

From Guilty Pleas To Negotiated Justice: A Global History Of Plea Bargaining And India'S Turn (2006 - 2023)

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Abstract

Plea bargaining is a negotiated resolution of a criminal case in which the accused accepts responsibility under court supervision in exchange for a calibrated outcome. Unlike compounding or summary disposal, it results in a conviction and integrates victim participation and voluntariness checks. This paper examines how plea bargaining evolved globally and how India has adapted the idea to its own institutional needs. It first reconstructs the emergence of negotiated pleas in the United States and their constitutional settlement, then surveys common-law and civil-law variants that emphasise judicial oversight, open-court recording, and victim remedies. Against this backdrop, the paper traces India's pathway from limited guilty-plea shortcuts and compounding to full codification in the Code of Criminal Procedure (2006) and re-codification in the Bharatiya Nagarik Suraksha Sanhita (2023). The analysis distinguishes plea bargaining from compounding and summary mechanisms and explicates BNSS features such as the thirty-day filing window and calibrated relief for first-time offenders. Using a doctrinal and comparative method, the paper evaluates four design levers eligibility limits, voluntariness checks, sentencing transparency, and enforceable compensation and proposes an implementation agenda. Core recommendations include data-led eligibility and public dashboards, "bail-before-plea" sequencing to reduce custody-driven coercion, minimum defence standards prior to any negotiation, indicative sentencing bands with brief reasons, and escrow-based compensation with monitored restorative terms. The paper argues that if these operational safeguards are embedded, negotiated justice can reduce pendency and undertrial incarceration while strengthening fairness, dignity, and public trust, for victims, defendants, and the courts alike.

Keywords: Plea Bargaining, Legal History and CrPC/BNSS

1. Introduction

Plea bargaining is a court-supervised way to resolve a criminal case through a negotiated admission of guilt that leads to a calibrated outcome often a reduced sentence and victim compensation distinct from compounding or summary disposal. Compounding ends in an acquittal and is limited to the offences listed in Section 320 of CrPC, 1973, whereas plea bargaining ends in a conviction and is generally available subject to statutory exclusions and a judicial check of voluntariness with the victim's participation. Likewise, special-summons and traffic-summary mechanisms for petty matters enable quick closure without negotiation and therefore are conceptually different from plea bargaining (Paranjape, 2023).

Historically, negotiated guilty pleas developed first in the United States and were given constitutional acceptance in *Brady v. United States*, after which federal and state rules formalized the practice under judicial oversight. Over time, variants spread across common-

law and civil-law systems each layering its own safeguards, such as open-court recording of agreements, limits on judicial sentence signalling, victim restitution, or focusing negotiation on the penalty rather than the charge. Across jurisdictions the same tension recurs justice systems seek speed and cost control, yet must guard against coercion, unequal bargaining power, and the risk of innocent pleas (*Brady v. United States*, 1970).

India travelled a distinct path. For decades there was no plea bargaining; instead, the system used functional shortcuts for minor cases (special summons and traffic summaries) and the separate institution of compounding. Mounting pendency, long undertrial detention, and courtroom delays led national bodies to propose reform. The Law Commission's 142nd Report (1991) and 154th Report (1996) recommended a court-centric model with voluntariness checks, victim participation, calibrated sentencing/compensation, and clear procedures (Law Commission of India, 1991, 1996). Parliament codified this architecture in 2006 as Chapter XXI-A of the CrPC, and in 2023 re-codified it in the *Bharatiya Nagarik Suraksha Sanhita* (BNSS) with tighter timelines (including a 30-day window from framing of charge to apply) and more explicit concessions for first-time offenders while retaining judicial oversight, voluntariness inquiries, and victim-focused outcomes (Siddique, 2022).

This paper pursues three aims. First, it traces the global history of plea bargaining to explain how negotiated justice moved from practice to principle. Second, it maps India's trajectory from pre-2006 mechanisms to CrPC codification and BNSS re-codification, clarifying how the Indian model differs from foreign approaches and why. Third, it tests design choices eligibility, voluntariness, sentencing transparency, and victim remedies against India's goals of reducing pendency and undertrial incarceration without sacrificing fairness. Methodologically, the paper adopts a doctrinal approach, drawing on statutes and rules (CrPC, BNSS), law-commission and committee reports and case laws. It closes with forward-looking suggestions for implementation data-led eligibility, robust safeguards against coercion, predictable sentencing ranges, enforceable victim compensation, and stronger defence capacity so negotiated justice in India can be faster, fairer, and visibly trustworthy

2. Global History & Models: From Early Practices To Rules

Modern plea bargaining did not appear overnight; it emerged from a long Anglo-American reliance on guilty pleas and docket-clearing shortcuts that gradually hardened into rules. Much of the comparative literature anchors the origins in the United States. American courts were experimenting with negotiated guilty pleas well over a century ago, with field evidence from California indicating that judges openly "credited" guilty pleas even when bargaining was not yet pervasive (Rai, 2014).

2.1 Nineteenth-century practice and the rise of negotiated dispositions-

Before the U.S. Civil War, appellate reports contain scattered references to deals, but it is in the late nineteenth century that plea-type resolutions begin to surface as a discernible pattern. By 1839, New York reportedly closed virtually every criminal case by guilty plea; mid-century figures suggest roughly half of cases ended the same way, and in Alameda County a substantial share of felony defendants eventually shifted to pleas. In the 1920s, U.S. crime-commission reports documented just how normal this had become, with guilty-plea rates reported at 85% in Chicago, 88% in New York, 70% in Dallas, and 79% in Des Moines. The practical drivers were familiar: crowded dockets, trial delay, and cost all pushing courts and counsel toward negotiated, speedier endings (Alschuler, 1979).

2.2 From practice to constitutional acceptance in the United States-

Early on, the U.S. Supreme Court showed little appetite to dignify plea discussions; lower courts, however, found them useful. That tension ended in 1970 when the Court, in *Brady v. United States*, declared plea bargaining “inherent in the criminal law and its administration,” thereby resolving the constitutional question and legitimizing a practice already dominant on the ground (*Brady v. United States*, 1970). The federal architecture that followed emphasized that prosecutor recommendations do not bind judges, and that once sentence is pronounced, a defendant cannot withdraw a plea. States, meanwhile, standardized paperwork (e.g., California’s model plea form) and even used plea forms in specialized contexts such as involuntary-commitment proceedings (Rai, 2014).

2.3 Diffusion beyond the U.S.: same logic, different safeguards-

Comparative surveys show broad transnational adoption England & Wales, Australia, Canada, France, Germany, Italy, Poland, Japan, the Central African Republic, and Pakistan and stress that, although the logic (managing time, cost, and case volume) is shared, design choices vary significantly across jurisdictions (Rai, 2014; Fisher, 2003).

2.3.1 Canada

Canadian courts recognize several forms of negotiation charge selection, sentence recommendations, and agreements over facts, but appellate authority warns against judges pre-indicating sentences. In *R. v. Roy*, the Ontario Court of Appeal cautioned that mid-trial sentence “ranges” from a judge risk the appearance of partiality; similarly, in *R. v. Rajaeefard*, the court disapproved of hallway discussions pressuring a plea, while permitting judges to comment neutrally on whether a proposed sentence is too high, too low, or within range (The Canadian Encyclopaedia, 2016; *R. v. Roy*, 1976; *R. v. Rajaeefard*, 1996).

2.3.2 England & Wales

English practice is narrower. In *R v Turner*, the Court of Appeal set out the modern position: counsel may consult with the judge, but the judge must not indicate what sentence is “in mind.” Later applications (including *Cains*) reinforced that a plea induced by perceived judicial signaling may be unsafe (*R v Turner*, 1970; Gaur, 2016).

2.3.3 Germany

German “agreements” grew from limited experiments in the early 1970s into a more routine case-management tool yet remain narrower than the U.S. model and are generally framed as a response to court workload rather than prosecutorial bargaining power (Fisher, 2003).

2.3.4 France

A circumscribed procedure allows prosecutors to propose agreements for minor offences (Less than one-year custody). Critics object on rights-based grounds, pointing to fair-trial and presumption-of-innocence concerns (Rai, 2014).

2.3.5 Italy

Italy’s *patteggiamento* negotiates the penalty rather than the charge, generally permitting up to a one-third reduction for a guilty plea; multiple counts may be narrowed by prosecutorial selection as part of the arrangement (Gaur, 2016).

2.3.6 Poland

The “voluntary submission to a penalty” procedure applies to less-serious offences (typically less than 10 years). After the accused proposes a penalty and pleads guilty, the prosecutor and victim may agree; the court may also suggest modifications before approving an agreed sentence, often without a full evidentiary hearing (Modrzejewska, 2024).

2.3.7 Georgia

Since 2004, “plea agreements” close in spirit to American practice permit resolution without a main hearing, typically via pleas to lesser charges (Transparency International Georgia, 2010).

2.3.8 Australia

Negotiations over charge, fact, or sentence are common across states, but courts are vigilant about judicial neutrality. In *R v Marshall*, the Supreme Court of Victoria condemned asking a trial judge, in open court, what sentence would follow a guilty plea (*R v Marshall*, 1981).

2.3.9 Pakistan

Introduced via the National Accountability Ordinance, Pakistan’s plea bargaining is largely confined to anti-corruption cases, requires admission of guilt and return of illicit proceeds, and triggers disqualifications (e.g., from public office or elections) upon acceptance (National Accountability Ordinance, 1999).

2.3.10 Japan and Denmark

Japan’s criminal courts historically forbade bargaining (despite occasional allegations of informal practice), and in 2009 Denmark’s Supreme Court held the practice unlawful illustrating that global diffusion has never been uniform (Abe, 2023).

3. India Before 2006 & Policy Drivers

India’s modern legal system largely descends from the British, who introduced courts of judicature (from 1672 onward) and a uniform, adversarial common-law framework later codified through statutes such as the Indian Penal Code, 1860, the Code of Criminal Procedure, 1898 (since replaced), the Indian Evidence Act, 1872, and the Indian Contract Act, 1872. Post-Independence, India retained this structure while layering constitutional rights over it (Indian Penal Code, 1860; Code of Criminal Procedure, 1898; Indian Evidence Act, 1872; Indian Contract Act, 1872).

3.1 Early guilty-plea mechanisms (not plea bargaining).

Historically, India did not recognize plea bargaining. For petty matters, however, the law created docket-clearing avenues without any negotiation between prosecution and accused: CrPC Section 206 allows an accused to plead guilty and pay a small fine without personal appearance, and Motor Vehicles Act, 1988 Section 208 enables summary disposal of traffic cases. These are convenience procedures with no bargaining and a narrow scope conceptually distinct from negotiated pleas (Code of Criminal Procedure, 1973; Motor Vehicles Act, 1988).

3.2 Compounding vs. plea bargaining

Compounding ends in an acquittal, while plea bargaining culminates in a conviction entered by the court. Compounding primarily benefits the accused by terminating prosecution; negotiated pleas are structured to benefit both the accused and the complainant/victim,

including through compensation as part of a “mutually satisfactory disposition” under judicial supervision. Scope also diverges compounding is exhaustively listed in CrPC Section 320(1) & (2), whereas plea bargaining is generally available subject to carve-outs for serious categories (e.g., offences punishable above seven years, life, or death; offences against women/children; notified socio-economic offences) (Code of Criminal Procedure, 1973).

3.3 Why India moved toward negotiated dispositions.

From the late 20th century, courts faced abnormal delay, mass pendency, overcrowded prisons dominated by undertrials, and significant litigation costs despite innovations like fast-track courts and Lok Adalats. The Law Commission of India therefore recommended calibrated legislative measures to reduce delay, mitigate undertrial suffering, and rationalize workloads (Law Commission of India, 1991, 1996).

3.4 Law Commission - concept to procedure.

- **142nd Report (1991):** Proposed a court-centric, safeguarded scheme for voluntary guilty pleas with measured concessions, participation of the complainant/victim, and judicial verification aimed at reducing delay and jail overcrowding while guarding voluntariness and fairness (Law Commission of India, 1991).
- **154th Report (1996):** Converted the idea into workable procedure: written application by the accused; in-court voluntariness inquiry; notice/hearing for victim and prosecution; reasoned acceptance/rejection; calibrated sentencing (caps/half-maximum, where applicable), probation, and compensation all under Chapter XXI-A as a proposed insertion to the CrPC (Law Commission of India, 1996).

Malimath Committee (2003) and legislative gatekeeping (2005)

The Malimath Committee endorsed giving the victim a role in negotiated settlements and urged coherence with compounding rules (Committee on Reforms..., 2003). The Parliamentary Standing Committee on Home Affairs (111th Report, 2005) backed inserting Chapter XXI-A to make plea bargaining an essential component for clearing arrears and easing undertrial distress while insisting on court involvement, eligibility exclusions, and parallel institutional reforms like an independent Directorate of Prosecution (Parliamentary Standing Committee on Home Affairs, 2005).

3.5 Culmination and continuity.

Parliament enacted the Criminal Law (Amendment) Act, 2005, bringing CrPC Chapter XXI-A (Section 265A-265L) into force on 5 July 2006. In 2023, India re-codified the scheme in the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS, Section 289-300) with tighter timelines (e.g., filing within 30 days from framing of charge) and an explicit window to conclude a mutually satisfactory disposition continuing the balance between efficiency and fairness in negotiated justice (Code of Criminal Procedure, 1973, Section 265A-265L; Bharatiya Nagarik Suraksha Sanhita, 2023, Section 289-300).

4. Plea Bargaining In The Crpc, 1973 (Chapter Xxi-A)

Chapter XXI-A applies once (a) a police report under Section 173 is filed or (b) a Magistrate has taken cognizance on complaint and issued process but not for offences punishable with death, life imprisonment, or imprisonment exceeding seven years. It also excludes offences that (i) affect the socio-economic condition of the country (to be notified by the Central

Government), and (ii) offences against a woman or a child below 14 years (Code of Criminal Procedure, 1973, Section 265A).

4.1 How an accused applies (voluntariness at the core)

The accused files a written application in the trial court with an affidavit affirming that the plea is voluntary and acknowledging the nature and extent of the statutory punishment; the court then issues notice to the Public Prosecutor/complainant and fixes a date. On that date, the court conducts an in-camera examination of the accused (without the other side present) to satisfy itself that the application is voluntary; if it is not voluntary (or the accused was previously convicted for the same offence), the case simply proceeds under the regular CrPC from that stage (CrPC Section 265B).

4.2 Working out a “mutually satisfactory disposition.”

If satisfied about voluntariness, the court facilitates a meeting to work out a disposition.

- In police-report cases, the court issues notice to the Public Prosecutor, the investigating officer, the accused, and the victim; the accused may participate with counsel.
- In complaint cases, the court issues notice to the accused and the victim; each may participate with counsel. Throughout, the court must ensure the process remains voluntary (CrPC Section 265C).

4.3 Recording the result

If a disposition is reached, the court prepares a report signed by the presiding officer and all participants. If no agreement is reached, the court records that fact and the case resume under the CrPC from the stage at which the application was filed (CrPC Section 265D).

4.4 How the court disposes of the case (compensation, probation, sentence)

On a successful disposition, the court must:

- Award compensation to the victim consistent with the disposition and hear parties on quantum of punishment and on probation (CrPC Section 360 / Probation of Offenders Act, 1958).
- If probation is appropriate, release the accused on probation.
- If a statutory minimum applies, sentence to one-half of that minimum.
- If no minimum applies, sentence to one-fourth of the punishment provided or extendable (CrPC Section 265E).

4.5 Judgment, finality, and court’s powers.

The court delivers judgment in open court in terms of Section 265E (CrPC Section 265F). The judgment is final no appeal lies, except SLP under Article 136 or writs under Articles 226/227 of the Constitution (CrPC Section 265G). The court retains all ordinary powers regarding bail, trial of offences, and other matters necessary to dispose the case (CrPC Section 265H), and pre-trial detention is set-off against sentence (CrPC Section 265-I).

4.6 Safeguards & savings.

Chapter XXI-A overrides inconsistent CrPC provisions (a savings/override clause) and clarifies it should not be read to restrict other provisions (CrPC Section 265J). Any statements or facts in a plea-bargaining application cannot be used for any other purpose

(CrPC Section 265K). The Chapter does not apply to juveniles/children under the Juvenile Justice Act (CrPC Section 265L)

5. Plea Bargaining In The Bnss, 2023 (Chapter Xxiii)

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) restates plea bargaining in Chapter XXIII (Sections 289-300) and makes it more practical. It keeps the earlier limits: no plea bargaining for offences that affect the country's socio-economic condition or for crimes against women or children under 14. It applies after the police file their report or a complaint case is formally taken forward by the court. The key changes are simple and time-bound: an accused must apply within 30 days of charges being framed (Section 290). At sentencing, courts get clear reduction bands-up to half of a statutory minimum (and one-quarter for first-time offenders), or where there is no minimum, one-fourth (and one-sixth for first timers) (Section 293). These steps come in the middle of a serious undertrial crisis about 75.8% of prisoners in 2022 were undertrials and prisons were at 131% occupancy, yet plea bargaining has been used in only 0.11% of criminal cases nationwide. BNSS tries to move negotiated justice from paper to practice so it can cut case backlogs and reduce undertrial custody, while still requiring voluntariness, court oversight, and victim participation. (Bharatiya Nagarik Suraksha Sanhita, 2023; National Crime Records Bureau, 2022; Gautam, 2023).

Key procedural shifts.

- 1. Time-bound entry:** An accused must move a plea-bargain application within 30 days from framing of charge (BNSS Section 290(1)), a new deadline absent in CrPC (where no outer limit existed).
- 2. Voluntariness & meeting:** The court still examines the accused in camera and, if satisfied, convenes a meeting including the Public Prosecutor (or complainant), the investigating officer (in police-report cases), the accused, and the victim; counsel may participate (BNSS Section 291; Section 292).

Disposal & calibrated sentencing

The court must award victim compensation consistent with the disposition and consider probation (BNSS Section 293(a) & (b)). When a statutory minimum applies, the court may impose one-half of the minimum; if the accused is a first-time offender, the court may impose one-fourth of the minimum (BNSS Section 293(c)). Where no minimum applies, the court may impose one-fourth of the provided/extendable punishment; for first-time offenders, one-sixth (BNSS Section 293(d)). Judgments remain final (save for constitutional remedies), the court retains full ancillary powers, detention set-off applies, and the Chapter prevails over inconsistent provisions (BNSS Section 294 - 298). Statements in the plea application are inadmissible for other purposes, and the Chapter does not apply to juveniles/children under the JJ Act, 2015 (BNSS Section 299-300).

6. Conclusion & Suggestions

India's journey with plea bargaining has moved from informal guilty-plea shortcuts to a court-centred, victim-attentive framework first codified in the CrPC (2006) and refined in the BNSS (2023). The architecture is now clear: voluntariness checks in camera, participation of the victim, and calibrated sentencing/compensation under judicial supervision. The BNSS adds discipline (a 30-day application window) and clearer relief for first-time offenders, signalling a shift toward rehabilitation without diluting accountability. What remains is implementation: ensuring pleas are chosen not coerced while improving parity across districts

and delivering timely, enforceable remedies for victims. Done well, negotiated justice can reduce pendency and undertrial incarceration and still uphold dignity, fairness, and transparency.

Suggestions

- **Data-led eligibility & oversight:** Publish and annually review eligible/excluded offence categories; run public dashboards (applications, acceptance rates, time to disposal, compensation paid, first-time-offender share) with independent audits to guide course-corrections.
- **Voluntariness with bail-first sequencing:** Record a simple, language-appropriate in-camera colloquy and add a short cooling-off period; decide **bail before plea** so custody pressure does not drive decisions.
- **Defense capacity as a pre-condition:** Require a defence certification that FIR/Section 173 papers and key evidence were reviewed with the accused; strengthen legal-aid training and supervision so advice is competent and independent.
- **Transparent, predictable sentencing:** Issue indicative sentencing bands (including BNSS concessions for first-time offenders), state the agreement in open court, and require brief written reasons building consistency and public trust.
- **Victim participation with enforceable remedies:** Keep victims at the table; route compensation through escrow with time-bound tranches and default consequences, and record/monitor any restorative terms (apology, repair, community service).

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