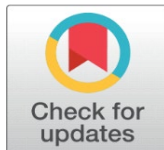
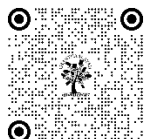


# EXAMINING THE CONSTITUTIONAL VALIDITY OF PLEA BARGAINING IN INDIA: A STUDY OF ITS COMPATIBILITY WITH THE PRINCIPLES OF NATURAL JUSTICE AND DUE PROCESS

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## ABSTRACT

The Indian judicial system has long been plagued by a backlog of cases, leading to delays in justice and an increased burden on the courts. Plea Bargaining is a relatively new concept in the Indian criminal justice system (CJS) that has been widely adopted to address the backlog of cases and expedite the judicial process. However, there are concerns about the constitutionality of plea bargaining in India, particularly concerning its compatibility with the principles of natural justice and due process. This research paper will examine the constitutional validity of plea bargaining in India and its compatibility with the principles of natural justice and due process. The study analyses the legal framework governing plea bargaining in India, including relevant constitutional provisions, statutes, and case law. Furthermore, the study critically analyzes the necessity and impact of plea bargaining within the Indian criminal justice system, highlighting its potential to expedite justice while safeguarding accused individuals' rights. The research concludes that, when applied within a framework of fairness, the plea bargaining is compatible with natural justice and the rule of law in India.

**Keywords:** Constitutional, Criminal Justice System, Defendants, Due Process, Natural Justice Plea Bargaining

## 1. INTRODUCTION

The Indian judicial system has long been plagued by a backlog of cases, leading to delays in justice and an increased burden on the courts.<sup>1</sup> To address this issue, several judicial reform strategies have been implemented, including the use of plea bargaining as a tool to expedite the resolution of criminal cases.<sup>2</sup>

<sup>1</sup> Sen, S. (2020). Indian judiciary imprisoned: An integrated AHP-TOPSIS approach to judicial productivity. *Global Business Review*, 21(2), 586-603. <https://doi.org/10.1177/0972150918765319>. Last visited on 03/05/2023.

<sup>2</sup>Khatun, S., & Kumar, K. S. (2022). Prison reform and alternatives to imprisonment: Socio-legal challenges across nations. *Baltic Journal of Law & Politics*, 15(7), 520. <https://versita.com/menuscrypt/index.php/Versita/article/view/1029/1085>. Last visited on 21/03/2023.

However, there are concerns about the constitutionality of plea bargaining in India, with debates on whether it infringes upon fundamental rights like “Article 20” of the Indian Constitution.<sup>3</sup> Article 20 of the Indian Constitution protects against self-incrimination and double jeopardy, while “Article 21” guarantees the right to life and personal liberty.<sup>4</sup> Some critics argue that plea bargaining can violate these fundamental rights like Article 21; by coercing defendants into giving up their rights by using any assurances or promises of a fair trial.<sup>5</sup>

However, others argue that plea bargaining, when conducted fairly and transparently, can be a valuable tool for streamlining the criminal justice system<sup>6</sup> and reducing the burden on courts.<sup>7</sup>

Pleabargaining has proven highly effective in countries like the USA and England.<sup>8</sup> In England, about 85% of serious criminal cases result in guilty pleas.<sup>9</sup> In the USA, this figure rises to around 95%.<sup>10</sup> India also recognises and regulates plea bargaining under its Criminal Procedure Code, with safeguards for the rights of the accused.<sup>11</sup> This research article aims to examine the constitutional validity of plea bargaining in India and its compatibility with the principles of natural justice and due process. The study also analyses the legal framework governing plea bargaining in India and examines its historical development and current state with a study that contributes to the ongoing debate on the use of plea bargaining in India.

## 2. RESEARCH METHODOLOGY

In this study, which is based on doctrinal research, the Authors have analysed the relevant data from the Law Commission of India, National Crime Records Bureau, constitutional provisions, the Criminal Procedure Code, and Indian court judgments. Using a comparative approach, it examines plea bargaining in India and the U.S., evaluating arguments for and against its constitutional validity and alignment with principles of fairness and due process. The research draws on legal doctrines, statutes, case law, and relevant literature from both jurisdictions. This paper is divided into six parts. The first part is introducing the topic of plea bargaining. The second part defines plea bargaining and discusses its statutory provisions in India. The third part of this paper expounds upon the Need for Plea Bargaining in Indian Criminal Justice System. The fourth part delves into the Constitutional Validity of Plea Bargaining in India and the United States of America. The fifth part of this research paper carefully analyses the Principles of Natural Justice and Due Process by using plea bargaining. The last part of the study concludes the entire analysis of plea bargaining and the research paper finds that plea bargaining is compatible with the principles of natural justice and the procedure established by law in India.

<sup>3</sup> Kurlekar, A., & Gokhale, S. (n.d.). The unconstitutionality of plea bargaining in the Indian framework: The vitiation of the voluntariness assumption. *India Law Journal*. <https://www.indialawjournal.org/archives/volume7/issue-2/article8.html>. Last visited on 03/03/2023.

<sup>4</sup> Singh, M. P. (2019). *Indian constitutional law* (13th ed.). Eastern Book Company.

<sup>5</sup> Thippaswamy v. State of Karnataka 1976 Cr. L.J 1527 <https://indiankanoon.org/doc/1422258/>

<sup>6</sup> Prakash, B. (2023). Concept of plea bargaining under the Indian legal system. SSRN. [https://www.researchgate.net/profile/Bhaswat-Prakash/publication/367552742\\_Concept\\_of\\_Plea\\_Bargaining\\_under\\_Indian\\_Legal\\_System/links/641d7923a1b72772e422a228/Concept-of-Plea-Bargaining-under-Indian-Legal-System.pdf](https://www.researchgate.net/profile/Bhaswat-Prakash/publication/367552742_Concept_of_Plea_Bargaining_under_Indian_Legal_System/links/641d7923a1b72772e422a228/Concept-of-Plea-Bargaining-under-Indian-Legal-System.pdf). Last visited on 02/03/2023

<sup>7</sup> Dogra, R., & Gupta, A. (2022). Plea bargaining mechanism in India: A study in comparative and analytical context. *International Journal of Legal Research and Studies*, 7(2), 1-8. <http://www.ijlrs.com/papers/vol-7-issue-2/1.pdf>. Last visited on 21/03/2023.

<sup>8</sup> Baldwin, J., & McConville, M. (1979). Plea bargaining and plea negotiation in England. *Law & Society Review*, 13(2), 287. <https://doi.org/10.2307/3053255>. Last visited on 20/03/2023.

<sup>9</sup> Thomas, P. A. (1978). Plea bargaining in England. *The Journal of Criminal Law and Criminology* (1973-), 69(2), 170-178.

<sup>10</sup> Ross, J. E. (2006). The entrenched position of plea bargaining in United States legal practice. *American Journal of Comparative Law*, 54, 717. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/amcomp54&div=69&id=&page=>. Last visited on 03/05/2023.

<sup>11</sup> Bahuguna, R. (n.d.). Plea bargaining – Yet to be adapted in Indian criminal justice system. *Dehradun Law Review*. <http://www.dehradunlawreview.com/wp-content/uploads/2020/06/5-Plea-bargaining-%E2%80%93-Yet-to-be-adapted-in-Indian-criminal-justice-system.pdf>. Last visited on 02/03/2023.

### 3. MEANING AND CONCEPT OF PLEA BARGAINING

Among professionals in the field, there is no universally accepted definition for plea bargaining. The definition of "plea bargaining" varies depending on the jurisdiction and the context of its use.<sup>12</sup> According to Black's Law dictionary, plea bargain is "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 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."<sup>13</sup> It comes from 'U. S Jurisdiction' and its Latin term is "Nolo Contendere," which means "I do not desire to contend," or a "No contest" plea.<sup>14</sup>

Plea bargaining was introduced in India after various recommendations given by the Law Commission of India on his 142, 152, and 177th reports.<sup>15</sup> After studying criminal justice systems in other countries with high conviction rates due to plea bargaining, the primary focus was on the United States. There, 90% of cases are resolved through plea bargains, and these findings were supported by the Malimath committee as well.<sup>16</sup> Though we followed the plea-bargaining idea from the United States, we adapted and moulded it to Indian situations and circumstances.<sup>17</sup> Plea Bargaining was introduced in the Indian Criminal Justice System in 2005 by the Criminal Law Amendment 2005 as a way to improve the speed and efficiency of the legal system that came into force in 2006, under the Criminal procedure code by adding New Chapter XXIA, from Section 265A to 265L.<sup>18</sup>

#### 2.1 Plea Bargaining Can Be Divided into Two Categories in India.<sup>19</sup>

1. Charge bargaining- it involves dropping some charges against the accused in exchange for a guilty plea.
2. Sentence bargaining – it allows for a lower sentence in exchange for an admission of guilt.

#### 1.2 Statutory Provision of Plea Bargaining

The Table 1. elaborates on all sections from 265A to 265L in the Indian Criminal Procedure Code that pertain to plea bargaining:<sup>20</sup>

Section	Description
265A	This section states that plea bargaining rules apply to cases with a maximum 7-year prison term, with or without a fine. However, plea bargaining is not allowed

<sup>12</sup> Guidorizzi, D. (2013). 15. Should We Really "Ban" Plea Bargaining?: The Core Concerns Of Plea Bargaining Critics. In C. Kubrin & T. Stucky (Ed.), *Introduction to Criminal Justice: A Sociological Perspective* (pp. 191-202). Redwood City: Stanford University Press. <https://doi.org/10.1515/9781503627352-018> last visited on 03/05/2023

<sup>13</sup> Garner, B. (2004). *Black's Law Dictionary* (8th ed., p. 1190). Thomson & West.

<sup>14</sup> For Fast Track Justice Doctrine Of "Nolo Contendere" Does It Not Deserve A Trial? [https://lawcommissionofindia.nic.in/adr\\_conf/nolo%20contendere%204.pdf](https://lawcommissionofindia.nic.in/adr_conf/nolo%20contendere%204.pdf), Last Visited on 20/03/2023

<sup>15</sup> Vijayalakshmi, A. (2023, May 23). Plea bargaining – Procedure with victimology approach: An analysis. *Psychology and Education Journal*. <http://psychologyandeducation.net/pae/index.php/pae/article/view/3190/2847>. Last visited on 23/05/2023.

<sup>16</sup> Joseph, R. A. (2023, March 5). Plea bargaining: A means to an end. *Manupatra*. <https://www.manupatra.com/roundup/326/Articles/Plea%20bargaining.pdf>. Last visited on 05/03/2023

<sup>17</sup> Chauhan, S. D. (2021). Plea bargaining in Indian criminal justice system: A critical view. *MDU Law Journal*, 15-24. [http://mdu.ac.in/UpFiles/UpPdfFiles/2021/Jun/4\\_06-23-2021\\_16-55-19\\_Journal%20of%20Law-Jan2020.pdf#page=20](http://mdu.ac.in/UpFiles/UpPdfFiles/2021/Jun/4_06-23-2021_16-55-19_Journal%20of%20Law-Jan2020.pdf#page=20). Last visited on 05/03/2023

<sup>18</sup> Mali, K. P. (2011). *Penology, victimology & correctional administration in India* (1st ed.). Allahabad Law Agency. p. 122.

<sup>19</sup> Kaur, A. P., & Goyal, A. (2023, March 2). Justice in plea bargaining: Is it a coercion to compromise? p. 220. *Manupatra*. <http://docs.manupatra.in/newsline/articles/upload/585db32a-3e8f-4a0f-a580-2d02778b5bfa.pdf>. Last visited on 02/03/23

<sup>20</sup> Criminal Procedure Code (CrPC) 265A-265L (India)

	for crimes against women or kids under 14, and for offenses punishable by death or life imprisonment.
265B	An accused may apply for plea bargaining, submitting a brief case description and a sworn affidavit confirming the voluntary nature of the plea. The court notifies all relevant parties and verifies the accused's voluntariness in-camera before proceeding.
265C	For a mutually agreed resolution, the court involves the accused, public prosecutor, and victim, ensuring voluntary participation. Both parties may have legal representation.
265D	If a resolution is reached, the court records it. If not, the case continues from the application stage.
265E	The court disposes of the case, ensuring victim compensation. Punishment can be reduced, potentially by half or to one-fourth, depending on circumstances. Probation provisions may apply.
265F	The court delivers a final, signed judgment in open court.
265G	The judgment is final, with no appeal except through writ petitions under Articles 226, 227, or special leave petitions under article 136 of the Constitution.
265H	The court retains all powers related to bail, trial, and case disposal.
265I	Time spent in detention is deducted from the sentence, following the same guidelines as stated in section 428.
265J	This chapter overrides any conflicting provisions in the Code.
265K	This section provides that any admission of guilt made by the accused in the course of plea bargaining shall not be used as evidence against the accused in any other proceeding
265L	Under this section plea bargaining does not apply to juveniles under the Juvenile Justice Act.

Table 1

These provisions apply to offenses that are punishable by imprisonment for less than seven years and do not include offenses that carry the punishment of death, imprisonment for life, or imprisonment exceeding seven years as per the current law and or any heinous crime. Also, these provisions do not apply to offenses that have an impact on the socio-economic condition of the country or that have been committed against women or children under the age of fourteen years.<sup>21</sup>

### Needfor Plea Bargaining in the Indian Criminal Justice System

Currently, the Criminal Justice System is being encouraged to find alternatives to the usual trial process. Plea bargaining has been introduced under the Indian Criminal Justice System to reduce the burden of caseload on the criminal justice system, promoting speedy disposal of cases, and providing an opportunity for the accused to avoid a lengthy trial and a harsher sentence.<sup>22</sup>

In India, there is a significant backlog of criminal cases pending in various courts, which is caused by various factors<sup>23</sup>. "Overcrowding in Indian prisons is a significant problem that poses several challenges to the justice system. Overcrowding prisons, is a violation of human rights, says Supreme Court.The Supreme Court is worried about

<sup>21</sup>Pathak, D. A. (2005). Plea bargaining: A new chapter in the Indian legal system. p. 53. *Raj Journal of Human Rights Studies*. [https://www.raijmr.com/ijrhs/wp-content/uploads/2017/11/IJRHS\\_2015\\_vol03\\_issue\\_01\\_12.pdf](https://www.raijmr.com/ijrhs/wp-content/uploads/2017/11/IJRHS_2015_vol03_issue_01_12.pdf). Last visited on 01/03/2023

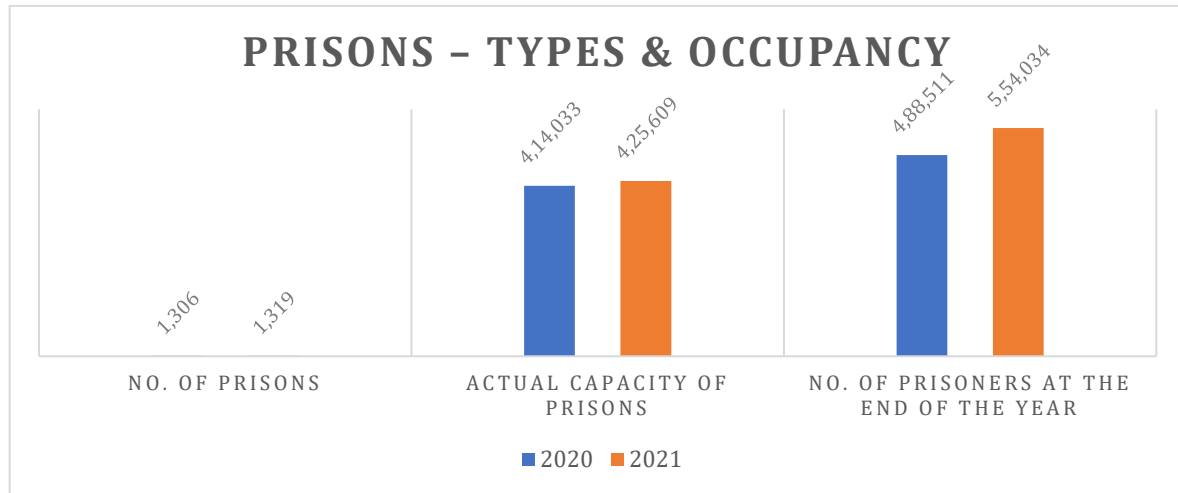
<sup>22</sup> Biswas, S. K. (2012). Towards an efficient criminal justice system through plea bargaining mechanism: Myths and realities. *Indian Journal of Law & Justice*, 3(1), 81. [http://118.185.209.246/bitstream/123456789/3201/1/September2012\\_06.pdf](http://118.185.209.246/bitstream/123456789/3201/1/September2012_06.pdf). Last visited on 15/03/2023

<sup>23</sup> Hazra, A. K., & Micevska, M. B. (2004). *The problem of court congestion: Evidence from Indian lower courts* (ZEF Discussion Papers on Development Policy No. 88). University of Bonn, Center for Development Research (ZEF).

overcrowded prisons, sometimes exceeding 150% capacity.” It urged High Courts to address this as it's a "*human rights violation*."<sup>24</sup>

Overcrowding leads to several problems such as poor living conditions, increased risk of violence, and inadequate access to healthcare and other necessities.<sup>25</sup> Moreover, it also affects the ability of the justice system to provide timely and effective justice to the victim of crime.<sup>26</sup>

We can see the current status of the prison in Figure 1 which illustrates according to the prisoner's statistics provided by NCRB.<sup>27</sup> that there has been a 1.0% increase in the total number of prisons at the national level, “from 1,306 in 2020 to 1,319 in 2021.” It's also shown the Actual Capacity of Prisons and the No. Of Prisoner at The End of Year<sup>28</sup>.



**Figure: 1- The current status of overcrowded prisons in India in**

As Figure 2 presents the condition of overcrowded prisons as of “December 31, 2021, there were a total of (5,54,034) convicts incarcerated in various jails around the country”.<sup>29</sup> By the end of 2021, the number of Convicts, Under-trial prisoners<sup>30</sup>, and Detenues<sup>31</sup> was recorded as 1,22,852, 4,27,165, and 3,470, accounting for 22.2%, 77.1%, and 0.6%, respectively. As of “December 31, 2021, other inmates accounted for 0.1% (547 prisoners) of total prisoners.”<sup>32</sup>

<sup>24</sup> The Hindu. (2021, December 1). Overcrowding prisons a violation of human rights, says Supreme Court. <https://www.thehindu.com/news/national/overcrowded-prison-involves-violation-of-human-rights-says-worried-supreme-court/article61836654.ece>. Last visited on 20/03/2023

<sup>25</sup> Naik, D. K. R., Fly, V., Mall, A., & Palace, B. H. A. (2019). The problems of prisoners: An analysis. *International Journal of Research and Analytical Reviews*, 6(2), 267-287. <https://www.ijrar.org/papers/IJRAR1AXP012.pdf>. Last visited on 01/03/2023

<sup>26</sup> Hossain, M., & Afroz, T. (2019). Plea-bargaining: Socio-legal impacts on the criminal justice system of Bangladesh. *Australian Journal of Asian Law*, 19(2), 197-215. <https://search.informit.org/doi/pdf/10.3316/informit.066774901425707>. Last visited on 25/03/2023

<sup>27</sup> National Crime Records Bureau

<sup>28</sup> National Crime Records Bureau. (2021). *Prison statistics* (Report). [https://ncrb.gov.in/sites/default/files/PSI-2021/PSI\\_2021\\_as\\_on\\_31-12-2021.pdf](https://ncrb.gov.in/sites/default/files/PSI-2021/PSI_2021_as_on_31-12-2021.pdf). Last visited on 03/03/2023

<sup>29</sup> Prison Statistics India-2021 Executive Summary [https://ncrb.gov.in/sites/default/files/PSI-2021/Executive\\_ncrb\\_Summary-2021.pdf](https://ncrb.gov.in/sites/default/files/PSI-2021/Executive_ncrb_Summary-2021.pdf) last visited on 14/03/2023

<sup>30</sup> Any person who has been committed to judicial custody and against whom a criminal trial has been initiated by a competent authority (trial is yet to start or is in process, but not yet disposed of).

<sup>31</sup> Any person detained in prison on the orders of the competent authority under the relevant preventive laws

<sup>32</sup> Supra 29 pp33



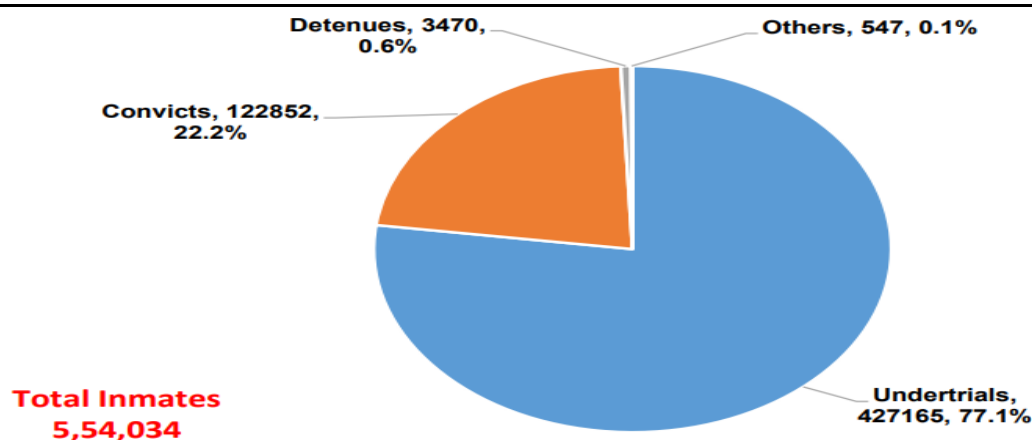


Figure 2, Different Types of Prisoners as of '31st December 2021<sup>33</sup>

The number of inmates now awaiting trial is significantly higher than the number of convicted inmates, as seen in the above pie chart.

We can see how the number of inmates has increased steadily over time, as seen in the table2

Year	Prison Population	Total, Prison Population Rate
2000	272,079	26
2002	322,357	30
2004	331,391	30
2006	373,271	32
2008	384,753	33
2010	368,998	30
2012	385,135	30
2014	418,536	32
2016	433,033	33
2018	466,084	34

Table 2 - Prison Population Rate<sup>34</sup>

Table2 of data shows alarming evidence about overcrowding in prisons that have been steadily rising each year<sup>35</sup>. The urgent need for the present judicial system is to ensure a speedy trial for criminal cases so that the fate of thousands of litigants can be determined quickly.<sup>36</sup>When justice is delayed, it's not just a matter of temporarily putting things off. In the legal sense, it involves a process that has lasting and unchangeable effects. As time goes by, this process quietly and gradually destroys the purpose of the justice system.<sup>37</sup>

<sup>33</sup>Supra 29 pp 33,

<sup>34</sup> World Prison Brief. (n.d.). India, <https://www.prisonstudies.org/country/india>, last visited on 20/03/2023

<sup>35</sup> Nair, H. V. (2018, June 28). 3.3 crore backlog cases in courts, pendency figure at highest: CJI Dipak Misra. *India Today*.<https://www.indiatoday.in/india/story/3-3-crore-backlog-cases-in-courts-pendency-figure-at-highest-cji-dipak-misra-1271752-2018-06-27?onetap=true>. Last visited on 24/05/2023

<sup>36</sup> Kumar, D. (2019). Judicial pronouncements on speedy trial in India: An analysis. *Journal of Legal Studies and Research*, 2(5), ISSN 2455-2437. <https://thelawbrigade.com/wp-content/uploads/2019/05/Dharminder.pdf>. Last visited on 03/03/2023

<sup>37</sup> Judicial Delay in India, : <https://timesofindia.indiatimes.com/readersblog/lawpedia/judicial-delay-in-india-50731/> last visited on 23/05/2023

## Constitutional Validity of Plea Bargaining in India

The practice of Plea Bargaining was not initially introduced in the Indian legal system, but rather in the United States.<sup>38</sup> Though Plea agreement is not specifically mentioned in the United States Constitution.<sup>39</sup> However, the Supreme Court of the United States has recognized plea bargaining as a constitutional practice in several landmark cases<sup>40</sup>. One such case is *Brady v. United States*<sup>41</sup>, where the Court held that plea bargaining is a constitutionally acceptable way of resolving criminal cases<sup>42</sup>. Additionally, in *Santobello v. New York*<sup>43</sup> The Court established that plea agreements are a fundamental component of the criminal justice system and that they help to facilitate the prompt and fair administration of justice<sup>44</sup>.

In the United States of America, the Bill of Rights, where the 'fifth amendment' of the United States Constitution, protects most basic rights, including the right to self-incrimination and the 'six amendments' right to a jury trial. Though USA<sup>45</sup> Supreme Court has consistently affirmed the legality of plea bargaining in various cases and has never considered it to be an issue of violating constitutional rights.<sup>46</sup>

However, in India Over the years, the Supreme Court of India has considered various arguments for and against plea bargaining, and stakeholders initially did not support it, often raising concerns about its compatibility with the constitution. Eventually, plea bargaining became a legal provision, but doubts about its constitutionality persisted.<sup>47</sup>

### Following Are the Few Landmark Cases Where Plea Bargaining Was Not Accepted:

- I. The Supreme Court questioned the judgment of the High Court in *Madanlal Ramchandra Daga v. State of Maharashtra* (1968)<sup>48</sup>, where after the accused pled guilty, the High Court permitted the appellant (who was convicted of cheating) to deposit his portion of the money if his sentence was lowered. Then, Justice Hidayatullah, this three-judge Bench condemned the practice of 'plea bargaining'.
- II. This Court reviewed the issue of plea negotiation again in *Murlidhar Meghraj Loya v. State of Maharashtra*<sup>49</sup>, criticized it with the following brief observation: - in which the court said that "the practice of plea bargaining pleases everyone except the silent society, which is a distant victim".
- III. In the case of *Kacchia Patel Santhilal Koderlal v. State of Gujarat*<sup>50</sup>, P.N. Bhagwati. J "was said that permitting the plea bargaining is contrary to public order, unfair and in violation of Article 21".

<sup>38</sup> Sharma, M. (2021, February 18). Plea bargaining in India and USA: A comparative study. *Enhelion*. <https://enhelion.com/blogs/2021/02/18/plea-bargaining-in-india-and-usa-a-comparative-study/>. Last visited on 23/05/2023

<sup>39</sup> Alschuler, A. W. (1979). Plea bargaining and its history. *Columbia Law Review*, 79(1), 1-43. : [https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2005&context=journal\\_articles](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2005&context=journal_articles) last visited 03/03/2023

<sup>40</sup> Supreme Court has mentioned in this case that (*Brady v. United States*) 'We cannot hold that it is unconstitutional for the State to extend a benefit to a defendant who in turn extends a substantial benefit to the state and who demonstrates by his plea that he is ready and willing to admit his crime and to enter the correctional system in a frame of mind that affords hope for success in rehabilitation over a shorter period than might otherwise be necessary

<sup>41</sup> *Brady v. United States*, 397 U.S. 742, 752 (1970)

<sup>42</sup> Albert Alschuler, "The Changing Plea Bargaining Debate," 69 *California Law Review* 652 (1981) [https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1983&context=journal\\_articles](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1983&context=journal_articles) last visited on 19-05-2023

<sup>43</sup> *Santobello v. New York*, 404 U.S. 257, 261 (1971)

<sup>44</sup> Wright, D. B. (1984). Plea bargaining – A necessary tool. *Connecticut Law Review*, 16(4), 1015-1019.

<sup>45</sup> United States of America

<sup>46</sup> (Wan, T. (2007). The unnecessary evil of plea bargaining: An unconstitutional conditions problem and not-so-least restrictive alternative. *Southern California Review of Law & Social Justice*, 17, 33.

<sup>47</sup> Santhy, K. V. K. (2013). Plea bargaining in U.S. and Indian criminal law: Confessions for concessions. *NALSAR Law Review*. <http://www.commonlii.org/in/journals/NALSARLawRw/2013/7.pdf>. Last visited on 03/05/2023

<sup>48</sup> *Indian Reports* (1968). AIR 1267, SCR (3) 34, p. 39.

<sup>49</sup> (1976) 3 SCC 684 (Para 13)

<sup>50</sup> 1980 CriLJ 553

- IV. P.N. Bhagwati J. in *Thippaswami v. State of Karnataka*<sup>51</sup> Forcing an accused to plead guilty for a reduced penalty, then increasing the sentence on appeal, violates Article 21. The court ruled such cases should be retried, allowing the accused to defend themselves and face an appropriate penalty if found guilty.
- V. In another case *State v. Chandrika*<sup>52</sup>, the court held that- "it is settled law that based on plea bargaining Court cannot dispose of the criminal cases. Mere acceptance or admission of the guilt should not be a ground for reduction of sentence. Nor can the accused bargain with the Court that as he is pleading guilty sentence be reduced."

As time passes, judges and legal stakeholders change their minds and begin seeking another approach to lower the docket of outstanding cases. Due to the growing backlog of cases, the Law Commission of India is recommending the introduction of plea bargaining in the Indian Criminal Justice System.<sup>53</sup>

**Over time, since plea bargaining has become a legal provision, it has gained greater acceptance in various cases, few examples such as:**

- I. In the *State Of Gujarat vs Natwar Harchandji Thakor*<sup>54</sup>, The Court recognized the value of plea bargaining and stated that "every plea of guilty which is construed to be a part of the statutory process in the criminal trial, should not be understood as a plea bargaining ipso facto. It is a matter of matter and has to be decided on a case-to-case basis. Considering the dynamic nature of law and society, the court said that the very object of the law is to provide an easy, cheap, and expeditious justice by resolving disputes."<sup>55</sup>
- II. In *Vijay Moses Das CBI*<sup>56</sup>: In this case, an individual was accused of supplying sub-standard material to ONGC at the wrong port, causing significant losses. The CBI charged the accused under "Sections 420, 468, and 471 of the IPC". The accused sought plea bargaining, but the Trial Court rejected the motion due to the lack of an affidavit and compensation. However, the Uttarakhand High Court directed the Trial Court to accept the plea bargaining proposal.

**The following articles of the Constitution of India are relevant to the constitutionality of plea bargaining in India:**

- I. Article 20(3): This article provides that "no person accused of an offense shall be compelled to be a witness against himself". Therefore, plea bargaining does not violate Article 20 of the Indian Constitution, which protects against self-incrimination and double jeopardy. A guilty plea must be made voluntarily, without coercion or inducement. If the accused provides incriminating evidence under pressure, it could violate their rights. However, if the plea bargain is made voluntarily and without coercion, it is considered a legitimate exercise of the accused's right to choose how to defend themselves.<sup>57</sup>
- II. Moreover, the rights under Article 20(3) are not violated by the simple acceptance of a guilty plea in exchange for a reduced sentence. This is since no specific disclosure of important data has been required during plea bargaining.<sup>58</sup>

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<sup>51</sup> 1983 Cri LJ 1271

<sup>52</sup> AIR 2000 SC 164

<sup>53</sup> Ghogare-Katkar, S. (n.d.). Plea bargaining – Challenges for implementation. *Manupatra*. <http://docs.manupatra.in/newsline/articles/Upload/4C2F9AF3-AAC9-4059-A312-A7E5A00A5F0B.pdf>. Last visited on 03/05/2023

<sup>54</sup> (2005) 1 GLR 709

<sup>55</sup> <https://indiankanoon.org/doc/1439610/>

<sup>56</sup> CrI. (Misc.) Application No. 1037/2006

<sup>57</sup> Yadav, A. (2020). Concept of plea-bargaining. *International Journal of Law Management & Humanities*, 3(5). <https://www.ijlmh.com/wp-content/uploads/Concept-of-Plea-Bargaining.pdf>. Last visited on 03/04/2023

<sup>58</sup> Yagnik, S., & Bharadwaj, A. (n.d.). Mapping the constitutionality of plea bargaining in India. *NUJSSACJ*. <https://www.nujssacj.com/post/mapping-the-constitutionality-of-plea-bargaining-in-india>. Last visited on 12/03/2023



- III. Article 21: This article provides that no person shall be deprived of his life or personal liberty except according to a 'procedure established by law'.<sup>59</sup> Plea bargaining does not infringe upon Article 21 of the Indian Constitution, which safeguards the right to life and personal liberty. Plea bargaining can be seen as a way to protect the accused's right to a fair trial by allowing them to negotiate a lesser sentence rather than risk a longer sentence at trial. The right to a speedy trial, although not initially included in Article 21, was recognized by the Supreme Court in 1979 in case of *Hussainara Khatoon v. Home Ministry*<sup>60</sup> as a constitutional right.<sup>61</sup> Similarly, the U.S. Constitution's Sixth Amendment guarantees a speedy trial, reinforced by the Speedy Trial Act of 1974<sup>62</sup>.
- IV. Article 39A: This article provides that the State shall provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities.<sup>63</sup> Legal help and negotiating a plea deal will go hand in hand. A person who is accused must be promised a fair trial where he or she is represented by a lawyer and given legal aid where necessary.<sup>64</sup>

### Principles of Natural Justice and Due Process:

The principles of natural justice and due process require that any process or decision-making must be fair and impartial.<sup>65</sup> However, the waiver of these principles must be justified and must not be used to unfairly deprive individuals of their rights.<sup>66</sup>

In the case of *Maneka Gandhi v. Union of India*<sup>67</sup> (1978), The Supreme Court of India ruled that the right to a fair hearing is a fundamental right according to Article 21 of the Constitution. Additionally, the Court stated that the principle of natural justice is not fixed and unyielding; it can be adapted to fit the demands of the situation.<sup>68</sup> The main argument against plea bargaining is that it violates the principles of natural justice by encouraging the accused to plead guilty, even if they are innocent. Alternative dispute resolution primarily adheres to the principles of natural justice, which include

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<sup>59</sup> *The Constitution of India* (2022). <https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2023/05/2023050195.pdf>. Last visited on 03/07/2023

<sup>60</sup> (1979) 3 S.C.R. 169

<sup>61</sup> Rao, Y. S. (n.d.). Right to fair trial. *Excise material*. Special Judicial Magistrate of I Class. <https://districts.ecourts.gov.in/sites/default/files/Excise%20material.pdf>. Last visited on 03/07/2023

<sup>62</sup> Arya, K. K. (2016). Right to speedy trial and mercy petitions in India. *Bharati Law Review*, Jan – Mar. <http://docs.manupatra.in/newsline/articles/Upload/BA797A43-0B75-4EB2-A2D6-1DA716E0A99E.pdf>. Last visited on 21/03/2023

<sup>63</sup> Team ProBono India. (2021, March). Compilation of selected cases on Article 39A. [https://www.probono-india.in/Indian-Society/Paper/790\\_6.%20Compilation%20on%20Cases%20Article%2039A.pdf](https://www.probono-india.in/Indian-Society/Paper/790_6.%20Compilation%20on%20Cases%20Article%2039A.pdf). Last visited on 07/07/2023

<sup>64</sup> *Plea bargaining in India: Striking a new 'deal' with criminal jurisprudence*. (2017). *NULJ*, 6(1), 139. SCC Online.

<sup>65</sup> Radu, M. I. (2009). Incompatible theories: Natural law and substantive due process. *Villanova Law Review*, 54, 247. <https://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=1077&context=vlr>. Last visited on 25/05/2023

<sup>66</sup> *Principles of natural justice*. (n.d.). <https://www.taxmann.com/bookstore/bookshop/bookfiles/Law%20Relating%20to%20Search%20%20Seizure--GC%20Das--Page%20Number%20256%20to%20268-sample%20chapter.pdf>. Last visited on 23/07/2023

<sup>67</sup> *Maneka Gandhi v. Union of India* AIR 1978 SC 597

<sup>68</sup> Social Laws Today. (2023, April 9). *Principle of natural justice*. [https://sociallawstoday.com/principle-of-natural-justice/#\\_ftnref15](https://sociallawstoday.com/principle-of-natural-justice/#_ftnref15). Last visited on 23/07/2023

two fundamental tenets: (1) *Nemo Judex in causa sua* (no one should be a judge in their own cause) and (2) *Audi alteram partem* (hear the other side).<sup>69</sup>

The Indian judiciary has taken a cautious approach to plea bargaining. In the context of plea bargaining, this means that the accused must be informed of their rights and the consequences of entering into a plea agreement. The process must be voluntary, without coercion or undue influence.<sup>70</sup> Assessing the arguments from both perspectives indicates that plea bargaining is an impartial method for handling criminal cases, which should not compromise the effectiveness of law and punishment, trigger concerns over due process, or result in unjust outcomes.

In the USA the Supreme Court by addressing a due process violation claim in *Bordenkircher v. Hayes*<sup>71</sup>, where the Court found that "openly presenting the defendant with the unpleasant alternatives of forgoing trial or facing charges did not violate due process."<sup>72</sup> U.S. Supreme Court also repeatedly held that the government 'may encourage a guilty plea by offering substantial benefits in return' (*Corbitt v. New Jersey*, 439 U.S. 212 (1978)).<sup>73</sup> In the USA, when the accused opts for a plea agreement in federal court, Rule 11 of the Federal Rules of Criminal Procedure applies. This rule mandates the parties to provide a comprehensive record of the plea negotiation process, ensuring compliance with Rule 11(c)-(g) procedures and ensuring due process.<sup>74</sup>

In India the plea bargaining system is, in fact, mutually beneficial, with the most significant advantage in India being the reduction of the backlog of cases, enabling prosecutors to pursue more cases, and mitigating the negative impact of prolonged detention on undertreated prisoners.<sup>75</sup>

For plea bargaining, the Government has set the mandatory guideline that should be followed during the plea bargaining procedure, which, under Section 265A to 265L provides complete provision and safeguard for the defendant. Like the accused must also have access to legal representation and a fair opportunity to present their case. Where If the Court believes the application was brought voluntarily, it will give the parties time to resolve.<sup>76</sup> Settlement may involve providing victim compensation and court fees by the accused. The Court will conduct an in-camera examination of the accused to ensure that the application was filed voluntarily. The opposite party must not be present during the examination<sup>77</sup>

To sum up, plea bargaining can lighten the criminal justice system's workload and lead to quicker case resolutions. However, it must follow natural justice and due process principles. This involves transparent procedures with participation from prosecution, victim, and defence, protecting accused rights, and preventing coercion, inequality, and injustice.<sup>78</sup> In the modern age, it is essential to tackle judicial delay to maintain public trust in the justice system. Timely

<sup>69</sup> Mishra, V. S., & Singh, J. (n.d.). Alternative dispute resolution & its comparative study with India and USA. *Jus Corpus Law Journal*, 1(3)

<sup>70</sup> Dwivedi, K. K. (2011–2012). Speedy trial and criminal justice system in India—A juristic study. *CNLU Law Journal*, 2, 112. SCC Online.

<sup>71</sup> 434 U.S. 357 (1978)

<sup>72</sup> *Bordenkircher v. Hayes* 434 U.S. 357 (1978)

<sup>73</sup> *Corbitt v. New Jersey*, 439 U.S. 212 (1978)

<sup>74</sup> Hessick, F. A. III. (2002). Plea bargaining and convicting the innocent: The role of the prosecutor, the defense counsel, and the judge. *BYU Journal of Public Law*, 16, 189. <https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1290&context=jpl>. Last visited on 23/05/2023.

<sup>75</sup> Kathuria, S. (2007). The bargain has been struck: A case for plea bargaining in India. *National Law School of India Review*, 19(2), Article 5. <https://repository.nls.ac.in/nlsir/vol19/iss2/5>. Last visited on 20/03/2023

<sup>76</sup> **Criminal justice administration.** (n.d.). [https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp\\_content/law/05.\\_criminal\\_justice\\_administration/19.\\_plea-bargaining/et/5682\\_et\\_19\\_et.pdf](https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/law/05._criminal_justice_administration/19._plea-bargaining/et/5682_et_19_et.pdf). Last visited on 25/04/2023

<sup>77</sup> **Plea bargaining.** (n.d.). <https://legalservices.maharashtra.gov.in/Site/Upload/Pdf/plea-bargaining.pdf>. Last visited on 20/03/2023

<sup>78</sup> Kumar, S. (2017). Plea bargaining in India: An economic perspective. *Army Institute of Law Journal*, 9. <https://ssrn.com/abstract=3045894>. Last visited on 20/09/2023.

delivery of justice is vital for fairness. Identifying the causes of delay and implementing effective measures are imperative. Adopting new methods and techniques is necessary to prevent justice denial caused by delays.<sup>79</sup>

## CONCLUSION

The Indian Constitution provides for the principles of natural justice, which include the right to a fair trial, the right to be heard, and the right to be judged by an impartial tribunal. While the Indian criminal justice system does focus on rehabilitation and reformation of offenders, there is still much room for improvement in terms of access to justice and fairness in the application of the law. The Constitution also provides for the procedure established by law, which means that any law passed by the legislature must be following the Constitution. Plea bargaining is a departure from the traditional adversarial system of justice and the constitutional scheme of criminal procedure. The court has also imposed certain guidelines for the implementation of plea bargaining, which include the involvement of the victim in the process, the provision of legal aid to the accused, and the recording of the proceedings.

In conclusion, the research paper finds that plea bargaining is compatible with the principles of natural justice and the procedure established by law in India, subject to certain guidelines. The practice of plea bargaining can help in reducing the backlog of cases in Indian courts and providing a speedy trial to the accused. However, it must be used with caution to avoid any miscarriage of justice.

## Case Laws:

1. *Bordenkircher v. Hayes*, 434 U.S. 357 (1978).
2. *Brady v. United States*, 397 U.S. 742 (1970).
3. *Corbitt v. New Jersey*, 439 U.S. 212 (1978).
4. *Hussainara Khatoon v. Home Ministry*, (1979) 3 S.C.R. 169.
5. *Kacchia Patel Santhilal Koderlal v. State of Gujarat*, 1980 CriLJ 553.
6. *Madanlal Ramchandra Daga v. State of Maharashtra*, AIR 1968 SC 1267; SCR (3) 34, p. 39.
7. *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.
8. *Murlidhar Meghraj Loya v. State of Maharashtra*, (1976) 3 SCC 684, para 13.
9. *Santobello v. New York*, 404 U.S. 257, 260 (1971).
10. *State of Gujarat v. Natwar Harchandji Thakor*, (2005) 1 GLR 709.
11. *State v. Chandrika*, AIR 2000 SC 164.
12. *Thippaswami v. State of Karnataka*, 1983 CriLJ 1271.
13. *Vijay Moses Das v. CBI*, CrI. (Misc.) Application No. 1037/2006.

## CONFLICT OF INTEREST

None

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<sup>79</sup>Harjai, M. (2020). Justice delayed is justice denied: With special reference to judicial pronouncements in India. *International Journal of Education, Modern Management, Applied Science & Social Science (IJEMASSS)*, 2(2), 17–20. <https://www.inspirajournals.com/uploads/Issues/1367298013.pdf>. Last visited on 25/03/2023

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