A COMPARATIVE STUDY ON PLEA BARGAINING IN INDIA AND OTHER COUNTRIES

AQUIN KURUVILLA TOM
Student, St. Joseph's College of Law

INTRODUCTION:

Many nations have accepted the idea of plea bargaining and have included it in their criminal procedural laws. Plea bargaining refers to pre-trial negotiations between the prosecutor and the accused in which the accused agrees to enter a guilty plea and the prosecution agrees to impose a lighter sentence or make a concession in exchange for the guilty plea. In order to preserve the rights of the accused, the notion of plea bargaining was very recently established in India in the year 2005. To lessen the amount of criminal cases where the trial does not start for three or five years, this idea was implemented. Many people who are charged with crimes are not eligible for bail for a variety of reasons, one of which is that they have been imprisoned for a long time as under-trial defendants who must endure a great deal of mental stress and hardship while in custody. The fact that the accused is eventually found not guilty if there is insufficient evidence to support his guilt is another factor. As a result, Chapter XXIA of the Code of Criminal Procedure, 1973, deals with this idea. This essay examines the plea bargaining procedure in India and other nations. Criminal trials are taking longer and longer to resolve by the time they are finished. In many cases, the trial process does not begin for many years after the accused has been placed in judicial custody. This is due to the criminal courts' increasing use of administrative procedures to expedite the process of conducting criminal trials. The criminal justice system in India stipulates that many inmates who are awaiting trial are compelled to stay in jails around the nation. [1]

According to the ***National Crime Records Bureau***, there were approximately **50,000** more people in prisons in 2011 than there were beds available, and most of them were awaiting trial or had been there for more than five or six years. Many people who are charged with crimes are not eligible for bail for a variety of reasons, one of which is that they have been imprisoned for a long time as under-trial defendants who must endure a great deal of mental stress and hardship while in custody. [2]The fact that the accused is eventually found not guilty if there is insufficient evidence

[1] Alschuler, A.W., 1979. Plea bargaining and its history. *Columbia Law Review, 79*(1), pp.1-43.
[2] Maynard, D.W., 1984. Inside plea bargaining. In *Inside Plea Bargaining* (pp. 201-208). Springer, Boston, MA.

to support his guilt is another factor. As a result, the courts established an informal system of pre-trial settlement and negotiation, which was used in the US and is now more often known as plea bargaining. In this system, the suspect or the accused may accept all or some of the charges against him, and instead of waiting for the trial to end, may request a lower sentence. Plea bargaining's primary goals are to prevent needless costs, unexpected trials, and harassment. It also reduces the number of criminal cases that are pending and helps with time management. Another goal of this system is to shorten the duration of the lawsuit by turning to a settlement agreement rather than a trial, which is nonetheless overseen by the court to guarantee justice. In the United States, England, and Australia, this practise is widespread. Plea bargaining is a notion that has become quite popular in the US, but it is only employed in very limited circumstances in the other two nations. On the suggestions of the ***Malimath Committee***, this concept was added to the **Criminal Procedure Code**. It is covered in **Chapter XXIA** and is comprised of Sections **265A to 265L.** [3]

DEFINITION OF PLEA BARGAINING

Plea agreements have a correct meaning, although the Code does not define them. It often refers to a deal between the prosecution and the defendant, when the defendant consents to enter a guilty plea in exchange for the prosecutor offering a concession or a lighter sentence. The Chief Justice of the Supreme Court of the United States noted in Warren Burger in ***Santobello v. New York***[4] that the idea of plea bargaining is an essential component of the administration of justice and, if it is properly administered, it must be encouraged. It also results in the final disposition of criminal cases. It is a procedure when the accused and the prosecution in a criminal case come to a mutually agreeable resolution of the matter, according to ***Black's Law Dictionary***. In most cases, the accused enters a guilty plea in order to get a reduced sentence, subject to the court's consent. [5]

Plea bargaining can be seen as consistent with the reformative theory of criminal justice, as it provides a way for the offender to take responsibility for their actions and make amends, while avoiding a long, costly and potentially damaging trial process. Through plea bargaining, the defendant may receive a lighter sentence or reduced charges in exchange for pleading guilty, and the criminal justice system can conserve resources and resolve cases more efficiently.

---

[3] Alschuler, A.W., 1981. The changing plea bargaining debate. *Calif. L. Rev.*, *69*, p.652.
[4] 404 U.S. 257
[5] Bibas, S., 2004. Plea bargaining outside the shadow of trial. *Harvard Law Review*, pp.2463-2547.

Additionally, plea bargaining can provide the victim with a sense of closure and the defendant with an opportunity for rehabilitation. The reformative theory seeks to reform the offender, rather than just punishing them, and plea bargaining can provide a way for this to occur in some cases.

HISTORY OF PLEA BARGAINING IN INDIA:

THE VEDIC ERA:

In the Vedic era, the notion of plea bargaining was used as a means of self-purification by erasing or lessening the consequences of sins committed by committing an offence. This practise has been documented in several ancient treaties and documents. Hindu law holds that delaying a decision in a lawsuit amounts to denying justice. The Dharamasastras also offers a notion in a different chapter named Prayaschita where it suggests many models of self-purification by admitting the wrongdoing. This was used as a justification for the imposition of a lower penalty and was supported by numerous smritis academics. Even Manu Smriti calls for a less sentence in exchange for a guilty plea. Therefore, throughout the Vedic era, numerous smritis permitted and supported the idea of reducing punishment by voluntary confession. This is comparable to the idea of a plea agreement. This leniency in sentencing was intended to allow the guilty a chance to recover his standing in society. [6]

THE MEDEIVEL ERA:

The Quisas system in the Muslim Criminal Code might be compared to the Mughal practise of plea bargaining. According to this law, if a person commits an offence against a deity, God will punish them accordingly, but if they commit an offence against the government or a private individual, they have the choice of compounding their offence along with the offender. Quisas is a kind of blood money, in which the accused pays a sum of money to the legally entitled heirs or surviving relatives. In the event that the accused agrees to compromise in return for money from the deceased's family or legal heirs, neither the king nor the Quazi may object. Muslim jurists accepted this practise on the grounds that the rights of God's creation should take precedence and that, in cases where the next dead victim was a child, the accused could not be executed until the child's species had reached adulthood. For example, during the Mughal era, robbery with murder was considered an offence against God, and in such cases, the death penalty was regarded as haqq

[6] Schulhofer, S.J., 1983. Is plea bargaining inevitable. *Harv. L. Rev*, *97*, p.1037.

Allah. Blood money was also not permitted, and if the thief returned the stolen item before the charge was filed, he could be released from liability. Quisas were used to negotiate plea deals during this time period, but only in a limited sense since the family of the victim was rewarded in murder cases. [7]

PLEA BARGAINING DURING BRITISH RULE:

The adversarial system, which was acquired from the British Colonial rulers, was used in India to resolve cases. The East India Company founded the Court in 1672, which sentenced offenders to punishment or required them to labour for the owner. In the year 1860, both this premise and the idea of plea bargaining were dropped. Instead of negotiating with compensation, the Britishers' primary goal was to punish.

When Lord Cornwallis issued a suggestion on 3 December 1790 stating that there could not be a consensual settlement between the heir of the dead and the accused in murder cases, the practise of plea-bargaining as it was common during the Mughal era suffered a setback. They were not authorised to provide forgiveness or compensation as payment for the blood. The Muslim Criminal Code was completely abolished when the Indian Penal Code was given legal form in the year 1860. [8]

PURPOSE OF THE INDIA LAW COMMISSION:

The 142nd and 154th Reports of the Law Commission outline a plea bargaining system for criminal cases in India. The system is only available to the accused or perpetrator, and the judge presiding over the case is chosen by the Chief Justice of the respective High Courts. The plea bargaining process can only occur if the defendant is entering the plea willingly and without coercion. The court must determine the willingness of the defendant, and if satisfied, the application may proceed. The outcome of the plea bargaining process may include a prison sentence, fine, or restitution to the wronged party. The 154th report also states that the court may accept the plea of guilty and impose a reduced sentence in certain circumstances. The decision of the court is final and confidential, and no bias will be brought against the accused in the next trial.

[7] Langbein, J.H., 1978. Understanding the short history of plea bargaining. *Law & Soc'y Rev.*, *13*, p.261.
[8] Scott, R.E. and Stuntz, W.J., 1991. Plea bargaining as contract. *Yale LJ*, *101*, p.1909.

TYPES OF PLEA BARGAINING:

1. **Charge bargaining** : a deal or agreement made between the prosecutor and the defendant wherein if the defendant enters a guilty plea, he or she may be charged with a crime. This purely rests on the prosecution's wishes, and it is up to them to accept or reject the deal.

2. **Sentence bargaining:** This is a practise that originated in India. In this scenario, the prosecutor, complainant, or victim, and the accused would negotiate for a shorter sentence than that which was mandated for the offence."

3. **Fact Bargaining:** In fact bargaining, a prosecutor agrees not to contest an accused's version of the facts or agrees not to reveal aggravating factual circumstances to the court. There is an agreement for a selective presentation of facts in return for a plea of guilty.

4. **Specific Fact Bargaining:** In this type of bargaining there is an acceptance of sanction without pleading guilty which is known as the nolo contendere pleas. Another category of pleas in this category is known as the Alford pleas where there is acceptance of sanction but the defendant asserts innocence."[9]

SALIENT FEATURES OF PLEA BARGAINING:

The Criminal Law (Amendment) Act, 6 2005, which was passed during the winter session of Parliament, established the idea of plea bargaining and included it in Chapter XXIA of the Code. The following standout characteristics of plea bargaining under Cr.P.C.

- Only crimes that carry sentences of up to seven years in prison are subject to the concept of plea bargaining. Offenses against the nation's socioeconomic conditions, crimes against women, crimes against children under the age of 14, and offences against young children are not covered by this concept.
- The accused should voluntarily submit the plea bargaining application.
- In the court where the alleged crime is being tried, the accused may submit an application for a plea deal; Once the court is satisfied that the accused is willingly entering into the

[9] Schulhofer, S.J., 1991. Plea bargaining as disaster. *Yale LJ*, *101*, p.1979.

plea agreement, it will give both parties the opportunity to reach a mutually satisfactory resolution, which may include the accused giving the victim compensation for their losses and other costs incurred during the case.

- Once a satisfactory resolution has been reached by the accused and the victim, the court will dismiss the case by giving the accused a sentence that amounts to one-fourth of the punishment. The comments or information provided by the defendant in a plea negotiation application should only be utilised for that purpose.
- Once the court issues a decision in a plea agreement matter, it is final; only under the provisions of Articles 136 and 32 or Articles 226, 227 of the Constitution may an appeal be made to another court. The judge may decide to release the accused on probation if they are a first-time offender. Alternately, the court may impose the minimal penalty for the specific offence, which is half.

WHEN ARE PLEA BARGAINS ATTAINED?"

When an officer in charge of the police station under Section 173 forwards a report stating that the offence the accused appears to have committed is one for which the death penalty or a sentence of imprisonment for a term longer than seven years has not been provided under the law currently in effect; or After investigating the complaint and any witnesses in accordance with Section 200, a Magistrate has taken notice of the offence and issued the procedure in accordance with Section 204.

WHO MAY SUBMIT A PLEA BARGAINING APPLICATION?

Anyone who is at least 18 years old and the subject of an ongoing trial may apply for a plea deal. Examples of this general rule's exceptions:

- The maximum punishment for the offence against the accused shall be less than seven years.
- A woman or a youngster under the age of 14 should not have been the targets of the crime.
- Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 should not have applied to the accused.

- The accused shouldn't have previously been found guilty of the same crime. The socioeconomic state of the nation shouldn't be impacted by the crime.

ARGUMENTS FOR PLEA BARGAINING

- **Justice delivered quickly:** The Indian judicial system is now overworked due to the volume of cases it must handle. Therefore, using a plea deal would enable rapid justice and result in a decision.
- **Low price:** Spending a lot of time and money getting ready for the courtroom arguments only to learn that the other side is asking for a hearing date extension. Plea negotiations are inexpensive and would result in justice. Plea bargaining may also fulfil what some academics claim is an irrepressible inclination toward collaboration among members of the courtroom work group," leading to a better working relationship. This courtroom work group may meet their "shared interest in avoiding confrontation, decreasing uncertainty, and sustaining group cohesiveness thanks to it."
- **Alternative Dispute Resolution:** The idea of plea bargaining is seen as another kind of ADR, and advocates claim that it is preferable to provide the State and the accused the chance to resolve factual and legal disagreements.
- **Cases are resolved quickly:** Accepting a plea deal generally involves less waiting and stress than going to trial."
- **Benefits to accused :**
  i. If there is a Minimum Punishment, he will get a Half Punishment.
  ii. He will get one-fourth of the sentence if such a punishment is not given. He could be let go with probation or a warning.
  iii. Under section 428 of the Criminal Procedure Code, he may get the benefit of time already served in detention.
  iv. There is no basis for an appeal against the ruling in his favour.
  v. The only use of an accused person's admission is in plea negotiations.
  vi. less expensive and time-consuming.

ARGUMENTS AGAINST PLEA BARGAINING:

- **Unjust Sentencing:** This concept is somewhat against the goal of criminal proceedings because it leads to unjustified leniency for offenders and it also promotes an antiquated view of the legal system, whereby the accused can claim plea bargaining and escape severe liability and put the victim in a position where the loss suffered by the victim or his family cannot be compensated.
- **Limitations of denouncing:** Plea bargaining sometimes results in tolerance for condemning. Many detractors claim that plea bargaining results in less severe punishments and more noticeable condemnation differences, which tends to undermine the whole criminal structure. Commentators make demands, and the ensuing tolerance allows the guilty to avoid strict punishment. If a person who has been reported were to be charged by encouraging him to confess by promising a lesser punishment in exchange for his cooperation, this would be considered a request for blame since it is not an open method.
- **Pressure on the innocent:** In some cases, innocent people may feel pressure to enter into a plea bargain even if they have not committed a crime. This can happen because the penalties for going to trial and being found guilty are often more severe than those associated with a plea bargain.
- **Misuse by the powerful:** Plea bargaining can also be misused by individuals with more power and resources, who can use their influence to secure favorable plea deals.
- **Reduced accountability:** Plea bargaining can also result in reduced accountability, as it allows individuals to avoid going to trial and facing the full consequences of their actions.
- **Injustice:** In some cases, plea bargaining can result in unjust outcomes, where individuals who have committed serious crimes receive lighter sentences in exchange for a guilty plea.

Overall, while plea bargaining can be an efficient way to resolve criminal cases, it can also have negative consequences for both innocent and guilty parties, and can result in an erosion of the principles of fairness and justice

In **State of Uttar Pradesh v. Chandrika**,[10] the Supreme Court ruled that it is established precedent that the Court cannot dismiss criminal proceedings based only on the pleadings presented. The case must be decided on the merits by the court, and if the person who was blamed

[10] Appeal (crl.) 1131-32 of 1999

acknowledges guilt, an appropriate penalty must be imposed. Simple admission of guilt or confirmation of responsibility cannot justify a lighter punishment.

INDIA'S JUDICIAL ATTITUDE TO PLEA BARGAINING:

- **State of Gujarat v. Natwar Harchanji Thakor :**[11] "In this case, the court determined that the primary goal of the law is to deliver quick, inexpensive, and straightforward justice via the settlement of disputes, including the criminal justice system. As a result, it can be claimed that the idea of plea bargaining is really a kind of redress and will give judicial reforms a new dimension."

- Justice Shiv Narayan Dingra said in **Pardeep Gupta v. State** that the trial court's rejection of the accused's plea agreement demonstrates that the court failed to examine the provisions of chapter XXIA of the law intended for this reason. Since the applicant is participating in an offence under Section 120 B of the IPC and her involvement is equal to that of her co-accused, the court rejected the accused's plea deal. However, none of the offences for which the petitioner was charged carried a sentence of more than seven years. The role of the accused, the nature of the offence, and other factors should be taken into consideration while considering the plea negotiation proposal. Due to his involvement with section 120-B of the Indian Penal Code, the trial court should not have denied his request for a plea agreement on the grounds that he was ineligible to receive a reduced punishment. The trial court's frame of thought suggests that it did not read the provisions of chapter XXIA before considering the application. The High Court instructed the trial court to assess the accused's plea bargain request in light of the Code of Criminal Procedure's rules and not only on a whim.
- **Rahul Kumpawat v. Union of India:**[12] In this case, the accused requested a plea bargaining hearing but was denied by the Metropolitan Magistrate of Rajasthan. The accused then filed an appeal with the Rajasthan High Court, which granted his request,

[11] Criminal Appeal Nos. 897 of 2002, 265 of 2003

[12] CRIMINAL MISC.(PET.)(CRLMP) NO.2257 of 2015

overturned the trial court's decision, remanded the case back to the trial court, and instructed it to consider the accused's plea bargaining request. Even if the idea of plea bargaining helps in delivering swift justice, it disadvantages the victim, whose loss cannot be made up by the offender receiving a less sentence.

There is no wrong without a cure, according to the Latin proverb ubi jus ibi remedium. The rule of law mandates that injustices must be rectified. There are numerous aspects to the legal problem of the payment of damages and compensation. The word compensation is one of the corrective measures accessible in tort law. Reimbursement in criminal-victim interactions pertains to making atonement to him, or it could just be compensation for the harm or destruction a crime against him produced. As it is often understood, it has nothing to do with giving the other side any advantages and instead bears the concept of making one party whole or providing an equivalent. It is a balance of the losses and sufferings a victim experiences as a consequence of victimisation. It has a noncriminal goal and end and is a show of accountability.

WHY IS PLEA BARGAINING NOT SUCCESSFUL IN INDIA?

Plea bargaining is not as popular in India as it is in other countries for several reasons:

1. **Lack of legal framework:** India did not have a legal framework for plea bargaining until 2006, when it was introduced through the Criminal Law (Amendment) Act.
2. **Conservative judicial system:** India has a conservative judicial system that places a strong emphasis on the right to a fair trial and the principle of innocence until proven guilty. As a result, plea bargaining has been viewed with suspicion by some members of the judiciary.
3. **Slow judicial process:** The slow pace of the Indian judicial system and the large backlog of cases also make plea bargaining less appealing, as it can take several years for a case to come to trial.
4. **Limited use:** Plea bargaining is only available in certain types of criminal cases and is subject to specific conditions and limitations, which has limited its use.
5. **Public perception:** There is also a perception among the public that plea bargaining allows criminals to escape punishment, which has contributed to its limited popularity in India.

In conclusion, plea bargaining has not gained widespread acceptance in India due to a combination of legal, cultural, and practical factors.

VICTIM: THE FORGOTTEN MAN

The casualty is essentially a single, identical act of crime. Accordingly, it is impossible to fully explain the wonder of wrongdoing without also addressing the victim of wrongdoing. Despite being a crucial component of wrongdoing and a prominent on-screen figure in the criminal equity framework, the wrongdoing victim was neglected since his position was reduced simply by the need to report wrongdoing and testify in court. Many believe that the victim is the member of the criminal equity process that is most disregarded. As a result, the higher courts in India have begun to use their writ authority to provide compensation in the right circumstances. The flaw with our current judicial system, however, is that although it gives the accused practically all the protections (right to a fair trial, bail, legal help, etc.), the victim receives little socioeconomic relief. The State's authorities have sometimes been ordered by courts to provide all essential facilities and to make sure that convicts' human rights are not abused."

In **Rattiram & Ors. v. State of M.P.** [13] the Apex Court rightly stressed the need to preserve victims' rights: Victimology, which is primarily a perspective of a trial from the point of view of the perpetrator as well as the victim, has gained importance in criminal law throughout time. Both are seen in the perspective of society. In certain nations, the victim's point of view is treated with respect. The court has a responsibility to ensure that the victims' rights are upheld.

THE IDEA OF PLEA BARGAINING IN A DIFFERENT COUNTRY:

The rules established by the court of appeal in **Turner** regulate the practise of judicial plea bargaining. In this instance, the court ruled that the judge and the attorneys must have open communication, but any discussions must take place between the judge and both attorneys. If the

[13] AIR 2012 SC 1485

defendant's attorney so chooses, he may be present. The judge should never state the penalty he intends to impose or that he would impose separate sentences for guilty verdicts and guilty pleas.

AUSTRALIA'S JUDICIAL PLEA BARGAINING:

The Supreme Court of Victoria noted in Marshall that it was improper to question a trial judge in open court about the proper punishment after a guilty plea.

In US:

The United Nations employed this idea back in the 19th century. Although plea bargaining is not included in the Bills of Rights, the constitutionality of the practise was maintained by the Sixth Amendment. Only 10% of criminal matters at the UN get to trial; 90% are resolved by plea agreements. By approving the 1974 modification to the Federal Rules of Criminal Procedure, this structure inside the federal system received legal recognition. The fundamental need is that the accused enter into a plea agreement willingly, consciously, and unassisted. Before accepting a guilty plea, the court must determine if it complies with Rule 1149's conditions. James Earl Ray admitted to killing Martin Luther King Jr. in 1969 in order to escape being put to death. Finally, he was sentenced to 99 years in jail."

The US Supreme Court ruled in the seminal case of **Bordenkircher v. Hayes** that the constitutional justification for plea negotiations is that there is no element of punishment or retribution as long as the accused is free to accept or reject the prosecution's offer. However, when the accused refused the "Plea Guilty" offer of five years in jail, the Apex Court maintained the accused's life sentence. The Supreme Court noted that it is always in the best interest of the party under pressure to choose the smaller of the two evils in the same case, but in a different context. Similar justification has also been used by the courts in private party tort issues. In a different instance, the US Supreme Court expressly recognised that plea bargaining was necessary for the fair administration of justice and, when done well, should be promoted.

Unlike in India, plea bargaining is permissible for practically all federal offences in the United States, with few to no restrictions governing the process. The prosecutor oversees the plea negotiating process, wielding the evidence and investigation report; he is the key authority who

negotiates the settlement. The judge's participation is restricted to accepting the terms of the discussion after determining the procedure is voluntary.

DIFFERENCES BETWEEN INDIA & THE USA

OFFENCES	In the USA, plea bargaining is permitted for almost all offences.	However, in India, defendants are only allowed to negotiate a plea for a select few offences.
ROLE OF VICTIM IN PROCEEDINGS	In the United States, the victim is not actively involved in the plea negotiation process.	In Indian law, the victim plays a significant part in the plea negotiation process. If a resolution that is acceptable to all parties cannot be reached, the victim has the right to reject or veto.
MECHANISMS AVAILABLE FOR ENFORCEABILITY	In the USA, a plea bargaining application is only submitted after the conclusion of negotiations between the prosecution and the accused.	After the application for plea bargaining is filed, the negotiating procedure with the accused person begins to ensure that the application is filled out freely by the accused. As a result, there is a lower likelihood that the accused will be forced into entering a plea agreement or that there will be hidden negotiations.
DISCRETION OF THE JUDGE	In USA, the judge does not exercise discretionary power while accepting an	In Indian legal system , the judge has discretionary power while accept or reject an application for plea

	application for plea bargaining.	bargaining filed by accused person.

PAKISTAN

Plea bargaining was introduced by the National Accountability Ordinance, 1999, an anti-corruption law. The accused applies for it accepting his guilt and offers to return the proceeds of corruption as determined by the investigators / prosecutors. After endorsement by the chairman of the National Accountability Bureau, the request is presented before a court. In case the court accepts the request for plea bargain, the accused stands convicted but is not sentenced if in trial, nor does he undergo a sentence previously pronounced by a lower court if in appeal. However, the accused is disqualified from taking part in elections, holding public office and obtaining a bank loan, besides being dismissed from service if he is a government officer.

ITALY

The procedure of 'pentito' (literally, he who has repented) was introduced for counter-terrorism purposes, and generalized during the Maxi trial against the mafia in 1986-1987. The procedure has been contested, as the pentiti received lighter sentences as long as they supplied information to the magistrates. Many of them have been accused of deliberately misleading the justice system. [(2006) 2 SCC (Cri) J-12]"

DEBATE OVER PLEA BARGAINING AT INTERNATIONAL CRIMINAL COURTS

Plea bargaining is still more contentious and uncommon at the international level than it is at the national level. There are many grounds for international criminal tribunals' scepticism regarding plea bargains. First, considering the heinousness and gravity of the offences in issue, offering concessions to individuals accused of international crimes is seen as inappropriate. Plea bargaining is perceived as diluting the moral message intended by international courts—that the world community is angry and will bring those responsible for the atrocities committed to account.

Second, plea bargaining is seen as impeding efforts to learn the truth regarding international crimes. Finally, plea bargaining is considered to disregard victims' rights to a public trial and a penalty appropriate to the defendant's guilt.

Plea bargaining supporters argue that the practise is not fundamentally incompatible with the purposes of international criminal justice and that, if properly established and conducted, a restricted type of plea bargaining may give significant advantages to international criminal courts. The merits of the first main criticism to plea bargaining—that it is inappropriate for use in the terrible crimes dealt with by international courts—are substantially dependent on the steepness of the plea reduction. If discussions result in just a few years in jail for a crime against humanity or genocide, the system has failed. An excessively low sentence would run counter to the retributive purpose of punishing the offender and showing appropriate anger at his crimes.

Overly generous plea deal dispositions would also decrease the deterrent impact of international criminal justice, which is dependent on the speed, probability, and harshness of punishment. International criminal courts already confront challenges on all three fronts: they are neither quick nor effective in apprehending and prosecuting suspects, and their baseline punishments are often seen as overly short. Reducing these punishments further as part of plea bargaining dilutes an already weakened deterrence impact. Plea agreements that result in sentences that are not too mild, on the other hand, may at least enhance the speed and possibility of punishment. One way they achieve this is by enabling prosecutors to get convictions despite evidence challenges. International prosecutors have great difficulties in acquiring evidence.

Crimes are often systematic, pervasive, and sophisticated. Investigations often take place in areas affected by armed conflict or other security threats, and national authorities are sometimes reluctant or unable to assist ICC investigators. Witnesses are usually frightened to testify as well. Given these challenges, prosecutors may reasonably prefer a plea bargain resulting in a reduced sentence to the chance of acquittal after trial of a prisoner they feel is guilty. Plea bargains may also offer prosecutors with invaluable inside information that can help them win subsequent cases against more responsible, high-level criminals. 88 In general, plea bargaining frees up resources

that may be utilised to pursue more criminals. This is a significant practical factor given the high costs, complexity, and duration of international trials.

Although speed is not often seen as a priority in international criminal justice, it is a means to the end objective of punishing and deterring international crimes. The ICTY has explicitly acknowledged this point: A guilty plea, especially one entered early in the proceedings, has significant personal and practical consequences. Victims and witnesses who have already experienced significant psychological and bodily injury are not forced to go to the Hague to testify in court and perhaps relive their ordeal. Furthermore, valuable legal, judicial, and financial resources that would otherwise be wasted on preparing for and executing a protracted and costly trial may be redeployed in the interests of achieving the Tribunal's broader goals.

According to a recent assessment of the speed of ICTR and ICTY proceedings, those concluded via guilty pleas take half as long as cases resolved by trial. The International Criminal Court has lately considered measures to speed up its processes, and plea bargaining may assist. Plea bargaining enhances the speed and possibility of punishment by freeing up resources to investigate and prosecute more offenders. Several studies have shown that the probability and immediacy of punishment are more significant deterrent elements than the harshness of punishment. And, although plea bargaining may result in more moderate, and hence less equitable, sentences than full trials, it secures at least some amount of retribution for a large number of people who would otherwise avoid punishment entirely. A second important concern is that plea bargaining weakens international criminal law's educational purpose. International criminal trials are thought to be vital for upholding the rule of law. They convey a message that crimes, especially when perpetrated by people in authority, will not be tolerated and will be dealt with. Because of this focus on the rule of law, proponents of international criminal justice often believe that truth commissions or other civil or informal legal systems for dealing with crimes are insufficient.

Plea bargaining is also considered by some as diluting the moral message sent by international criminal tribunals. True, negotiation does not have the same educational impact as a trial. Its rushed investigations and lack of witness testimony deprive the national and international communities of a compelling and dramatic reminder of the importance of the rule of law. Nonetheless, by resulting

in a conviction, a plea bargain strengthens the fundamental premise that the rule of law reaches those most accountable for international crimes, even if they are high-ranking political and military officials.

When formerly strong officials acknowledge guilt in front of the Courts, they send a powerful message about the legitimacy of the tribunals and their duties. International criminal tribunals have also emphasised the need of preserving victims' rights and interests. This focus on victims' interests is presumably influenced, at least in part, by the civil law approach to criminal justice, in which victims have enhanced participation rights in criminal trials. However, it is inspired by human rights jurisprudence, which stresses the entitlement of victims of human rights violations to complete legal redress for the wrongs done to them.' International court trials are claimed to benefit survivors of atrocities by providing them and their communities with closure.

According to one author, they are one vast national psychodrama, psychotherapy on a national scale. Victims may use trials to convey their tales and have wrongs done to them publicly recognised. In light of this, plea bargaining seems to be an unappealing choice from the standpoint of a victim, since it shortens the trial procedures and the healing function they may serve for victims, and it decreases the sentence imposed on criminals. However, supporters of plea bargaining point out that the conflict between victims' interests and plea bargaining is not always that great. For starters, international criminal courts may enable victims to participate in plea hearings and provide feedback on potential plea deals.

The ICC legal framework already contains several measures that allow for increased victim involvement in admission of guilt hearings. Courts may also promote the kinds of guilty pleas that are more likely to be beneficial to victims—unambiguous, detailed, and followed by real and sincere statements of contrition. Furthermore, avoiding trial testimony may be advantageous in the eyes of certain victims.

A plea bargain saves these victims the trouble of travelling to another country to testify, the worry about their and their families' safety, and the ordeal of confronting the defendant, reliving the trauma they experienced, and potentially having their credibility called into question during

cross-examination. Plea bargaining also benefits all victims by expediting the processes and enabling any compensation claims they may have, allowing them to go on with their lives.

In addition to preserving the interests of victims, international criminal tribunals seek to foster peace and reconciliation in the area where the crimes occurred. This is a purpose that is unique to international criminal proceedings and was used to justify the establishment of current international criminal courts. International criminal courts seek to eliminate allegations directed at whole communities and so halt the cycle of violence by pinpointing individual responsibility for crimes.

Plea bargaining supporters say that guilty pleas may also help to the objective of international criminal justice. When offenders plead guilty, they take personal responsibility for their acts and contribute to the discovery of the truth about the offences committed. Guilty pleas contribute to the healing and reconciliation process by assisting in the establishment of the truth. The statement of regret that usually follows a guilty plea encourages reconciliation as well. As one witness said in response to Miroslav Deronjid's guilty plea, The Bosnian Muslims I talked with in the community were relieved since he recognised his crime. This is a good thing that can help heal the community's wounds if he is properly punished." However, the impact of guilty pleas on reconciliation is complicated. When pleas are accompanied by hefty sentence reductions, they are divisive among victims and often elicit more anger rather than reconciliation. Even when accompanied by expressions of sorrow, such guilty pleas are often seen as deceptive and motivated only by the sentence reductions." "To earn a significant sentence reduction, guilty pleas may need to be followed by repentant acts, not simply remarks, in order to have a good influence on reconciliation. Courts may grant such sentencing reductions only if the defendant has taken reparative steps beyond a guilty plea, such as surrendering voluntarily, cooperating with the prosecution in other cases, revealing information beyond what the prosecution already knows, or taking other conciliatory actions toward victims. International courts may also be required to perform more active outreach in victim communities in order to explain the rationale for plea bargains.

International criminal courts have also pledged to conduct fair trials and follow processes that may be used as a model for criminal justice systems across the globe. Plea bargaining supporters say that the practise is compatible with international human rights legislation since international courts have implemented procedural safeguards to guarantee that a guilty plea is voluntary, informed, and factually based. Critics argue that courts have not fully addressed the issue of guilty pleas being pressured by high sentence reductions, and that defendants do not always get sufficient information to freely and rationally relinquish their rights to trial.

Defendants may also face injustice if they plead guilty with the intention of securing a sentence reduction, but the court refuses to respect the parties' agreement on the punishment. Because the agreement is not binding on the court, a defendant who pleads guilty basically throws himself at the mercy of the judges. And, although defendants are informed before entering a plea of guilty that the agreement is not binding on the court, this does not completely alleviate the underlying fairness question. Finally, the purpose of keeping an accurate record of foreign crimes is challenged by plea bargaining. International criminal courts have acknowledged that guilty pleas help to ascertain the facts. Indeed, this is one of the reasons why guilty pleas carry such a heavy weight in mitigation." "When offenders plead guilty, they may provide inside knowledge that would not normally be revealed during a trial, such as how a leadership structure functioned or why particular crimes were done."

Accepting responsibility also helps to avoid erroneous revisionist versions of history. denial of the conduct of the crime may no longer be an option for those who have persuaded themselves that the Tribunal is biased or that its verdicts are founded on inadequate or even fake evidence, after political and military leaders declare their guilt publicly in court. Nonetheless, prosecutors and judges must be wary of the danger that plea bargains would undercut the purpose of producing an accurate record by omitting facts and neglecting to fully examine them via an adversarial process. neither the public nor the judges themselves will get closer to knowing the truth beyond what is agreed in the plea deal, it is always conceivable.

Charge bargains are particularly troublesome in this regard: If the Prosecutor strikes a plea arrangement in which the entirety of an individual's criminal activity is not represented or the remaining charges do not adequately reflect the seriousness of crimes committed by the accused,

doubts about whether justice is being served will undoubtedly emerge. The public may be left wondering about the motivations behind guilty pleas, whether the conviction accurately represents the accused's whole criminal activity, and if it produces a reliable and comprehensive historical record.

As the Momir Nikoli Trial Chamber underlined, it is particularly vital for foreign tribunals to oversee charge bargaining and ensure that key facts are not excluded or misrepresented in the pursuit of a consensual resolution. The increased scrutiny of charge agreements is compatible with civil law methods to criminal process and, more crucially, with the purpose of international criminal tribunals to establish the truth and give an accurate record of the offences. To summarise, the legality of plea bargaining in international criminal courts is still being disputed and is heavily dependent on the shape that the practise takes. Certain sorts of plea agreements may jeopardise victims' interests as well as the courts' truth-seeking, retributive, and deterrent aims. Others may help to achieve these objectives, or at the very least avoid confrontation with them. To maximise the value of plea deals, judges must carefully craft them.

In this regard, the ICC Statute improves on the ICTY and ICTR Rules on plea bargaining. The ICC Statute stresses the significance of obtaining sufficient data to establish an admission of guilt, as well as the role of judges to independently assess the facts. This technique improves the historical record produced by plea deals and increases the fairness of plea bargaining to offenders and victims. The ICC clearly charges judges with ensuring that plea bargains are compatible with the interests of justice and victims. It also allows for victim involvement in the procedures on admission of guilt and enables them to express their opinions on specific plea agreements. Finally, the ICC stipulates that an admission of guilt may be made only after consulting with defence counsel, enhancing the possibility that the admission is voluntary and informed. As a result, the ICC's approach to plea bargaining has a high potential to achieve the court's larger purposes. As previously stated, Ahmad al-Faqi al-Mahdi is expected to enter his first guilty plea to the war crime of attacking buildings linked to religion and historic landmarks later this year.

The offender is supposed to freely acknowledge to his actions and show regret for them. The court's handling of this guilty plea will create a significant precedent for future plea negotiations before the ICC. As the ICC evaluates the role of plea bargaining in its procedures, it should explore

other significant problems about guilty pleas that have emerged at international criminal courts and in certain domestic systems. The ICC, for example, may seek to expound on the voluntariness criterion and provide instances of the kind of coercion that might make a guilty plea involuntary. It is critical to determine if threats of much higher penalty or offers of unusually light punishments may make guilty pleas involuntary. If the answer is true, the ICC should take action to prevent such involuntary pleas (for example, by setting a fixed ceiling on plea discounts and by strictly supervising charge bargains). It would also be beneficial for the ICC to impose a presumption that offenders must take responsibility for their conduct in order to be sentenced less harshly. To be legitimate, guilty pleas must be unambiguous, according to the ICTY and ICTR Rules. AFurthermore, before granting any major sentence reductions, ICC judges may seek proof of sorrow that goes beyond simple comments and includes acts that indicate repentance. Such a provision may assist guarantee that guilty pleas, especially when accompanied by large sentence reductions, contribute to reconciliation in the area harmed by the crimes at hand.

Finally, while assessing confessions of guilt, courts should aggressively employ the instruments afforded by the ICC Statute and request more evidence. This technique would increase the contribution of confessions of guilt to the finding of the truth and the presenting of an accurate record, which is still a primary purpose of international criminal tribunals. Considering alternatives like these should urge policymakers to reconsider the role of plea bargaining in international criminal law and establish processes that are fair, efficient, and compatible with international criminal justice aims.

CONCLUSION:

As a result, I'd draw the conclusion that although the idea of plea bargaining was developed to lighten the load on the courts, it does so in a way that violates the rights of the victim by giving the accused a less punishment in exchange for using the plea bargaining process. Even this idea does not help to lower crime rates since it gives the accused the idea that he may commit an offence and still negotiate a lighter sentence.

Only time will be able to determine whether or not the introduction of this novel idea was warranted. Due to the fact that there are so few instances in which this idea of plea bargaining has

been used, higher courts have not, in one way or another, given this issue the due consideration, judges do not now hold this notion of plea bargaining in high esteem.

****

BIBLOGRAPHY

JOURNALS

1. Kathuria, S., 2007. The Bargain has been Struck: A Case for Plea Bargaining in India. *Student B. Rev*, *19*, p.55.
2. Joseph, R.A., Plea Bargaining: a Means to an End.
3. Dungdung, A., 2012. Plea Bargaining: The Indian Experience. *Available at SSRN 2049826*.
4. Jain, H. and Rautela, M., 2018. Overview of Plea Bargaining in India. *Available at SSRN 3151302*.
5. Kishan, H., 2018. Darker side of plea bargaining: The worldwide scenario with future perspectives. *International Journal for Advance Research and Development*, *3*(6), pp.28-37.
6. Mathur, J.K., 1992. Plea Bargaining—In Indian Context. *Journal of the Indian Law Institute*, *34*(3), pp.429-442.
7. Mishra, N., 2021. Plea Bargaining in India. *Available at SSRN 3868015*.
8. Amin, S., 2014. Plea Bargaining-An Indian Approach. *GNLU JL Dev. & Pol.*, *4*, p.67.
9. Bhardwaj, M., Justice in Plea Bargaining in India: a Review of major drawbacks.
10. Singh, P.K., 2021. Plea Bargaining and Criminal Justice in India. *Athens JL*, *7*, p.33.

11. Khan, S.A., 2017. Plea Bargaining in India: A Tool to Provide Restorative Justice?. In *Restorative Justice in India* (pp. 127-140). Springer, Cham.
12. Putra, G., 2021. A critical analysis of plea-bargaining in India.
13. Kumar, S., 2017. Plea Bargaining in India: An Economic Perspective. *Army Institute of Law Journal*, *9*.

BOOK

1. Lippke, R.L., 2011. *The ethics of plea bargaining*. Oxford University Press on Demand.