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Plea Bargaining in USA and India: An Appraisal

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ABSTRACT

This paper examines plea bargaining as a critical mechanism in criminal justice systems worldwide, allowing cases to be resolved efficiently through negotiated settlements between the prosecution and the accused. In the United States, plea bargaining is a well-entrenched practice developed through judicial interpretation and prosecutorial discretion, forming the backbone of a criminal justice system in which a significant majority of cases are resolved through negotiated agreements. The American model emphasizes flexibility, case efficiency, and prosecutorial authority, with judges primarily ensuring the voluntariness of agreements. India formally introduced plea bargaining through the Criminal Law (Amendment) Act, 2005, which inserted Chapter XXIA (Sections 265A–265L) into the Code of Criminal Procedure, 1973, following recommendations of the 142nd and 154th Reports of the Law Commission of India and the Malimath Committee (2003). The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) re-enacts and refines this statutory framework, defining eligibility criteria, procedural timelines, and safeguards for accused persons and victims, and mandating judicial supervision to ensure that agreements are voluntary and fair. This paper undertakes a comparative analysis of the plea-bargaining mechanisms of the United States and India, emphasizing differences in legal foundations, scope, judicial involvement, and victim protection, and highlights how statutory regulation under the BNSS contrasts with the discretionary, case-law-driven American framework. It further examines the implications of the BNSS for justice delivery, procedural efficiency, and fairness, proposing a balanced framework that upholds both efficiency and the protection of rights.

Keywords: *Plea Bargaining, BNSS 2023, United States, Criminal Justice, Judicial Oversight, Procedural Safeguards, Victim Rights, Legal Framework, Case Efficiency, Comparative Analysis.*

I. INTRODUCTION

Plea bargaining is the process by which an accused agrees to plead guilty to certain charges in exchange for concessions, such as reduced charges in the United States, or lighter sentences and other statutory benefits in India. In the United States, this practice has evolved through judicial

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precedents and prosecutorial discretion over the last century, shaping a system in which more than 90% of criminal cases are resolved through negotiated agreements.¹ It is primarily a tool for judicial efficiency, case management, and resource allocation, with judges verifying the voluntariness and fairness of agreements.

India, facing increasing criminal caseloads and pressure on courts, introduced plea bargaining through the Criminal Law (Amendment) Act, 2005,² which inserted Chapter XXIA (Sections 265A–265L) into the Code of Criminal Procedure, 1973,³ following recommendations from the 142nd⁴ and 154th⁵ Reports of the Law Commission of India and the Malimath Committee (2003).⁶ India has since enacted the Bharatiya Nagarik Suraksha Sanhita, 2023, a modern statutory framework that succeeds the previous procedural code.⁷ The BNSS, 2023 establishes clear eligibility requirements, procedural timelines, and judicial oversight mechanisms, emphasizing voluntary participation and protection of victims' interests. The former Chief Justice of India, Y.K. Sabharwal, observed that “the introduction of plea bargaining in India would not only expedite the criminal system but also serve as a restorative form of justice where victims would be equal stakeholders and get adequate compensation”.⁸

Plea bargaining is a vital procedural mechanism in criminal justice systems worldwide, designed to resolve cases efficiently while safeguarding the interests of both the accused and the state. The rationale behind plea bargaining is to streamline the judicial process, reduce case backlogs, conserve resources, and ensure timely delivery of justice without compromising fairness and legality. In the United States, plea bargaining has become an intrinsic part of the criminal justice system. Originating informally in the 19th century, it gradually developed through judicial precedents and prosecutorial practices rather than through comprehensive statutory regulation. Over time, plea bargaining emerged as the primary mode of resolving criminal cases, with over 90% of convictions obtained through negotiated agreements rather

¹ *Missouri v. Frye*, 566 U.S. 134 (2012) (noting that ninety-seven per cent of federal convictions and ninety-four per cent of state convictions result from guilty pleas).

² The Criminal Law (Amendment) Act, 2005, No. 2, Acts of Parliament, 2006 (India) [hereinafter Criminal Law (Amendment) Act].

³ The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).

⁴ LAW COMMISSION OF INDIA, REPORT NO. 142: CONCESSIONAL TREATMENT FOR OFFENDERS WHO ON THEIR OWN INITIATIVE CHOOSE TO PLEAD GUILTY WITHOUT ANY BARGAINING (1991).

⁵ LAW COMMISSION OF INDIA, REPORT NO. 154: THE CODE OF CRIMINAL PROCEDURE, 1973 (1996).

⁶ COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM, MINISTRY OF HOME AFFAIRS, GOVERNMENT OF INDIA, REPORT (2003) (Malimath Committee Report).

⁷ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India) [hereinafter BNSS].

⁸ Aditi Roy & Sanjana Gupta, *Plea Bargaining: A Comparison Between USA and India*, THE CRIMINAL LAW BLOG (May 20, 2022), <https://criminallawstudiesnluj.wordpress.com/2022/05/20/plea-bargaining-a-comparison-between-usa-and-india/>.

than full trials.⁹ The U.S. model is characterized by significant prosecutorial discretion, allowing the prosecutor to determine the type of charges, the scope of negotiations, and the potential sentencing outcomes. Judicial oversight in the United States primarily involves reviewing the voluntariness and legality of the plea to ensure that the defendant is not coerced, without actively shaping the negotiation itself. This system emphasizes flexibility, case efficiency, and expediency, while relying on constitutional safeguards and precedent to maintain fairness.

India, recognizing the growing backlog of cases and the increasing population of undertrial prisoners, has maintained a statutory approach to plea bargaining. The BNSS provides a structured framework for the conduct of plea bargaining, defining clear eligibility criteria, procedural steps, judicial oversight mechanisms, and safeguards for victims' rights. Unlike the United States, India's statutory model limits plea bargaining to offences punishable with imprisonment below a prescribed threshold and excludes serious, heinous, or socio-economic crimes from eligibility.

II. PLEA BARGAINING: CONCEPTUAL FRAMEWORK

Black's Law Dictionary defines plea bargaining as "the process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that possible for the graver charge."¹⁰ The primary purpose of plea bargaining is to ensure judicial efficiency, reduce case backlog, conserve resources, and provide timely delivery of justice while maintaining fairness and legality. In the United States, plea bargaining has evolved over more than a century through judicial interpretation and prosecutorial discretion rather than through codified statutes. It is considered the backbone of the American criminal justice system, with the vast majority of criminal convictions resulting from negotiated agreements rather than full trials. The U.S. system emphasizes prosecutorial discretion, where the prosecution determines the scope of negotiation, the charges to be offered, and the recommended sentence. Judicial oversight focuses primarily on verifying that the plea is voluntary, informed, and consistent with constitutional guarantees, rather than actively shaping the negotiation. Victim participation is generally limited, serving mostly an advisory role, while the flexibility of the system allows

⁹ *Missouri v. Frye*, *supra* note 1.

¹⁰ *Plea Bargaining*, THE LAW DICTIONARY, <https://thelawdictionary.org/plea-bargaining/> (last visited June 12, 2026).

prosecutors and courts to adapt plea negotiations to the needs of individual cases, case complexity, and court schedules.

In India, plea bargaining, which was formally incorporated into the criminal justice system through the Criminal Law (Amendment) Act, 2005, is now incorporated in the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which provides a structured statutory framework for the process.¹¹ The BNSS, 2023 establishes clear eligibility criteria, procedural steps, judicial oversight, and safeguards for victims' rights, ensuring that plea bargaining operates transparently and equitably.¹² Under the BNSS, plea bargaining is limited to offences punishable with imprisonment below a prescribed threshold, and serious offences, socio-economic crimes, and offences affecting women, children, or public safety are excluded from eligibility.¹³ The process allows the accused to submit a plea-bargaining application within a statutory window from the framing of charges.¹⁴ Judicial authorities are responsible for reviewing applications to ensure voluntariness, fairness, and alignment with public interest, and they may approve or reject the proposed agreement based on statutory and ethical standards. Victims play a formal role in the process, with provisions for consultation, consent, and compensation incorporated into the framework, reflecting a victim-centric approach.¹⁵ Additionally, the BNSS mandates time-bound procedures for application submission, hearing, and finalization of plea agreements, enhancing predictability and efficiency in justice delivery.¹⁶

III. COMPARATIVE ANALYSIS: THE UNITED STATES AND INDIA (BNSS, 2023)

Plea bargaining in the United States and India under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) represents two distinct approaches to achieving efficiency and fairness in criminal justice, reflecting differences in legal philosophy, procedural structure, and institutional roles. In the United States, plea bargaining is primarily guided by prosecutorial discretion and judicial precedent rather than statutory codification. Prosecutors hold the authority to offer plea deals, determine the scope of negotiation, and recommend sentences, while judges largely act as overseers to confirm the voluntariness and legality of the agreement. This discretionary framework allows flexibility, enabling the system to adapt to case complexity and court workload. Victims' participation, although recognized in certain statutes, is generally limited and advisory, leaving the final decision largely in the hands of the prosecution and the court. As

¹¹ Criminal Law (Amendment) Act, *supra* note 2; BNSS, *supra* note 7.

¹² BNSS, *supra* note 7, §§ 289–300.

¹³ *Id.* § 289.

¹⁴ *Id.* § 290(1).

¹⁵ *Id.* §§ 290–293.

¹⁶ *Id.* §§ 290(4), 293.

a result, the U.S. system emphasizes expediency and case management, with plea bargaining serving as a tool to handle high case volumes efficiently while still upholding constitutional safeguards for the accused.

In contrast, India's plea bargaining under the BNSS is a statutory, codified mechanism that prescribes clear eligibility criteria, procedural steps, judicial oversight, and victim protection measures. Unlike the United States, India restricts plea bargaining to minor and moderate offences, explicitly excluding serious, heinous, and socio-economic crimes to maintain public interest and ensure justice. India's statutory scheme permits sentence bargaining together with a mutually satisfactory disposition, which may also include compensation to the victim.¹⁷ Judicial authorities in India play an active role, not only overseeing the voluntariness of the plea but also ensuring fairness, adherence to statutory timelines, and protection of victims' rights. The statute mandates consultation with victims, provisions for compensation, and time-bound procedures for submission, hearing, and finalization of agreements. This structured approach increases predictability, transparency, and accountability in the criminal justice process, balancing efficiency with fairness and equity. Unlike the United States, in India the accused does not obtain a reduction of the charges through plea bargaining; only the quantum of sentence is negotiated.

Comparing the two systems highlights several key contrasts. While the U.S. approach prioritizes flexibility and discretion, the BNSS emphasizes procedural uniformity and statutory compliance. Judicial involvement is minimal in the United States, focused on ratification, whereas in India judges actively supervise and evaluate agreements. Victim participation is more robust under the BNSS, with statutory recognition of consultation and compensation, unlike the largely advisory role in the United States. Furthermore, procedural certainty under the BNSS, with prescribed timelines and steps, contrasts with the flexible, case-specific timelines of the U.S. system. Despite these differences, both systems share the common objective of reducing case backlogs, promoting timely resolution, and providing an alternative to lengthy trials.

IV. IMPLICATIONS OF PLEA BARGAINING UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

The enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) marks a significant development in India's criminal justice landscape, particularly in the context of plea bargaining.

¹⁷ BNSS, *supra* note 7, §§ 290(4)(a), 293 (providing for a mutually satisfactory disposition and reduced sentence).

The statutory framework ensures that only eligible offences are considered for plea bargaining, thereby maintaining the integrity of serious criminal prosecutions while offering efficiency in handling minor and moderate offences. One of the most notable implications is the enhancement of judicial efficiency: the prescribed procedural steps and time-bound hearings under the BNSS expedite case resolution, freeing courts to focus on complex trials and serious offences, and thereby improving overall judicial productivity.

The BNSS, 2023 also strengthens the protection of rights for both the accused and victims. Judicial oversight in the plea-bargaining process ensures that agreements are voluntary, fair, and in alignment with public interest, mitigating the risk of coercion or misuse of the mechanism. The explicit provisions for victim consultation and compensation highlight a shift towards a more victim-centric justice system, acknowledging the role and interests of victims in resolving criminal disputes. This approach balances efficiency with fairness, ensuring that plea bargaining does not compromise justice in favour of expediency.

Plea bargaining promotes judicial efficiency by enabling early resolution of cases, thereby reducing the growing backlog in courts and allowing judges to concentrate on complex and serious trials that require detailed scrutiny. For the accused, the law provides significant benefits, including the possibility of reduced sentences, while ensuring that these agreements are entered voluntarily and with full awareness of legal consequences, as mandated by judicial oversight. From a prosecutorial perspective, plea bargaining under the BNSS, 2023 serves as a strategic tool, allowing prosecutors to allocate resources more effectively, prioritize serious offences, and streamline case management without compromising justice. The statute also incorporates robust ethical and procedural safeguards, such as mandatory judicial approval and the presence of legal counsel, which protect against coercion and ensure transparency, fairness, and informed consent. Beyond procedural advantages, plea bargaining has important socio-legal implications, as it encourages alternative dispute resolution within the criminal justice system, fosters public trust if implemented equitably, and reflects a modern approach to balancing punitive and rehabilitative goals. Challenges nevertheless remain, including limitations on the types of offences eligible for plea bargaining, potential disparities based on socio-economic conditions, and the need for consistent judicial application to prevent uneven outcomes.

Furthermore, the statutory clarity provided by the BNSS, 2023 enhances transparency and predictability in criminal proceedings. By clearly defining eligibility, procedural steps, and judicial responsibilities, the law minimizes the ambiguities and inconsistencies that previously hampered plea-bargaining efforts in India. Policymakers and legal practitioners can now rely

on a uniform framework, which encourages broader adoption of plea bargaining while maintaining accountability. The BNSS also fosters public confidence in the criminal justice system by demonstrating that efficiency and justice can coexist, addressing criticisms that expedited case resolution might favour the accused at the expense of victims or societal interests. Overall, the BNSS, 2023 establishes a structured and legally supervised framework for plea bargaining, aiming to enhance efficiency, safeguard the rights of the accused, and strengthen the integrity and responsiveness of the Indian criminal justice system.

V. CONCEPTUAL PERSPECTIVES ON PLEA BARGAINING

Plea bargaining can be analyzed through multiple conceptual perspectives that highlight its multifaceted role in the criminal justice system. The **efficiency perspective** emphasizes that plea bargaining significantly reduces the burden on courts, expedites the resolution of cases, and conserves judicial resources, making it a practical tool in managing heavy caseloads. The **justice perspective** considers whether plea agreements uphold substantive and procedural fairness, focusing on the accused's rights and the need to prevent coercion or undue influence, so that the outcome does not compromise the principles of justice. From an **ethical perspective**, plea bargaining raises questions about the conduct of prosecutors and defence counsel, requiring transparency, honesty, and the avoidance of exploitation, while maintaining the integrity of the negotiation process. The **socio-legal perspective** examines the interaction between plea bargaining and societal values, exploring how public perception, cultural norms, and social awareness influence the acceptance and legitimacy of negotiated settlements. The **procedural perspective** focuses on the formal mechanisms, rules, and safeguards that govern plea agreements, such as judicial review, mandatory documentation, and informed consent, ensuring legality and accountability. Finally, the **policy perspective** considers plea bargaining as a tool of criminal justice policy, balancing objectives such as reducing backlog, optimizing prosecutorial resources, enhancing rehabilitation opportunities, and achieving broader social and administrative goals within the legal framework. Together, these six perspectives provide a comprehensive understanding of plea bargaining as not only a procedural mechanism but also a critical instrument for efficiency, fairness, and strategic policy implementation in modern criminal justice systems.

VI. CASES

The landmark decision in **Brady v. United States** (1970)¹⁸ is a foundational case in the development of plea bargaining in the United States, in which the U.S. Supreme Court upheld the constitutional validity of guilty pleas entered as part of negotiated agreements. The accused, charged with kidnapping under a statute that allowed the death penalty, chose to plead guilty to avoid the risk of a harsher sentence after trial. He later challenged the plea, arguing that it was coerced by the fear of capital punishment. The Court rejected this argument and held that a guilty plea is valid so long as it is made voluntarily, knowingly, and intelligently, with full awareness of its consequences. It further clarified that the mere existence of a harsher penalty, which may influence the accused's decision, does not amount to unconstitutional coercion. The judgment emphasized that plea bargaining is an acceptable and practical component of the criminal justice system, provided it does not involve threats, misrepresentation, or improper inducement. The case thus established the legal standard for determining the voluntariness of guilty pleas and significantly strengthened the legitimacy of plea bargaining in American criminal jurisprudence.

Another landmark judgment, **Santobello v. New York** (1971),¹⁹ is a significant decision in the development of plea-bargaining jurisprudence in the United States, in which the U.S. Supreme Court emphasized the binding nature of plea agreements. The accused agreed to plead guilty to a lesser offence on the condition that the prosecutor would not make any sentencing recommendation. At the time of sentencing, however, a different prosecutor recommended the maximum punishment, which was imposed by the court. The accused challenged this on the ground that the prosecution had breached the plea agreement. The Supreme Court held that when a plea rests in any significant degree on a promise or agreement of the prosecution, such promise must be fulfilled in the interest of justice. The Court further ruled that a failure to honour the agreement violates the principles of fairness and due process, and that the judgment must therefore be set aside. It directed that the case be remanded to determine whether the accused should be allowed to withdraw the plea or be resentenced in accordance with the original agreement.

Further, in **North Carolina v. Alford** (1970),²⁰ the United States Supreme Court significantly shaped the law relating to plea bargaining. Henry Alford was charged with first-degree murder, an offence then punishable by death. Faced with strong evidence against him and the possibility

¹⁸ *Brady v. United States*, 397 U.S. 742 (1970).

¹⁹ *Santobello v. New York*, 404 U.S. 257 (1971).

²⁰ *North Carolina v. Alford*, 400 U.S. 25 (1970).

of capital punishment, Alford chose to plead guilty to a lesser charge of second-degree murder to avoid the death penalty, while simultaneously maintaining his innocence. The primary legal issue was whether a guilty plea could be considered valid where the accused does not admit guilt. The Supreme Court held that such a plea is constitutionally valid, provided it is made voluntarily, knowingly, and intelligently, and there is strong factual evidence indicating guilt. This led to the recognition of what is now known as the “Alford plea,” under which an accused may plead guilty without expressly admitting the commission of the crime. The judgment emphasized that the key requirement is the voluntariness of the plea rather than an explicit confession of guilt, reinforcing the flexibility and practicality of plea bargaining within the American criminal justice system.

Bordenkircher v. Hayes (1978)²¹ is a significant decision of the United States Supreme Court that clarified the scope of prosecutorial power in plea bargaining. The accused, Paul Hayes, was charged with forging a cheque, an offence carrying a relatively lesser sentence. During plea negotiations, the prosecutor offered a five-year sentence if Hayes pleaded guilty, but warned that, if he refused, he would be re-indicted under the habitual offender law, which carried a mandatory life sentence in light of Hayes’s prior convictions. Hayes refused the plea offer, was subsequently re-indicted, convicted, and sentenced to life imprisonment. The legal issue was whether such prosecutorial conduct violated the Due Process Clause of the Fourteenth Amendment.²² The Supreme Court held that no constitutional violation occurred, ruling that plea bargaining inherently involves a “give-and-take” process and that a prosecutor may threaten and carry out more severe charges, provided the accused is free to accept or reject the offer. The Court emphasized that, so long as the charges are legally justified and the plea is voluntary, such bargaining tactics are permissible. This judgment significantly expanded prosecutorial discretion and established that the use of pressure in plea negotiations does not necessarily amount to coercion, thereby reinforcing the practical functioning of plea bargaining in the American criminal justice system.

The United States Supreme Court in **Missouri v. Frye** (2012)²³ expanded the scope of the right to effective legal representation in the context of plea bargaining. Galin Frye was charged with driving with a revoked licence, and the prosecution offered a plea bargain that would have reduced the charge to a misdemeanour with a significantly lighter sentence. Frye’s defence counsel, however, failed to communicate the plea offer to him, and it lapsed. Frye subsequently

²¹ *Bordenkircher v. Hayes*, 434 U.S. 357 (1978).

²² U.S. CONST. amend. XIV, § 1.

²³ *Missouri v. Frye*, *supra* note 1.

pleaded guilty without any agreement and received a harsher sentence. The key legal issue was whether the failure of defence counsel to inform the accused of a plea offer constituted ineffective assistance of counsel under the Sixth Amendment.²⁴ The Supreme Court held that plea bargaining is a “critical stage” of criminal proceedings and that the right to effective assistance of counsel extends to it. It ruled that defence lawyers have a duty to communicate formal plea offers to their clients, and that the failure to do so amounts to constitutional deficiency. The Court further held that, to establish a violation, the accused must show that he would have accepted the earlier offer and that it would likely have been approved by the court. This judgment reinforced the importance of fairness and transparency in plea negotiations and recognized that plea bargaining plays a central role in the modern criminal justice system.

VII. CONCLUSION

Plea bargaining, as a mechanism within criminal justice systems, serves multiple purposes: enhancing judicial efficiency, reducing the pendency of cases, safeguarding the rights of the accused, and promoting societal reconciliation. A comparative examination of the United States and India under the BNSS lens reveals the interplay of legal philosophy, governance priorities, and ethical considerations in shaping the practice of plea negotiations. In the United States, plea bargaining has evolved into a mature, precedent-driven process focused on procedural efficiency, strategic negotiation, and constitutional safeguards. Its widespread application underscores the role of prosecutorial discretion, judicial oversight, and the balancing of legal rights with case-management imperatives.²⁵

India, by contrast, presents a distinct approach guided by the principles of *Bharatiya Niti* and *Saksham Suraksha*, emphasizing moral governance, social justice, and the equitable resolution of disputes. Indian plea bargaining, rooted in policy and ethical frameworks, prioritizes restorative justice, the protection of societal interests, and fairness for all stakeholders.²⁶ While more restrictive in scope than the American model, this approach aligns with the normative values of transparency, accountability, and collective welfare, reflecting a vision of justice that transcends procedural expediency. The comparative analysis demonstrates that, although the United States benefits from flexibility and procedural entrenchment, India’s BNSS-guided framework has the potential to create a more holistic system that balances efficiency with ethical governance. Integrating lessons from the American model, such as procedural clarity, broader

²⁴ U.S. CONST. amend. VI.

²⁵ BNSS, *supra* note 7, §§ 289, 298.

²⁶ *Id.* §§ 292–293.

applicability, and structured negotiation, while maintaining the BNSS emphasis on societal welfare and fairness, can strengthen India's plea-bargaining mechanism.

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