 has also been played and contributed to the development and commencement of plea bargaining in India. Section 208 allows accused individuals to admit guilt for minor offenses and resolve the matter by paying fines.[20]

COMPARATIVE ANALYSIS

There are specific changes in India and the US relating to plea bargaining.

- Firstly, plea bargaining is available for almost all offenses under the American crime system. This is not the case in India, where plea bargaining is applicable only in certain types of offenses. All punishable offenses with imprisonment of seven or more years, life imprisonment, or the death penalty are excluded from the scope of plea bargaining. Plea bargaining can only apply to all other crimes with less than seven years of punishment.

[18] (2005) Cr.L.J. 2957
[19] Uttar Pradesh v. Chandrika; AIR 2000 SC 164
[20] Motor Vehicles Act, 1988, §208, Act No. 59 of Parliament, 1988

- In the United States, all types or forms of plea bargaining are allowed to be taken into consideration. According to the new legislation in India, BNSS,2024, only one type, i.e., sentence bargaining, was retained under the scope of plea bargaining.[21]
- In the US, the application is filed after the negotiation process, whereas in India, filing the application is the first step in plea bargaining. This ensures that the accused is voluntarily filing it with his free consent.[22]
- The discretion to accept or reject the application is in the hands of judges in India but not in the case of the United States.[23]
- Sentence given by plea bargaining is final in the case of the US. However, it can be appealed under the provisions of the Indian constitution, such as Article 136 24as a special leave petition or as a writ petition under Article 226[25] And 227.[26]

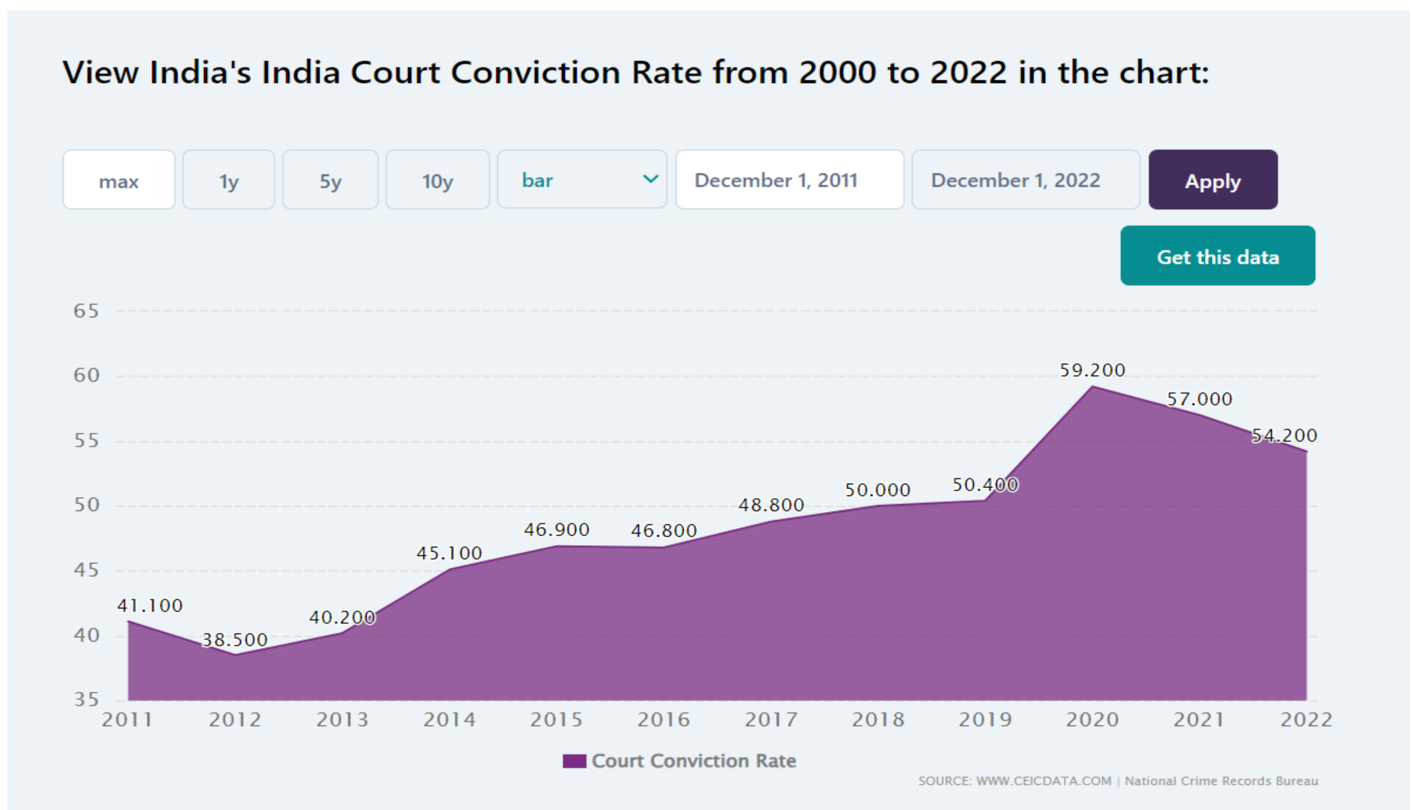
CRITICAL ANALYSIS

Statistics of Convictions and Acquittals

According to research, 90% of US convictions are made through plea bargaining. This practice is majorly prevalent in the US. If the concept were to be stripped from the US criminal system, it would be hard to keep up with all cases in America.[27]

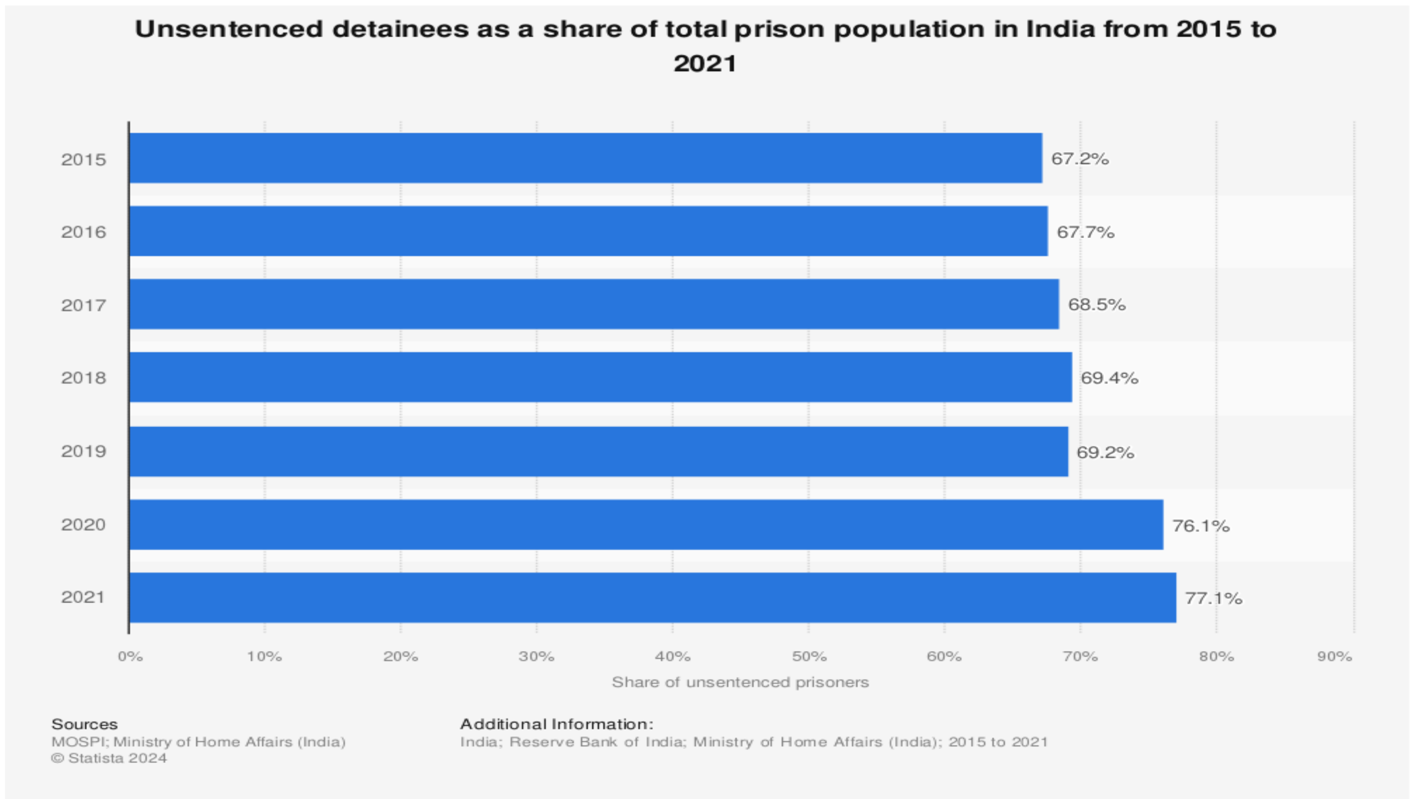
[21] Amin, Shaista, Plea Bargaining - An Indian Approach, 4 GNLU J.L. Dev. & Pol. 67 (2014)
[22] Sharma, Muskan, Plea bargaining in India and USA -A Comparative Study, Enhelion Blogs, 2024.
[23] *Ibid*
[24] Constitution of India, 1950, Article 136
[25] Constitution of India, 1950, Article 226
[26] Constitution of India, 1950, Article 227
[27] K.V.K. Santhy, Plea Bargaining in US and Indian Criminal Law Confessions for Concessions, NALSAR Law Review, 2013

The low conviction rate also poses problems in India. According to the data provided by the National Crime Records Bureau (NCRB) in 2022, the conviction rate decreased from 57% to 54% in 2021. Low conviction rates depict that there is a lack of efficiency in the criminal system of India, leaving thousands of accused in prison, waiting for months to get justice. [28]



Undertrial or Unsentenced detainees are affected the most, as they rot in prison without being represented in court. This Ministry of Home Affairs report showcases the data on unsentenced detainees in jail. A whopping

[28] National Crime Records Bureau (2022) India court conviction rate, CEIC.



77% of all prisoners are detained without being sentenced. The share has been increasing over the years, worsening the conditions.[29]

These statistics can be improved by enforcing more plea-bargaining cases and taking strict measures against any delays that lead to the piling up of cases.

TYPES OF PLEA BARGAINING

There are three main types of plea bargaining: charge bargaining, sentence bargaining, and fact bargaining.

[29] MOSPI, Unsentenced detainees as a share of the total prison population in India from 2015 to 2021 Statista, https://www.statista.com/statistics/1170574/india-share-of-unsentenced-prisoners/

1. **Charge bargaining** refers to pleading to a less severe charge or one out of multiple charges framed against the accused in return for getting other charges dismissed.
2. **Sentence bargaining** refers to bargaining for a more lenient sentence than prescribed as punishment according to the offense in exchange for pleading guilty.
3. **Fact bargaining** states that the prosecutor agrees not to reveal extra facts or information if the accused pleads guilty, which might help him get a lenient sentence.

In India, according to the new act of Bharatiya Suraksha Sanhita, 2023, only one type of plea bargaining, i.e., sentence bargaining, is available to the accused. This further limits the scope of this practice, giving fewer opportunities to resolve cases efficiently and speedily.[30]

Exceptions to the practice of Plea Bargaining

Plea Bargaining is a reasonably straightforward process that can be availed by filing applications in the court where the case is pending, stating that the defendant voluntarily chooses to plead guilty for the benefit of more lenient sentencing. However, there are certain exceptions when plea bargaining is not applicable as a practice. Under the CrPC, 1973;

1. Plea bargaining is not allowed for offenses punishable with imprisonment exceeding seven years, life imprisonment, or the death penalty.
2. The offense must not relate to socio-economic offenses that are grave in nature.
3. The defendant must not be convicted of the same offense previously or be a habitual offender.

[30] Bharatiya Nagarik Suraksha Sanhita, 2023, §289, Act No. 46 of Parliament, 2023.

4. According to the new act, BNSS, the application for plea bargaining must be filed within 30 days, starting from the date the frame was charged against the accused or the defendant.

Gaps in the Practice

While such negotiations to plead guilty for lesser sentences aid in lowering the burden of courts and the pendency of cases, as the defense gives up its right to trial and the time-consuming process of trials is saved, it also poses dilemmas and challenges that raise concerns about whether this practice interrupts the process of justice being served.

1. **Lack of transparency**: Plea bargaining means that the case does not go to trial. The negotiation is done behind closed doors, usually in the private chambers of the persecutors. Hence, no third person is present to witness the agreement between the defendant and the prosecutor. This needs to be more transparent and can cast doubt on the actual terms of the plea agreement.
2. **Unequal bargaining power**: In some instances, there is a probability that the prosecutor does not fulfill his responsibility of informing the defendant of all the necessary pieces of information. Here, the imbalance in bargaining power is showcased, where the prosecutor holds more power and can misuse the same to put the defendant in a disadvantageous position.
3. **Lack of judicial oversight**: as stated above, this practice is done without any witness or guidance. There is no scope for any judicial overview to ensure that fair and just negotiations occur. The prosecutor can take advantage of abuse of power and information. There is no proper legal mechanism to inform the judges about the plea agreement, which can put the defendant at a disadvantage again as the judgment will not be according to what was decided.

4. **Inadequate representation**- defendants who do not have the privilege of having a legal representative may find it challenging to use the practice of plea bargaining.

Though there are specific gaps in the implementation of plea bargaining, these can be overcome by bringing suggestions and reforms to enforce the practice more efficiently.

Ways the Practice of Plea Bargaining Can Go Wrong

Though this practice looks efficient, looking at the statistics and the previous success rate in other countries, it is not necessarily true that its application and implementation in India will prosper the criminal system of India. There are chances, but it needs a solid base to be established and be effective. Otherwise, it can do more harm than benefit, giving more avenues for misusing provisions of law than creating pathways for access to alternative forms of justice for victims and accused individuals. After all, the criminal jurisprudence of India is based on the principle that “it is better than ten guilty left loose than convicting and punishing one innocent,” taking into consideration Blackstone’s work.

Another primary concern related to this concept is the lack of accountability and privacy of such practices, which creates a significant loophole. There is no provision to keep account of how offenses are being pleaded instead of going to trial. As a trial requires exhaustive procedures for documentation, evidence, summons, arguments, and discussions, all in front of a court, none of this is ensured during plea bargaining. This is concerning, which is why modifying the laws relating to plea bargaining, such as incorporating an officer or body of officials to keep track of pleas, is essential not to lose the essence of such practice.

Lastly, power imbalance and dynamics are prevalent in aspects of life; the same can be seen in the case of plea-bargaining practices. There might be instances when the victim of the accused individual is being

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pressured to plead instead of going to trial. This might hamper fundamental rights, one of them being the fundamental right to a fair and free trial. It must be remembered that this practice is for the benefit of individuals and to safeguard their rights. Hence, precautions must be taken to prevent any instance of unfair practices and misuse.

Law Commission Reports Recommending Plea Bargaining

In India, the Law Commission has played a significant role in introducing the practice of plea bargaining. The practice was also successfully implemented in India through multiple published reports. In its *78th report*, an increasing number of undertrials and the deteriorating conditions of jails due to overcrowding have been identified, and urgent actions have been emphasized.[31]

The *142nd report,* under Justice Thakkar, is detailed and elaborate, including a critical analysis of Plea Bargaining in the US, its origin, procedure, framework, and success rate. This acted as an outline in putting forward the recommendations and scheme for introducing the same in India.[32]

The Law Commission of India, in its *154th report*, analyzed the position of the United States and concluded that this practice should be included in the Indian laws as well, commenting on its success in the US as well. They believed that the administration of such a practice would also lead to favorable results in India. Further, proper framework, procedures, and guidelines that should be incorporated were suggested. [33]

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[31] 78th Law Commission Report, "Congestion of under trial prisoners in jails", Law Commission of India, 1979

[32] 142nd Law Commission Report, "Concessional Treatment for Offenders who on their initiative choose to plead guilty without Bargaining," Law Commission of India, 1991

[33] 154th Law Commission Report, "Criminal Procedure Code, 1973- Chapter XIII Plea Bargaining", Law Commission of India, 1996

The *177th report* of the Law Commission reads compoundability of offenses along with plea bargaining, recommending that the scope of compoundable offenses should be widened and plea bargaining should be considered to help increase efficiency and effectiveness in tackling problems of cases in arrears.[34]

SUGGESTIONS & CONCLUSIONS

Suggestions for Reform

Based on the findings of this study, several recommendations can be proposed:

1. *Improved judicial supervision*- Specific mechanisms should be created to ensure transparency and fairness in the process and monitor and review such bargains.
2. *Legislative reforms*- Legislations should be refined and updated according to the current needs to ensure consistency and protection of the justice system.
3. *Accessible Legal representation*- The accused should be provided with legal representatives to look after their cases and prevent misuse of bargaining power by the prosecution.
4. *The Role of Technology* - To increase the effectiveness of plea-bargaining practice.

By implementing these reforms and policy recommendations, the legal system can strive towards a more equitable and effective administration of justice, balancing the need for efficient case resolution with the protection of defendants' rights and the integrity of the criminal justice process.

[34] 177th Law Commission Report, "Law Relating to Arrest," Law Commission of India, 2001

Conclusion

Thus, Plea Bargaining has evolved significantly throughout the years, from its American origin to its adaptation in India. With strict enforcement and better monitoring of this practice, plea bargaining can prove its true colors. This concept acts as a backbone for the American criminal system, and through its judicial use, it can achieve its objectives in India as well.

In conclusion, this research article aimed to explore the diverse nature of plea bargaining, its origin, its success in the US, and its adoption and implementation in India. Upon conducting a comparative analysis, it has showcased a nuanced understanding of its evolution. It has emerged as a practical response to the overhauling of cases and limited resources within the criminal justice system. Though complexities are faced, judicial oversight and continuous developments will guarantee a robust mechanism for the same.

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