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**COMPARATIVE ANALYSIS OF PLEA BARGAINING IN INDIA,
US, UK AND FRANCE**- A. Karunakaran¹**Introduction**

Plea bargaining is a process where the accused and the prosecution reach an agreement, usually to avoid a long trial.² It is widely used in many countries to save time, reduce expenses, and make justice quicker. In India, where court cases are often delayed and trials can take years, plea bargaining was introduced in 2005 through the Criminal Law (Amendment) Act.³ Since then, it has become a topic of much discussion. To understand the background of plea bargaining, it is important to first identify the key stakeholders involved in the process. In both trials and plea negotiations, the primary actors are the defence counsel, the prosecutor, and the judge. Scholars have long attempted to study how plea bargaining functions and have applied different theoretical perspectives to explain it. Despite varying approaches, the general conclusion remains that plea bargaining has now become an accepted practice, often seen as replacing the traditional idea of fair adjudication. From an economic perspective, Landes argues that plea bargaining operates like a transaction in which the prosecutor seeks to “buy” a guilty plea from the accused in return for a more lenient sentence.⁴

Definition of Plea bargaining

The law dictionary defines plea bargaining as an agreement between the parties (i.e. the plaintiff and defendant) to resolve the case between themselves without taking it further for trial.⁵ Britannica Encyclopaedia defines plea bargaining as the practice of negotiation between prosecutor and defence attorney (acting on behalf of the accused)

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²Black’s Law Dictionary (9th ed. 2009), definition of “Plea Bargaining.”

³Criminal Law (Amendment) Act, 2005, inserting Chapter XXI-A into the Code of Criminal Procedure, 1973.

⁴William M. Landes, *An Economic Analysis of the Courts*, 14 J.L. & Econ. 61, 64–65 (1971).

⁵‘Plea Bargaining Definition & Meaning - Black’s Law Dictionary’ (The Law Dictionary, 2 March 2013) <<https://thelawdictionary.org/plea-bargaining>

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where the defendant pleads guilty in exchange for a lesser sentence or recommendation or a specific type of sentence or maybe dismissal of charges.⁶In simple terms, a plea bargain can be understood as an agreement between the accused and the State, represented by the prosecutor. The main purpose of this process is to save time, reduce investigation and trial expenses, and avoid lengthy proceedings.⁷ Instead of going through a full trial, the State agrees to negotiate with the accused, who in return may plead guilty, pay a fine, or accept a reduced sentence.⁸ By doing so, the State fulfills its duty of maintaining law and order in a more efficient manner, while the accused benefits from a lighter punishment.⁹ In this way, plea bargaining is often seen as a “win-win” arrangement for both sides.

Historical Context

Plea bargaining is not a modern innovation but a concept that has evolved for more than a century. Although it is difficult to trace its exact origin, Lawrence M. Friedman suggests that it developed between 1880 and 1970.¹⁰ He identifies three distinct phases in this evolution. In the first phase, lasting until the early 20th century, a mixed system prevailed where some defendants chose full trials while others negotiated plea bargains. The second phase, continuing until around 1950, saw a marked increase in guilty pleas. During this period, trials became less common since the criminal justice system was largely tilted in favor of the State, leaving defendants with fewer chances of acquittal. The third and present phase reflects the practice of “overcharging,” where prosecutors often add multiple or exaggerated charges against an accused to strengthen their bargaining power. Consequently, fewer defendants opt for trial, preferring negotiated settlements instead.

The concept of plea bargaining traces its roots to the United States, where it gradually developed into an essential feature of the criminal justice system. Plea bargaining emerged as a pre-trial negotiation process between the prosecutor and the accused,

⁶‘Plea Bargaining’ (Encyclopaedia Britannica)

⁷Law Commission of India, *Report No. 154: The Code of Criminal Procedure, 1973* (1996), recommending the introduction of plea bargaining in India.

⁸Ibid

⁹*Santobello v. New York*, 404 U.S. 257 (1971), where the U.S. Supreme Court recognized plea bargaining as an essential part of the criminal justice system.

¹⁰Lawrence M. Friedman, *Plea Bargaining in Historical Perspective*, 13 *Law & Soc’y Rev.* 247 (1979).

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under which the latter agrees to plead guilty in return for certain concessions, such as a reduction of charges or a lighter sentence. Over time, this practice became widespread, with more than 75 percentage of criminal cases in the U.S. being resolved through guilty pleas rather than full jury trials.

The legitimacy of plea bargaining was affirmed by the U.S. Supreme Court in *Brady v. United States*,¹¹ where it was held that the process does not violate constitutional safeguards so long as the plea is entered voluntarily, without coercion, and with due regard for the rights of the accused. Joseph emphasizes that this judicial recognition gave plea bargaining a strong legal foundation, transforming it from a pragmatic practice into an accepted legal norm.

Thus, the origin of plea bargaining lies in the American legal system, where it evolved both as a response to overcrowded dockets and prison systems and as a mechanism to ensure quicker disposal of criminal cases, ultimately influencing its adoption in other jurisdictions, including India.

In India, however, the concept of plea bargaining was historically alien to the criminal justice system. The traditional approach emphasized the idea of a full trial as essential to fair adjudication, and early judicial opinions even regarded negotiated pleas as against public policy.¹² The turning point came with the Law Commission of India's 142nd Report (1991) and later the 154th Report (1996), both of which highlighted the severe backlog of cases and recommended the introduction of plea bargaining as a solution.¹³ After much debate, the Criminal Law (Amendment) Act, 2005 formally introduced Chapter XXI-A into the Code of Criminal Procedure, thereby institutionalizing plea bargaining in India.¹⁴ This marked a major shift in Indian criminal procedure, moving closer to global trends while still raising debates about its compatibility with Indian legal traditions.

¹¹*Brady v. United States*, 397 U.S. 742 (1970).

¹²*Kasambhai Abdulrehmanbhai Sheikh v. State of Gujarat*, (1980) 3 SCC 120, where the Supreme Court held that negotiated pleas were unconstitutional.

¹³Law Commission of India, *142nd Report on Concessional Treatment for Offenders who on their own Initiative Choose to Plead Guilty without any Bargaining* (1991); *154th Report on the Code of Criminal Procedure, 1973* (1996).

¹⁴Criminal Law (Amendment) Act, 2005, inserting Chapter XXI-A (Sections 265A–265L) into the Code of Criminal Procedure, 1973.

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Types of Plea Bargaining

Plea bargaining is a mechanism through which an accused person negotiates with the prosecution for a reduced punishment or lesser charges in exchange for pleading guilty. Over the years, different forms of plea bargaining have developed, each serving a distinct purpose in the criminal justice system. Broadly, there are three major types of plea bargaining: charge bargaining, sentence bargaining, and fact bargaining.

Charge Bargaining

This is the most common form of plea bargaining. Here, the accused agrees to plead guilty to a lesser charge than the one originally imposed. For example, a person charged with murder may agree to plead guilty to culpable homicide not amounting to murder. This benefits the prosecution by securing a conviction without the need for a lengthy trial, while the accused benefits from facing a lighter charge and reduced punishment.

Sentence Bargaining

In sentence bargaining, the accused pleads guilty to the original charge but negotiates for a lighter sentence. For instance, in cases where imprisonment is mandatory, the accused may negotiate for a reduced term of imprisonment or a fine instead of incarceration. This type is significant where the prosecution has a strong case and the accused prefers certainty of a lesser punishment over the risk of a higher sentence after trial.

Fact Bargaining

This is the least common and also the most controversial form of plea bargaining. Under this type, the accused admits to certain facts in exchange for the prosecutor agreeing not to introduce other damaging facts or evidence that could increase the severity of the punishment. For example, an accused may admit to possession of drugs but the prosecution may agree not to present evidence of intent to distribute, which would

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attract a harsher penalty. Critics often argue that fact bargaining may lead to suppression of the truth and distortion of the trial process.

Development of Plea Bargaining in India

Plea bargaining, which was first introduced in India through the Criminal Law (Amendment) Act, 2005 and incorporated in the Code of Criminal Procedure, 1973 under Chapter XXI-A (Sections 265A–265L), has been retained under the Bharatiya Nagarik Suraksha Sanhita, 2023. In the new code, the provisions are reorganized and placed under Chapter XXII (Sections 289–303). The structure and substantive content, however, remain largely the same. Under Section 289 of BNSS, an accused may apply for plea bargaining, but its scope is restricted. Just as under the CrPC, plea bargaining is permitted only for offences punishable with imprisonment of up to seven years, while socio-economic offences and crimes against women or children below fourteen years are excluded as per Section 290 BNSS. The procedure requires the court to facilitate a mutually satisfactory disposition between the accused, the prosecution, and the victim, ensuring that the plea is entered voluntarily, without coercion or duress, as elaborated in Sections 291–293 BNSS. Once a settlement is reached, the court may pass a judgment or sentence in accordance with the agreement, and the decision becomes final, with only limited grounds for appeal, as provided under Section 296 BNSS.

While the BNSS does not bring any major substantive changes to plea bargaining, the reorganization of provisions and renumbering of sections aim to simplify the code's structure. The essential framework—eligibility, judicial scrutiny, victim participation, and restrictions—remains identical to that of the CrPC. This indicates that the legislature chose to continue with the earlier model introduced in 2006, considering it an effective mechanism for reducing delays in criminal trials and addressing the problem of undertrial prisoners. Thus, under BNSS, plea bargaining continues to serve as an alternative dispute resolution mechanism within criminal justice, but its application is limited to minor offences, reflecting a cautious approach towards balancing efficiency with the protection of victims' rights and the interests of justice.

The need for plea bargaining in India was first highlighted in the 142nd Report of the Law Commission, which observed that many undertrial prisoners were forced to remain

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in jail for periods longer than the maximum sentence they would have received if convicted. This concern was reiterated in the 154th Report, where the Commission again recommended the introduction of plea bargaining as a remedy for both the massive backlog of criminal cases and the suffering of accused persons languishing in jail. Despite apprehensions relating to illiteracy, possible coercion, and prosecutorial pressure, the Commission concluded that the advantages of plea bargaining outweighed the risks. The 177th Report of the Law Commission reinforced this position, stressing that such a mechanism was necessary for speedy justice.

Judicial opinions also began to recognize the growing need for alternatives to lengthy trials. In *State of Gujarat v. Natwar Harchandji Thakor*,¹⁵ the Gujarat High Court observed that plea bargaining could be considered “a measure of reform” to reduce the delays in the justice system and to strike a balance between the interests of the accused and that of society. Similarly, in *Kasambhai Abdulrehmanbhai Sheikh v. State of Gujarat*,¹⁶ although the Supreme Court initially disapproved of negotiated pleas on constitutional grounds, later legislative changes addressed those concerns by formally incorporating plea bargaining into the CrPC.

The recommendations of successive Law Commissions eventually gained strong support from the Committee on Reforms of the Criminal Justice System, chaired by Justice V.S. Malimath, which emphasized that plea bargaining would ease the burden of pending cases and help in expediting justice delivery.¹⁷ However, in the Indian context, the scope of plea bargaining is deliberately limited. It is available only in cases where the punishment prescribed is up to seven years of imprisonment and is expressly excluded in relation to socio-economic offences and crimes against women and children below 14 years of age.

Plea bargaining in India has received considerable judicial attention in recent years. In July 2023, the Supreme Court observed that the Indian framework under Chapter XXI-A of the Code of Criminal Procedure (CrPC) is confined only to sentence bargaining, unlike jurisdictions such as the United States, which also permit offence (charge)

¹⁵*State of Gujarat v. Natwar Harchandji Thakor*, 2005 Cri LJ 2957 (Guj HC).

¹⁶*Kasambhai Abdulrehmanbhai Sheikh v. State of Gujarat*, (1980) 3 SCC 120.

¹⁷Government of India, *Report of the Committee on Reforms of Criminal Justice System* (Justice V.S. Malimath, 2003).

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bargaining. The Court hinted that Indian law may consider incorporating offence bargaining in the future to strengthen criminal justice reforms.¹⁸

In October 2022, the Supreme Court issued important guidelines to address the pendency of criminal cases. It recommended the adoption of a multi-pronged approach combining plea bargaining, compounding of offences, and the use of the Probation of Offenders Act, 1958. The Court also directed the introduction of pilot schemes across district courts for testing these integrated mechanisms, thereby promoting efficiency in case disposal.¹⁹

Further, judicial pronouncements have clarified the distinction between a plea of guilty and plea bargaining. While plea bargaining involves negotiation between the accused and prosecution with court approval, a plea of guilty is a direct admission of the offence without negotiation.²⁰

Plea Bargaining under the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023

Plea bargaining is a mechanism that allows an accused to plead guilty in exchange for certain concessions, usually in the form of a reduced sentence. It was first introduced in India through the Criminal Law (Amendment) Act, 2005, which inserted Chapter XXI-A into the Code of Criminal Procedure, 1973. With the replacement of the CrPC by the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, the concept of plea bargaining has been retained, though with certain modifications in scope and procedure.

Under the BNSS, plea bargaining is confined primarily to sentence bargaining, unlike the wider scope seen in the U.S., where charge bargaining and fact bargaining are also prevalent. The law restricts its application to cases where the punishment is up to seven years of imprisonment and specifically excludes serious categories such as socio-economic offences, crimes against women, and offences against children under the age

¹⁸*Supreme Court of India Observation*, July 2023, reported in LiveLaw, “Supreme Court Indicates Expansion of Plea Bargaining Beyond Sentence Bargaining,” available at: <https://www.livelaw.in/top-stories/supreme-court-plea-bargaining-offence-bargaining-sentence-bargaining-233620>

¹⁹*Supreme Court Guidelines*, October 2022, reported in **LiveLaw**, “Supreme Court Issues Guidelines for Criminal Case Disposal: Plea Bargaining, Compounding & Probation of Offenders Act,” available at: <https://www.livelaw.in/top-stories/supreme-court-guidelines-criminal-cases-plea-bargaining-compounding-probation-of-offenders-2022-livelaw-sc-889-212773>

²⁰*State v. Sonu*, AIR ONLINE 2019 DEL 1826

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of 14.²¹ The rationale behind this limitation is to balance efficiency in disposing of minor cases with the need to preserve the sanctity of trials in serious offences.

The procedure for plea bargaining under BNSS is strictly regulated. The accused must file an application within thirty days of the charges being framed.²² The court then examines the voluntariness of the application through an in-camera proceeding. If satisfied, the judge may allow a sixty-day period during which the prosecution and the accused, along with the victim or complainant where relevant, may negotiate a mutually acceptable settlement.²³ If an agreement is reached, the court can pass a judgment accordingly, and the time spent in detention is credited towards the sentence. Importantly, any statement made by the accused during plea negotiations cannot be used for any other purpose in subsequent proceedings, thereby safeguarding the right against self-incrimination.²⁴

The BNSS approach also builds upon earlier judicial concerns. Initially, in *Kasambhai Abdulrehmanbhai Sheikh v. State of Gujarat*, the Supreme Court held that plea bargaining was unconstitutional, as it could encourage coercion and compromise fair trial rights.²⁵ However, in *State of Gujarat v. Natwar Harchandji Thakor*, the Gujarat High Court emphasized that in light of mounting case backlogs, plea bargaining could be seen as a reformative measure.²⁶ The legislature, influenced by Law Commission Reports (142nd, 154th, and 177th) and the recommendations of the Malimath Committee, eventually gave statutory recognition to plea bargaining, which now finds continuity under the BNSS.²⁷

Thus, plea bargaining under the BNSS represents a calibrated attempt to expedite justice delivery without sacrificing fundamental rights. While it offers efficiency, cost reduction, and relief to undertrial prisoners, critics warn of potential risks such as undue prosecutorial pressure or inequality in bargaining power.²⁸ Therefore, judicial oversight

²¹BNSS, 2023, Section 289(2).

²²BNSS, 2023, Section 290.

²³BNSS, 2023, Section 291.

²⁴BNSS, 2023, Section 293.

²⁵(1980) 3 SCC 120.

²⁶2005 Cri LJ 2957 (Guj HC).

²⁷ Law Commission of India, *142nd Report* (1991); *154th Report* (1996); *177th Report* (2001); Government of India, *Report of the Committee on Reforms of the Criminal Justice System* (Justice V.S. Malimath, 2003).

²⁸Abhinav Sekhri, *Plea Bargaining in India: A Critique*, National Law School of India Review, Vol. 23 (2011).

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and effective legal aid are essential to ensure that plea bargaining remains a fair and voluntary process within India's criminal justice system.

Plea Bargaining in the United States

Plea bargaining is an established and dominant practice in the United States, with the vast majority of criminal cases being resolved through negotiated pleas rather than full jury trials. Over the years, its use has increased significantly, rising from 84% of federal criminal cases in 1984 to almost 94% in 2001.²⁹ This reflects not only the efficiency of the process but also the institutional preference for negotiated settlements over lengthy trials. Plea bargains, however, are always subject to judicial approval, and the rules governing them may vary across different states and jurisdictions. In the U.S., an accused may enter one of three pleas: Guilty, Not Guilty, or *Nolo Contendere* (No Contest).³⁰ While a guilty plea operates as an express admission of guilt, a plea of *Nolo Contendere* functions as an implied confession, where the accused does not contest the charges, leaving the determination of guilt to the court. Importantly, courts retain discretionary power to accept or reject such pleas based on the facts and circumstances of each case. Judicial scrutiny ensures that pleas are entered voluntarily, without coercion or undue pressure, and that the accused is safeguarded from public scrutiny during the process.³¹

The development of plea bargaining in the U.S. is closely tied to structural challenges within the justice system, including the problem of prison overcrowding, which made negotiated settlements more appealing as a tool of efficiency. In *Brady v. United States*, the U.S. Supreme Court upheld the constitutionality of plea bargaining, holding that the mere fact that a defendant accepted a plea out of fear of receiving the death penalty did not invalidate the voluntariness of the plea, so long as the process was conducted fairly and within due process limits.³² Similarly, in *State v. Adams*, the court elaborated on the doctrine of *Nolo Contendere*, explaining that it reflected the accused's choice not to contest the charge, even though it carried the same legal consequences as a guilty

²⁹Satyabansham Kumar, PLEA BARGAINING AND COMPARATIVE ANALYSIS, *Journal of Legal Research and Juridical Sciences*, Vol. 2 Issue 1

³⁰Federal Rules of Criminal Procedure, Rule 11.

³¹*Santobello v. New York*, 404 U.S. 257 (1971).

³²*Brady v. United States*, 397 U.S. 742 (1970).

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plea.³³The constitutional legitimacy of plea bargaining was further affirmed in *Haynes v. Bordenkircher*, where the Supreme Court upheld a life imprisonment sentence for an accused who rejected a plea deal offering only five years. The Court observed that while there was a possibility of defendants choosing the lesser punishment under pressure, there was no inherent element of coercion so long as the accused retained the freedom to accept or reject the prosecutor's offer.³⁴

Thus, although plea bargaining dominates criminal case resolution in the United States, its acceptance is conditional upon two fundamental safeguards: voluntary consent of the accused and judicial oversight. Courts play a critical role in ensuring that negotiations are not tainted by duress, that confidentiality is maintained, and that all parties—prosecution, defence, and the accused—participate freely. Properly supervised, plea bargaining has been recognized by the U.S. Supreme Court as a legitimate and integral part of the criminal justice process.

Plea Bargaining in the United Kingdom

Plea bargaining in the United Kingdom has historically been viewed with caution compared to its widespread acceptance in the United States. Unlike the U.S. model, which openly institutionalises negotiated pleas, the UK framework operates under the principle of judicial discretion, with plea agreements subjected to strict oversight to preserve the integrity of the criminal justice system. While English law does not formally describe the process as “plea bargaining,” it recognises the practice of granting sentence discounts to defendants who enter an early guilty plea. This system is not seen as a bargain between prosecution and defence, but rather as a pragmatic judicial tool to encourage efficiency while maintaining fairness.³⁵

The statutory basis for this practice lies in the Criminal Justice Act 2003, supplemented by the Sentencing Guidelines Council and later the Sentencing Council, which explicitly provides that the earlier a guilty plea is entered, the greater the reduction in sentence. Typically, a guilty plea at the first available opportunity may reduce a sentence by up to one-third, while a late plea, such as immediately before trial, might attract only a one-

³³*State v. Adams*, 18 Kan. 458 (1877).

³⁴*Haynes v. Bordenkircher*, 434 U.S. 357 (1978).

³⁵Criminal Justice Act 2003, Part 12.

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tenth reduction.³⁶ The rationale is that early guilty pleas save valuable court time, reduce the burden on witnesses and victims, and enable swifter case resolution, thereby promoting efficiency within the criminal justice system.

Judicial pronouncements have also shaped the scope of plea bargaining in the UK. In *R v. Turner*, the Court of Appeal emphasised that the judge should never pressure the accused into pleading guilty but could properly indicate the likely sentence benefit of an early plea.³⁷ Similarly, in *Attorney General's Reference (No. 92 of 2000)*, the Court clarified that plea discussions must not undermine justice, and any agreement between the defence and prosecution is subject to judicial scrutiny.³⁸ This reflects the UK's cautious approach—while plea bargaining exists in practice, it is heavily regulated to prevent coercion or abuse of prosecutorial discretion.

Another significant case, *R v. Goodyear*, further clarified judicial involvement, allowing defendants to request a “Goodyear indication” where a judge may indicate the maximum sentence if the defendant were to plead guilty.³⁹ This mechanism provides transparency while ensuring that decisions remain voluntary and informed, without inappropriate pressure. It highlights the UK's preference for judicially supervised plea discussions rather than prosecutorial negotiations, thereby safeguarding the accused's rights.

Plea Bargaining in France

The French criminal justice system traditionally relied on the inquisitorial model, where judges played a central role in investigating and adjudicating cases. As a result, plea bargaining—long associated with adversarial systems like that of the United States—was historically absent from French law. However, reforms in the late twentieth and early twenty-first centuries introduced mechanisms resembling plea bargaining, motivated by the need to address delays, reduce case backlogs, and adapt to the increasing complexity of criminal cases.

³⁶Sentencing Council, *Reduction in Sentence for a Guilty Plea: Definitive Guideline* (2017).

³⁷*R v. Turner* [1970] 2 QB 321 (CA)

³⁸*Attorney General's Reference (No. 92 of 2000)* [2001] EWCA Crim 253.

³⁹*R v. Goodyear* [2005] EWCA Crim 888.

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The most significant development came with the introduction of the procedure known as “*Comparution sur Reconnaissance Prealable de Culpabilite*” (CRPC), or “appearance on prior recognition of guilt,” under the *Perben II Law of 2004*.⁴⁰ This procedure allows the prosecutor to propose a sentence in exchange for the accused’s admission of guilt. If the accused accepts, the proposal must be approved by a judge, ensuring judicial oversight. The CRPC applies only to offences punishable by up to five years of imprisonment and excludes serious crimes such as homicide and sexual offences.⁴¹

The CRPC system mirrors plea bargaining in its efficiency-oriented objectives but differs in its procedural safeguards. Judicial approval is mandatory, and the accused must be assisted by a lawyer to ensure voluntariness and prevent coercion. Furthermore, unlike the American system, prosecutors in France cannot independently finalise plea agreements—the judiciary retains the final authority to ensure that the punishment is proportionate and just.

French courts have recognised the legitimacy of CRPC within the broader framework of criminal justice reform. In Decision No. 2004-492 DC of 2 March 2004, the Constitutional Council upheld the CRPC procedure, ruling that it complied with constitutional guarantees of a fair trial and judicial independence. This decision marked a significant shift in French criminal procedure, reflecting an effort to balance efficiency with rights protection.⁴²

Comparative Analysis on Plea Bargaining: India, USA, UK, and France

Plea bargaining has evolved differently across jurisdictions, shaped by each country’s legal traditions and policy priorities. While the United States pioneered the practice, other nations such as India, the United Kingdom, and France have gradually introduced controlled forms of plea bargaining to address case backlog, efficiency, and fairness within their criminal justice systems.

⁴⁰Law No. 2004-204 of 9 March 2004, known as the “Perben II Law.”

⁴¹Code de Procedure Penale (French Code of Criminal Procedure), Articles 495-7 to 495-16.

⁴²Satyabansham Kumar, PLEA BARGAINING AND COMPARATIVE ANALYSIS, *Journal of Legal Research and Juridical Sciences*, Vol. 2 Issue 1.

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In the United States, plea bargaining is the dominant mode of criminal case resolution, with more than 90% of criminal cases settled through negotiated pleas rather than trials.⁴³ Plea bargaining allows the prosecutor and accused to agree on reduced charges or sentences in exchange for a guilty plea, subject to judicial approval. The U.S. Supreme Court in *Brady v. United States* upheld the constitutionality of plea bargaining, provided it was voluntary and free from coercion.⁴⁴ The practice is justified largely on pragmatic grounds—reducing trial costs, addressing prison overcrowding, and ensuring speedy resolution of cases. However, critics argue that the system can lead to coercion, with defendants pleading guilty to avoid harsher sentences.

The United Kingdom historically resisted American-style plea bargaining, preferring the principle of open justice through trial.⁴⁵ However, the practice of plea discussions and sentence discounts has gained recognition, especially under the Criminal Justice Act 2003. Defendants who plead guilty at an early stage may receive up to a one-third reduction in their sentence.⁴⁶ Unlike the United States, plea bargaining in the UK is tightly regulated by judicial oversight and does not involve negotiations over charges; rather, it is limited to sentence reductions. This reflects the UK's effort to balance efficiency with the principle that justice should be transparent and proportionate.

In France, the inquisitorial system initially had no room for plea bargaining. However, reforms through the Perben II Law of 2004 introduced the procedure of Comparution sur Reconnaissance Prealable de Culpabilite (CRPC), or appearance on prior recognition of guilt.⁴⁷ This mechanism allows prosecutors to propose a sentence when the accused admits guilt, subject to judicial approval. The CRPC applies only to offences punishable by up to five years of imprisonment and excludes serious crimes.⁴⁸ Judicial oversight and mandatory legal assistance safeguard against coercion, making the French model more restrictive than its U.S. counterpart.

In India, plea bargaining was introduced relatively late through Chapter XXIA of the Code of Criminal Procedure, 1973, inserted by the Criminal Law (Amendment) Act,

⁴³Bureau of Justice Statistics, *Federal Justice Statistics, 2001* (Washington, DC, 2003).

⁴⁴*Brady v. United States*, 397 U.S. 742 (1970).

⁴⁵Andrew Ashworth, *Sentencing and Criminal Justice* (Cambridge University Press, 2015).

⁴⁶Criminal Justice Act 2003, s. 144 (UK).

⁴⁷Law No. 2004-204 of 9 March 2004 (“Perben II Law”).

⁴⁸Code de Procedure Penale, Articles 495-7 to 495-16 (France).

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2005. Now, under the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, which replaces the Cr. PC, the provisions continue to regulate plea bargaining with certain modifications.⁴⁹ The Law Commission of India, in its 154th Report, recommended plea bargaining as a remedy for judicial delays and to address the plight of undertrial prisoners languishing in jail for periods longer than their likely sentence.⁵⁰ In India, plea bargaining applies only to offences punishable with imprisonment up to seven years and excludes socio-economic offences, crimes against women, and crimes against children. Unlike the United States, Indian law places significant restrictions, and judicial approval remains central to ensure voluntariness and fairness.

In comparison, the United States model represents the broadest and most pragmatic use of plea bargaining, prioritising efficiency over strict fairness. The UK and French systems are more cautious, limiting plea bargaining to sentencing concessions or specific offences, with strong judicial oversight. The Indian model under BNSS falls closer to the European approach, permitting plea bargaining in a restricted domain while prioritising safeguards against misuse. Collectively, these variations reflect the tension between efficiency in criminal justice and the protection of due process rights, a balance each legal system strikes differently.

Comparative Table on Plea Bargaining

Aspect	India	USA	UK	France
Legal Basis	Chapter XXI-A CrPC (2005); Chapter XXII BNSS (2023).	Long-standing practice, recognized under Federal & State Rules of Criminal Procedure	Formalized under <i>Sentencing Guidelines</i> ; “Goodyear Indicatio	<i>Comparution sur Reconnaissance Prealable de Culpabilite</i> (CRPC) introduced in 2004.

⁴⁹Bharatiya Nagarik Suraksha Sanhita, 2023, Chapter XXIA.

⁵⁰Law Commission of India, 154th Report on the Code of Criminal Procedure, 1973 (1996).

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		e.	ns” (judicial sentence indicatio ns).	
Types of Plea Bargaining	Sentence, charge, fact bargaining (statutory framework mainly allows sentence bargaining).	Charge, sentence, fact bargainin g (all three widely practiced).	Sentence bargaini ng (guilty plea leads to reduced sentence).	Sentence bargaining; accused admits guilt for lighter penalty.
Scope of Applicatio n	Only for offences punishable with imprisonme nt up to 7 years; excludes socio- economic offences, offences against women/chil dren.	Applicab le to almost all criminal offences, including serious crimes.	Mostly applied to reduce sentence after guilty plea; not for serious crimes like murder.	Applies to offences punishable up to 5 years imprisonment (later extended to 10 years).
Judicial Scrutiny	Mandatory court oversight to	Court approval required,	Judge must ensure	Judge must approve agreement;

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	ensure plea is voluntary and not coerced.	but courts usually defer to prosecutor—defendant agreements.	plea is voluntary; judge may indicate sentence range.	ensures voluntariness and proportionality.
Victim's Role	Victim consultation mandatory in process.	Victim's role limited; prosecutor-driven.	Victim has no direct role, process is between prosecution and defence.	Victim has no direct role, mainly prosecutor and accused.
Transparency & Confidentiality	Proceedings confidential, records in-camera.	Generally public, though some negotiations may be private.	Negotiations informal but outcome transparent in court.	Conducted before judge, recorded, but not publicized widely.
Objective	Reduce backlog, speed up trials,	Efficiently, avoid jury trial, manage	Encourage guilty pleas, reduce	Quick disposal of minor/medium offences,

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	reduce undertrial population.	caseloads .	burden on courts.	reduce backlog.
Criticism	Limited scope; excludes major offences; fear of coercion.	Risk of coercion, overcharging by prosecutors, undermines trial rights.	Creates sentencing disparities, risk of pressuring guilty pleas.	Criticized as “Americanization” of French justice; risk of weakening trial rights.

Critical Analysis of Plea Bargaining in India, USA, UK, and France

A comparative examination of plea bargaining in India, the United States, the United Kingdom, and France reveals important differences in both philosophy and practice. The United States has adopted the most expansive model, where plea bargaining dominates the criminal justice system and disposes of nearly 90–95% of criminal cases. Prosecutors have wide discretion to negotiate charges and sentences, subject only to judicial approval. This efficiency, however, has come at the cost of concerns over voluntariness, prosecutorial coercion, and the erosion of the right to trial by jury. In contrast, the United Kingdom has adopted a far narrower model. There, plea bargaining does not extend to negotiations over charges; rather, it operates primarily as a sentence discount system where defendants who plead guilty early may receive up to a one-third reduction in sentence under the Criminal Justice Act 2003. This makes the system more transparent and judge-controlled, but also raises questions of fairness, since sentence discounts may pressure defendants to plead guilty for pragmatic reasons rather than actual culpability.

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France, traditionally wedded to the inquisitorial model, resisted plea bargaining until the 2004 Perben II Law, which introduced *Comparution sur Reconnaissance Prealable de Culpabilite* (CRPC). Like the U.K., France restricts bargaining to sentencing and limits its use to offences punishable up to five years. The French model is more judicialised than either the U.S. or the U.K. system, as a judge must approve every agreement and defence counsel participation is mandatory. This ensures safeguards against coercion but limits its impact in reducing court congestion. India, while borrowing the concept from the U.S., has designed a framework closer to the European models. Introduced by the Criminal Law (Amendment) Act, 2005 and retained in the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, India restricts plea bargaining to offences punishable with imprisonment up to seven years, and expressly excludes socio-economic crimes and offences against women and children. Unlike the U.S., Indian law requires both judicial oversight and victim consent, which makes the process more rights-oriented but also restricts its practical application in reducing arrears of cases.

Thus, the comparative picture shows four different orientations: the U.S. model prioritises efficiency, often at the expense of voluntariness and trial rights; the U.K. model uses sentence discounts as a pragmatic tool but avoids charge bargaining; the French model embeds strict judicial control to safeguard rights but applies only to limited offences; while the Indian model combines restrictions on scope, judicial supervision, and victim participation, reflecting caution due to socio-economic vulnerabilities. The key divergence lies in the weight each system places on efficiency versus fairness: while the U.S. tilts heavily toward efficiency, the European and Indian approaches favour fairness and oversight, even at the cost of limited effectiveness in backlog reduction.

Suggestions to Improve Plea Bargaining in India

First, expanding the scope of offences would make the system more effective. At present, plea bargaining is limited to cases punishable up to seven years, excluding socio-economic crimes and offences against women and children. While this caution is understandable, it has left out a vast proportion of criminal cases that clog Indian courts. A carefully graded expansion, for example including certain socio-economic offences or mid-level white-collar crimes, could reduce pendency without compromising justice.

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Second, there is a need for greater judicial supervision combined with prosecutorial accountability. At present, the role of the judge is mostly supervisory, but in practice, judges often simply record the plea without engaging in a meaningful inquiry. Borrowing from the French CRPC model, Indian judges could be required to actively ensure that the accused fully understands the consequences of the plea, that defence counsel has been adequately involved, and that no coercion or inducement is present.

Third, strengthening the role of victims would improve fairness. The current law requires victim consent, but there is little guidance on how this consent should be obtained or how victims' rights will be safeguarded. A structured victim participation mechanism, for instance, through victim impact statements or mandatory consultation, would ensure that plea bargaining does not reduce victims' voices in the process.

Fourth, India could adopt sentencing guidelines similar to the U.K., which uses a transparent sentence discount framework. This would prevent arbitrary concessions and ensure uniformity across different courts. Currently, Indian plea bargaining often results in unpredictable outcomes, which undermines public confidence.

Fifth, awareness and legal aid support are critical. Many accused persons in India, particularly from marginalised backgrounds, are unaware of plea bargaining or fear exploitation. Introducing mandatory legal aid counsel during plea negotiations, coupled with awareness campaigns, could help ensure informed and voluntary participation.

Finally, monitoring and evaluation mechanisms should be introduced. A national database tracking the number of plea bargains, offences involved, outcomes, and impact on pendency would allow policymakers to assess effectiveness and address shortcomings over time. Without such empirical monitoring, reforms remain theoretical.

Conclusion

Plea bargaining, once considered alien to Indian criminal jurisprudence, has now become a structured mechanism under Chapter XXI-A of the Code of Criminal Procedure, 1973, and retained in the Bharatiya Nagarik Suraksha Sanhita, 2023. Its introduction was primarily driven by the twin concerns of judicial backlog and undue pre-trial incarceration, which had long undermined the efficiency and fairness of the

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criminal justice system. While the concept draws inspiration from the United States, where plea bargains resolve an overwhelming majority of cases, its application in India remains cautious and limited, reflecting concerns about fairness, voluntariness, and protection of vulnerable accused.

A comparative analysis reveals that India's framework is far narrower than that of the U.S., where prosecutorial discretion dominates, or France and the U.K., where judicial oversight and sentencing guidelines provide greater safeguards. In India, the exclusion of socio-economic offences, crimes against women and children, and serious offences punishable with more than seven years' imprisonment reflects a deliberate attempt to prevent misuse. However, this also means that many cases contributing to judicial pendency remain outside its scope. Moreover, the system has been criticised for lacking transparency, uniform sentencing benefits, and effective victim participation, thereby limiting its success.

At the same time, plea bargaining holds enormous potential in India if implemented with suitable reforms. Expanding its scope to selected categories of offences, strengthening judicial scrutiny, incorporating victim rights, introducing sentencing guidelines, and ensuring mandatory legal aid could transform it into a credible mechanism that balances efficiency with fairness. Importantly, consistent monitoring and empirical evaluation would help assess its real impact on pendency and justice delivery.

Ultimately, plea bargaining should not be seen merely as a tool for reducing case backlog, but as an instrument to achieve a more humane, participatory, and efficient criminal justice system. When properly safeguarded, it can serve as a middle path between the rigidities of prolonged trials and the risks of unchecked prosecutorial bargaining. The Indian experience, still at a formative stage, must therefore evolve by learning from comparative jurisdictions while tailoring reforms to its own social and constitutional realities. In doing so, plea bargaining can move from being an experiment born of necessity to becoming an integral pillar of restorative and participatory criminal justice in India.

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