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A COMPARATIVE ANALYSIS OF PLEA-BARGAINING PRACTICES IN INDIA AND THE UNITED STATES, AND OTHER WESTERN DEMOCRACIES

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ABSTRACT

Plea bargaining, a legal negotiation process between the prosecution and the accused, has gained significance in criminal justice systems around the world as a means of reducing trial time and expenses and ensuring speedy justice. In India, where the criminal justice system is known for its inefficiency and long-drawn-out trials, the concept of plea bargaining was introduced in 2005 through the Criminal Law (Amendment) Act. Since its introduction, plea bargaining has been the subject of much debate and scrutiny in India, with many experts questioning its effectiveness and compatibility with the Indian legal system. This research paper aims to explore the practice of plea bargaining in India, analyzing its various aspects, including its history, legal framework, implementation, and effectiveness. The paper also seeks to evaluate the impact of plea bargaining on the Indian criminal justice system, examining the advantages and disadvantages of this controversial legal practice.

KEYWORDS: Charges, Trial, Accused, the Criminal Justice System, Punishment

1. COMPARING PLEA BARGAINING IN INDIA, THE UNITED STATES, AND THE OTHER WESTERN DEMOCRACIES

The procedure of pleading guilty to a charge or charges in exchange for a concession from the prosecutor or the court is known as plea bargaining. This compromise could come in the form of a shortened sentence, the dropping of some charges, or an agreement to suggest a less severe punishment to the judge. Plea

bargaining is a standard practice in criminal justice systems all throughout the world; however, the rules and practices differ from nation to nation.

Plea bargaining is a practice that is well-established in the US. In fact, it's thought that plea bargaining settles more than 90% of all criminal prosecutions in the US. This is due in part to the adversarial system of justice used in the US, where defense and prosecution attorneys are entrusted with presenting competing cases in court. This frequently results in protracted trials and a backlog of cases. Plea negotiating facilitates a more rapid and effective resolution of cases and can assist in guaranteeing that guilty defendants receive just punishment.

In the US, a plea agreement is often presented to the defendant by the prosecutor and may contain a reduced charge, a reduced sentence, or both. The defendant has the option of accepting, rejecting, or negotiating the conditions of the offer. If they accept the offer, the defendant will admit guilt to the agreed-upon charge and get the agreed-upon punishment.

Plea bargaining was relatively recently legalized in India under the Criminal Law Amendment Act in 2006. Plea bargaining is less common in India than as common in India as it is in the US, though it is utilized for a restricted number of charges. Only crimes with a maximum term of seven years or less are eligible for plea bargaining, and the offender must be prepared to accept responsibility. There have been some complaints about how the Indian plea-



bargaining system has been put in place, but it is still in its infancy. For instance, some observers have claimed that the system is unfair to poorer defendants who might not have access to legal counsel.

The involvement of the judge is one of the primary distinctions between plea bargaining in India and the US. In the US, the prosecution and defense lawyer often negotiate plea deals; the judge has a comparatively small impact on the proceedings. Yet, in India, the judge is far more involved in the plea negotiating procedure. The judge must approve any plea agreement before it is finalized, and the judge may participate in the negotiations of the agreement's parameters.

The scope of plea negotiations also differs between the two nations. Plea bargaining is employed in a wide variety of situations in the US, from minor offences like traffic violations to serious felonies like murder. Plea bargaining is only an option in India for certain infractions that carry a sentence of less than seven years in prison. Because to the fact that many of the most serious criminal cases cannot be settled through this procedure, plea bargaining has little utility in India.

Plea bargaining is not as common in other Western democracies as it is in the US and India. For instance, while plea bargaining is permitted in some situations in the UK, it is less common than in the US. Instead of using formal plea agreements, the UK system of plea bargaining places a greater emphasis on the negotiating of guilty pleas. In Australia, where plea bargaining is legal but less common than in the US, the same is true. In both nations, the emphasis is on ensuring that the offender enters a voluntary and informed guilty plea rather than employing plea bargaining to expedite cases.

The aim of plea negotiations is to persuade offenders to enter guilty pleas and take responsibility for their conduct, which is a commonality among various nations. This

lessens the workload on the courts and encourages defendants to cooperate with the law, which can aid in the investigation of subsequent offenses. The requirement to provide fairness and transparency in plea negotiations, with defendants fully aware of their rights and the implications of their choices, is another connection.

The involvement of the judge in the process is one significant distinction between plea bargaining procedures in various nations. In the US, the prosecutor and the defendant's attorney frequently barter over plea deals, with the court only sometimes becoming involved. In some nations, like the UK, the court participates more actively in the plea bargaining process to make sure the defendant is fully aware of the consequences of their choice.

The amount to which plea bargaining is employed to lessen the severity of the punishment is another distinction. In the US, pleading guilty is frequently done to lessen the punishment a defendant would otherwise face if they were convicted at trial. In some nations, like Australia, the emphasis is on making sure that the offender enters a guilty plea voluntarily and with full knowledge, as opposed to utilising plea bargaining to lessen the punishment.

2. EFFECTIVENESS OF PLEA BARGAINING ON THE CRIMINAL JUSTICE SYSTEM

Plea bargaining is a widely used mechanism for resolving criminal cases in many countries, including India, the United States, and other Western democracies. Its effectiveness, however, remains a matter of debate.

First off, it has been established that plea bargaining is a useful tool for resolving criminal cases in the United States. As was already established, plea bargaining is used to resolve the great majority of criminal cases in the US. The strain on the courts has decreased as a result, allowing the criminal justice system to function more effectively. However, it has been demonstrated that in some circumstances, plea bargaining results in more accurate and



reliable outcomes since defendants may be more inclined to admit guilt to a lesser charge if they are aware of the strength of the evidence against them.

Plea bargaining's success is less widespread in India, though. Plea bargaining is not commonly utilized in India, where it was recently introduced in 2005. It is not available for serious crimes, but in some circumstances, it might be a helpful method for promptly and efficiently handling minor infractions. Additionally, the ineffectiveness of plea bargaining as a method of resolving criminal cases is due to a lack of knowledge and comprehension of it among both defence attorneys and defendants.

Plea bargaining is becoming a common practise in other Western democracies like Canada and Australia for resolving criminal cases. Plea bargaining has been proven to be a useful strategy in these nations for lessening the workload on the courts and ensuring that justice is administered effectively. Critics counter that because defendants who are successful in negotiating a plea agreement may receive a lighter sentence than those who go to trial, plea bargaining can also result in disparities in sentencing.

There is disagreement over how plea agreements affect the criminal justice system. Although many plea agreements are reached behind closed doors, some contend that plea bargaining may result in a lack of accountability and transparency in the legal system. In addition, even if they are innocent, defendants may feel under pressure to enter a guilty plea in order to avoid the possibility of a harsher sentence if they go to trial. As a result, the notions of justice and fairness may be compromised and erroneous convictions may result.

On the other hand, proponents of plea agreements contend that it is a crucial instrument for making sure that justice is carried out quickly and effectively. The courts would be far more overworked without plea

deals, and many cases would be postponed for months or perhaps years. Plea bargaining also offers the chance for rehabilitation, as suspects who admit guilt in exchange for a lighter sentence might be more eager to take ownership of their mistakes and make an effort to behave better moving forward.

In conclusion, the process of settling criminal cases through plea bargaining is complicated and contentious. Depending on the nation and the situation, it may or may not be effective. Although plea bargaining can be a useful tool for lessening the load on the courts and ensuring that justice is administered effectively, it can also result in disparities in sentencing and threaten the values of justice and fairness. In the end, how plea bargaining is implemented, regulated, and whether it is used in a transparent and accountable manner will determine how it affects the criminal justice system.

3. LEGAL AND PROCEDURAL FRAMEWORKS GOVERNING PLEA BARGAINING IN THESE VARIOUS COUNTRIES

The legal and procedural frameworks governing plea bargaining in India, the United States, and other Western democracies vary considerably.

United States: Plea bargaining is a common practice in the United States, and both the Federal Rules of Criminal Procedure and state laws in each state specify the procedures that must be followed. These regulations specify the kinds of plea deals that are acceptable, the functions of the prosecutor and defense attorney throughout the plea negotiation process, and the steps for accepting or rejecting plea deals.

The sentencing guidelines, which offer a framework for calculating suitable penalties for various offenses, are a significant aspect of the US legal system. By giving prosecutors leverage to offer shorter terms in return for guilty pleas and ensuring that the final sentences adhere to the guidelines, can affect the plea-bargaining process.



India: The Code of Criminal Procedure, which was revised in 2005 to permit plea bargaining in specific situations, lays down the legal framework for this practise there. The Indian legal system restricts the use of plea bargaining to offenses that carry sentences of up to seven years in jail, and the court must first approve any deal before it can be implemented.

Unfortunately, a lack of awareness and comprehension among attorneys and defendants has made it difficult to put the Indian plea bargaining system into practise. Both many defence attorneys and many defendants are unaware of the procedure's existence. Due to the prosecution's enormous negotiating power in plea deals, there are additional worries that the system may not be just to defendants.

Other Western Democracies: The legal foundation for plea bargaining varies depending on the jurisdiction in other Western democracies like Canada and Australia. In general, it is possible to negotiate a plea deal. Still, there are some limitations, including the types of offenses that can be resolved through a plea deal, the maximum sentence that can be given, and the types of plea deals that are acceptable.

The requirement that judges approve plea agreements and ensure that they are in the public interest is one aspect of the Canadian legal system. This can aid in preventing the use of plea bargains to evade the legal system or produce outcomes that are unfair to the defendant or the victim.

In conclusion, the legal and procedural frameworks that control plea bargaining in countries like India, the US, and other Western democracies have a big impact on how they go and what happens. The kinds of plea agreements that are available, the parties' roles in the negotiation process, and the steps for accepting or rejecting plea agreements can all be influenced by these frameworks. In the end, how these frameworks are implemented and

regulated and whether they support fairness, openness, and accountability in the criminal justice system will determine how effective plea bargaining is as a method of settling criminal cases.

4. ETHICAL AND MORAL ISSUES SURROUNDING PLEA BARGAINING

Plea bargaining brings up a variety of moral and ethical concerns that affect various nations, including India and the United States. These concerns deal with the process's impartiality, the rights of the accused, and how plea bargaining affects the criminal justice system as a whole.

Ethical Issue

The possibility of coercion or improper influence is one ethical concern with plea bargaining. Even if a defendant is innocent or does not fully grasp the implications of pleading guilty, they may be under pressure to accept plea offers. This can be a particular issue for defendants who are facing severe penalties if they go to trial or who cannot afford quality legal counsel.

The potential for plea bargaining to erode the rule of law and the idea of equal justice presents another ethical dilemma. Opponents contend that plea bargaining enables prosecutors to evade the court system and arrive at decisions that are not consistent with the facts or the law. In situations when the person is not guilty or if the evidence against them is thin, this can be very problematic.

Moral Issue

Plea bargaining also raises moral questions about the fairness of the court system and the rights of the accused. Even if they are innocent, defendants may feel under pressure to enter a guilty plea in order to avoid the possibility of receiving a harsher penalty should a trial occur. This may be considered a breach of the defendant's legal right to due process and a fair trial.

Additionally, the criminal judicial system as a whole may be affected by plea bargaining. The



widespread use of plea deals, according to critics, might result in a "trial penalty" when defendants who exercise their right to a trial suffer worse sentences than those who accept plea bargains. As a result, the most defenceless defendants may end themselves in a system where they are more likely to plead guilty than others who are more fortunate and have access to legal counsel.

The extent to which the issues are addressed: In the United States, procedural and legal safeguards to some extent address the moral and ethical concerns underlying plea bargaining. For instance, judges must guarantee that plea agreements are entered into willingly and with full knowledge of the repercussions. Defendants also have a right to legal representation. Yet, detractors contend that these protections are frequently insufficient and that plea bargaining still enables prosecutors to obtain results that are not consistent with the facts or the law.

In India, legal provisions that mandate judicial approval of plea agreements and guarantee the right of the defendant to withdraw their plea if they feel compelled or pushed address the ethical and moral concerns surrounding plea bargaining. Yet, as was already indicated, the lack of knowledge and comprehension among attorneys and defendants has hindered the execution of these laws.

Several Western democracies, like Canada and Australia, have laws limiting the types of charges that can be plea bargained and the maximum sentence that can be handed down. These laws attempt to address the ethical and moral concerns surrounding plea bargaining. Also, courts in these nations play a bigger part in accepting plea deals and making sure they serve the public good.

Plea bargaining brings up a variety of moral and ethical concerns that exist across the globe. The fairness and efficiency of the plea-bargaining process are still up for question, despite the fact that there are some legal and

procedural safeguards in place to address these problems. The degree to which these issues are addressed is determined by the unique legal and procedural frameworks in each nation, as well as more general cultural and social attitudes towards the criminal justice system.

5. FACTORS THAT INFLUENCE PLEA BARGAINING OUTCOMES

Socio-Economic Status: The defendant's socio-economic status is one of the main variables that affect the results of the plea negotiations. According to research, defendants who are underprivileged or cannot afford skilled legal counsel are more likely to enter guilty pleas and suffer harsher punishments than those who can afford top-notch counsel. This is due to the fact that unrepresented defendants frequently lack the resources to mount a compelling defense and are more susceptible to pressure from prosecutors to accept plea deals.

Race: Another element that may affect the results of a plea deal is race. Studies have repeatedly demonstrated that Black and Latino defendants are more likely than white defendants to receive plea bargains and that these agreements frequently result in harsher sentences. This is known as racial disparities in plea bargaining. These disparities may be caused by structural racism in the criminal justice system, as well as unintentional bias on the part of judges and prosecutors.

Gender: Results of plea bargaining can also be impacted by considerations of gender. According to research, women are more likely than men to be offered plea agreements, and these agreements frequently result in charges that are less serious and shorter sentences. But compared to men, women who reject plea bargains and choose to go to trial are more likely to be found guilty and face harsher penalties. In plea bargaining, this is known as the "gender penalty."

Quality of Legal Representation: Another element that may affect the results of a plea



agreement is the caliber of legal representation. High-quality legal counsel increases the likelihood that a defendant will receive a favourable plea bargain and have their rights upheld throughout the plea-bargaining process. Defendants whom overworked or inexperienced attorneys represent, however, may be more likely to enter guilty pleas and incur harsher punishments. This is due to the possibility that these attorneys lack the tools or knowledge necessary to advocate for their clients in productive negotiations.

Other aspects: The seriousness of the charges, the veracity of the evidence against the defendant, and the prosecutors and judges discretion are additional variables that may affect the results of a plea agreement. The chances of the defendant receiving a good plea deal may be higher when the prosecution's case has little support or the charges are relatively light. The defendant may have fewer options and may be more likely to receive a harsh sentence in situations when the evidence is solid or the charges are serious.

A number of variables, including the defendant's socioeconomic level, race, gender, and caliber of legal representation, affect the results of plea negotiations. These elements may significantly affect the plea negotiation process and lead to varying outcomes for various defendants. A concerted effort will be needed to address systemic problems with the criminal justice system, such as unconscious bias, structural racism, and insufficient financing for public defenders, in order to eliminate these discrepancies.

6. SUGGESTIONS

There are a number of plea-bargaining best practices that nations looking to enhance their criminal justice systems might follow. These procedures promote the use of plea bargaining as an efficient method for resolving criminal cases and work to maintain justice and transparency in the plea-bargaining process.

- **Guidelines for Prosecutions:** Nations should create guidelines for the prosecution that specify precise and uniform standards for granting plea deals. These conditions ought to be determined by elements including the gravity of the offense, the defendant's prior criminal history, and the veracity of the evidence. Prosecutors can make sure that plea offers are presented properly and uniformly by setting clear criteria.
- **Judicial Oversight:** To guarantee that plea bargains are fair and just, nations should establish judicial monitoring over them. Judges ought to have the power to reject plea deals that serve the interests of injustice or that come from coercion or excessive pressure.
- **Sufficient Legal Representation:** Governments should make sure that everyone facing charges has access to adequate legal counsel during the plea negotiation process. Together with funding public defenders, this also entails holding private defense attorneys to a high standard of ethics and professionalism.
- **Transparency:** Governments should encourage transparency in the plea negotiation process by mandating that prosecutors notify the court and the defendant's attorney of any plea agreements. This can aid in ensuring that plea agreements are reasonable and that defendants are aware of the repercussions of entering a guilty plea.
- **Alternatives to Incarceration:** For non-violent offenders, nations should take into account alternatives to incarceration, such as diversion programs or community service. Prosecutors can use plea bargaining to promote rehabilitation and lower recidivism by offering alternatives to incarceration.



- **Training for Prosecutors and Defense Lawyers:** Governments should train prosecutors and defence lawyers on the fundamentals of plea bargaining and effective negotiating techniques. This can support ensuring that the criminal justice system uses plea negotiations fairly and effectively.
- **Monitoring and Evaluation:** To guarantee that plea bargaining is used fairly and effectively, nations should monitor and assess its use. This may entail gathering information on the use of plea bargaining, examining the results for various defendant groups, and polling prosecutors and defense lawyers to gauge their opinions of the plea-bargaining procedure.

There are a number of plea-bargaining best practices that nations looking to enhance their criminal justice systems might follow. By putting these procedures into place, nations can make sure that plea bargaining is applied equitably and successfully to end criminal cases, encourage rehabilitation, and lower recidivism.

7. REFERENCE

- Kathuria, S. (2007). The Bargain has been Struck: A Case for Plea Bargaining in India. *Student Bar Review*, 19(2), 55–68. <http://www.jstor.org/stable/44306676>
- Mathur, J. K. (1992). PLEA BARGAINING—IN INDIAN CONTEXT. *Journal of the Indian Law Institute*, 34(3), 429–442. <http://www.jstor.org/stable/43951453>
- Rao, K. S. (2001). CRIMINAL JUSTICE SYSTEM — REQUIRED REFORMS. *Journal of the Indian Law Institute*, 43(2), 155–173. <http://www.jstor.org/stable/43951765>
- Costs and the Plea Bargaining Process: Reducing the Price of Justice to the Nonindigent Defendant. (1979). *The Yale Law Journal*, 89(2), 333–352. <https://doi.org/10.2307/795840>
- Taylor, J. S. (2004). Plea Bargains, Constraining Options, and Respect for Autonomy. *Public Affairs Quarterly*, 18(3),

249–264.

<http://www.jstor.org/stable/40441384>

- Roberts, J. V., Azmeh, U., & Tripathi, K. (2011). Structured Sentencing in England and Wales: Recent Developments and Lessons for India. *National Law School of India Review*, 23(1), 27–45. <http://www.jstor.org/stable/44283737>
- Jain, H., & Rautela, M. (2018). Overview of Plea Bargaining in India. Available at SSRN 3151302. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3151302
- Singh, A. (2009). Plea Bargaining in India: A Nibble at the Edge of the Problem. *NUALS LJ*, 3, 79. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/nualsj3&div=13&id=&page=>
- Bhardwaj, M. Justice in Plea Bargaining in India: a Review of major drawbacks. <http://www.irtjournal.com/uploads/2018%20v4i1/65.v4i1.pdf>