Salgaocar Law Review Special Edition 2025-26

ISSN 2395-7263

Plea Bargaining: Negotiated Justice in Gender-Based Crimes[1]

Smt. Ashwini Parab,
Assistant Professor,
Raja Lakhamgouda Law College,
Belagavi, Karnataka-590006,
ashwini@rllc.in

Abstract

Plea bargaining is emerging as a pragmatic tool in criminal justice systems worldwide. It is an efficient disposal method for reducing the burden on courts. However, the application of plea bargaining in gender-based crimes raises complex ethical, legal, and social concerns. Gender-based crimes such as rape, sexual assault, domestic violence, and harassment are not merely offences against individuals but violations of fundamental human rights. They are often responsible for perpetuating systemic inequalities. In such cases, plea bargaining trivialises the gravity of the offence, undermining deterrence, and silencing survivors who may already face societal stigma. Plea bargaining may have its own advantages as well as disadvantages. There is always a juggle between prioritising quicker relief and avoiding further traumatisation through

[1] Smt. Ashwini Parab, Assistant Professor, Raja Lakhamgouda Law College, Belagavi, Karnataka-590006, ashwini@rllc.in

lengthy trials and reinforcement of patriarchal structures by prioritising expediency over justice.

Plea bargaining offers an alternative lens for examining negotiated justice. Negotiation, traditionally employed in civil and commercial disputes, emphasises consensual resolution, confidentiality, and efficiency. Plea bargaining in gender-based crimes highlights both opportunities and limitations. On the one hand, survivor-centric negotiation could empower victims by granting them agency to shape outcomes, ensuring reparative measures, and fostering restorative justice. On the other hand, the risk of coercion, imbalance of power, and lack of transparency in negotiation processes may replicate the very inequities that gender-based crimes seek to challenge.

This paper critically evaluates the intersection of plea bargaining and gender-based crimes to explore whether negotiated justice can coexist with principles of fairness, accountability, and gender sensitivity. The need for balancing efficiency with justice, ensuring that mechanisms of negotiation do not compromise the dignity and rights of survivors.

Keywords- Plea-bargaining, Gender Based Crimes (GBC), Negotiated Justice, Survivor Centric, Criminal Justice System.

Plea Bargaining: Negotiated Justice in Gender-Based Crimes[2]

Smt. Ashwini Parab,
Assistant Professor,
Raja Lakhamgouda Law College,
Belagavi, Karnataka-590006,
ashwini@rllc.in

Introduction

The contemporary criminal justice landscape is undergoing a paradigm shift, moving away from the rigidities of traditional adversarial trials toward more flexible, pragmatic mechanisms of case disposal. At the forefront of this evolution is plea bargaining—a process whereby a defendant pleads guilty to a lesser charge or to one of several charges in exchange for a more lenient sentence or the dismissal of other charges.[3] While lauded for its ability to clear massive judicial backlogs and provide certainty in outcomes, its application in the realm of gender-based crimes (GBC) remains one of the most contentious debates in modern jurisprudence.[4] Gender-based crimes, including rape, domestic violence, and sexual harassment, are not merely private disputes; they are profound

[2] Smt. Ashwini Parab, Assistant Professor, Raja Lakhamgouda Law College, Belagavi, Karnataka-590006, ashwini@rllc.in
[3] Alschuler, A. W. (1981). The Prosecutor's Role in Plea Bargaining. University of Chicago Law Review.
[4] Bibas, S. (2004). Plea Bargaining Outside the Shadow of Trial. Harvard Law Review.

violations of human rights that reinforce systemic patriarchy. In such a situation, a question arises whether the negotiated justice can coexist with the non-negotiable requirements of fairness and accountability for survivors.[5]

The Practical Appeal of Plea Bargaining

In theory, plea bargaining serves as a release valve for overburdened court systems. In jurisdictions such as India, the time, cost, and emotional toll of the trial often discourage victims and witnesses from participating. For the state, plea bargaining offers an immediate conviction without the risk of an acquittal due to technicalities like lack of evidence or hostility of witnesses. In the context of GBC, a plea can be a survivor-centric tool. It spares the victim from the embarrassment and humiliation experienced during aggressive cross-examination. By securing a guaranteed admission of guilt, the system provides a sense of immediate closure to the case and thereby avoids the years of torture and unrest to the victim as well as the uncertainty inherent in appellate processes.[6]

The adoption of plea bargaining for gender-based crimes in India would represent a significant setback for judicial integrity and the protection of the vulnerable population. At its core, gender-based crimes such as domestic abuse, sexual assault, etc., have systemic power imbalances. In such cases, if we further allow an accused person to negotiate a reduced sentence, it would essentially threaten justice and cause further trauma to the survivor. In the Indian context, where social pressure and coercion are often used to silence victims, plea bargaining could be weaponised to force survivors into settlements that prioritise administrative efficiency over true accountability. Furthermore, it undermines the deterrent effect of the law, sending a message that crimes against women and marginalised genders can be discounted through a bargain. To ensure the safety of its citizens and uphold the rule of law, India must maintain a rigid

[5] Ibid.
[6] Alschuler, A. W. (1981). The Prosecutor's Role in Plea Bargaining. University of Chicago Law Review.

stance against plea bargaining in these cases, ensuring that justice is based on the gravity of the offence rather than a compromise of convenience. Though it is said that plea-bargaining will save the family, marriage, etc., GBC are crimes, not a civil wrong. So, protecting family or marriage should not be the concern of the legal system.

The Indian Context: BNSS vs. Reality

Plea bargaining was always considered a threat to justice that prioritised administrative conveniences over the moral burden of Criminal law. The Courts have a duty to punish the offender and not barter with him. The plea bargaining under the Criminal Justice System in India can be studied in two phases, i. e, position of plea bargaining in India prior to 2005 amendment to the Criminal Procedure Code and after 2005 amendment.

Judicial Initiatives on Plea Bargaining

The Indian judiciary maintained a staunch and uncompromising opposition to the concept of plea bargaining, viewing it as a threat to justice that prioritised administrative convenience over the moral weight of criminal law. This judicial resistance to plea-bargaining for gender-based and socio-economic crimes was based on the opinion that the state has the duty to punish offenders and not to barter it away.[7] In Thippaswamy v. State of Karnataka[8] The Supreme Court expressed concerns about the fairness of the plea-bargaining process. The Supreme Court held that inducing an accused to plead guilty with a promise of leniency and then enhancing that sentence on appeal violates Article 21 (Right to Life and Liberty). The Court ruled that if a plea bargain is found to be unfair, the conviction should be set aside and the case remanded for a fresh trial so the accused can defend themselves.

[7] Kasambhai Ardul Rehmanbhai Shaikh v. State of Gujarat, (1980) 3 SCC 120
[8] Thippaswamy v. State of Karnataka, (1983) 1 SCC 194.

In Murlidhar Meghraj Loya v. State of Maharashtra[9] The Supreme Court was highly critical of the plea-bargaining practice. The Court described plea bargaining as unconstitutional and illegal, arguing that it could lead to corruption and allow criminals to escape the full force of the law by trading for a lighter sentence. This sentiment kept plea bargaining out of Indian law for several decades.

In State of Gujarat v. Natwar Harchandji Thakor[10] Gujarat High Court signalled a pragmatic shift, just before the law was officially amended. The Gujarat High Court acknowledged that the world was moving toward more efficient ways of resolving criminal cases. It stated that while plea bargaining must have safeguards, it could be a useful tool for speedy justice as long as it was voluntary and the accused was fully aware of their rights.

In Kasambhai Ardul Rehmanbhai Shaikh v. State of Gujarat[11] The Supreme Court rejected the concept of negotiated justice. The Court held that plea bargaining was not recognised by the Indian criminal justice system at the time. It noted that it was the duty of the court to decide cases on merit rather than through a mutual settlement between the prosecution and the accused.

In Bodhisattwa Gautam v. Miss Subhra Chakraborty, the court emphasised that these are crimes against society and cannot be settled through marriage or money.[12]

The Supreme Court of India has consistently held that plea bargaining was unconstitutional, illegal, and against public policy even before the introduction of Chapter XXI-A Criminal Procedure Code. Because the practice was not legally recognised, there are no cases where it was adopted in a formal sense. Instead,

[9] Murlidhar Meghraj Loya v. State of Maharashtra, 1976 AIR 1929/ (1976) 3 SCC 684.
[10] State of Gujarat v. Natwar Harchandji Thakor, (2005) 1 GLR 706.
[11] Kasambhai Ardul Rehmanbhai Shaikh v. State of Gujarat, (1980) 3 SCC 120.
[12] Bodhisattwa Gautam v. Miss Subhra Chakraborty, (1996) 1 SCC 490.

there are several landmark cases where the courts have declared plea bargaining unconstitutional and unsuitable, especially in serious or gender-related crimes.

The Malimath Committee Report[13]

The Malimath Committee, formally known as the Committee on Reforms of the Criminal Justice System, played a pivotal role in the formal introduction of plea bargaining in India. Chaired by Justice V.S. Malimath, the committee argued that the Indian criminal justice system was on the verge of collapse due to massive case backlogs and inordinate delays.

The committee's support for plea bargaining was rooted in the need for speedy justice and reducing the burden on the judiciary. The committee largely endorsed that plea bargaining could resolve the grave problem of trial delays. It identified plea bargaining as a critical tool for the disposal of accumulated cases. By allowing a mutually satisfactory disposition, the court could save time and resources for more serious offences. Plea bargaining could counter the risk of coercion. The committee recommended that the process be overseen by a judge and that the accused must file an affidavit stating their choice was voluntary and made after understanding the consequences. It also suggested that the court should examine the accused in camera to ensure the plea wasn't forced by the police or the prosecution.

While the committee viewed plea bargaining as a pragmatic necessity, it faced significant criticism from human rights groups. It was argued that the report shifted the focus from justice to conviction rates, potentially undermining the presumption of innocence. Human rights advocates warned that poor under-trials, unable to afford long legal battles, would be coerced into pleading guilty just to escape indefinite jail time. It was further argued that instead of fixing the

[13] ommittee on Reforms of Criminal Justice System (Malimath Committee Report), Ministry of Home Affairs, Government of India, 2003. Refer chapters on "Simplification of Procedures" and "Arrears of Cases." https://www.mha.gov.in/sites/default/files/2022-08/criminal_justice_system%5B1%5D.pdf?hl=en-IN

shortage of judges and poor investigation quality, the committee offered a shortcut that compromises the quality of justice.

However, the Malimath Committee emphasised that plea bargaining should not apply to gender-based crimes. The primary reasoning was that in a patriarchal society like India, a woman who has been a victim of a crime might be coerced or pressured by family or the accused into settling the matter through a plea bargain. By excluding these crimes, the law aims to protect the victim from secondary victimisation and ensure that serious offenders do not escape the full weight of the law through a negotiation. These offences are too grave or involve vulnerable victims, making a bargain inappropriate. Similarly, offences against children below the age of 14 are ineligible. Further, plea-bargaining is unsuitable for any crime punishable by death, life imprisonment, or a term exceeding 7 years and crimes that affect the socio-economic condition of the country.

Following the Malimath Report, the Indian government passed the Criminal Law (Amendment) Act, 2005, which officially inserted plea bargaining into the Code of Criminal Procedure in Chapter XXI-A (which now corresponds to Chapter XXII of BNSS). Today, these provisions remain a core part of the Indian legal landscape, intended to balance judicial efficiency with the rights of the accused.

Post 2005 Amendment to Cr. P. C.

The transition from the Code of Criminal Procedure (CrPC), 1973, to the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, marks a pivotal moment for "negotiated justice" in India. While the BNSS aims to modernise the criminal justice system through technology and victim-centricity, it maintains a strict "no-bargain" stance for gender-based crimes (GBC), preserving the ethical wall between judicial efficiency and the non-negotiable dignity of women.

The Bharatiya Nagarik Suraksha Sanhita, 2023, hereinafter BNSS, specifically in Sections 289 to 300 (corresponding to Sections 265A to 265L under Chapter XXI-A of the CrPC), continues the Indian tradition of excluding gender-based

crimes from the purview of plea bargaining. Section 289 of BNSS[14] explicitly bars plea bargaining for offences committed against women or children below the age of fourteen. This legislative continuity emphasises a deep-seated state policy that GBCs are crimes against society and cannot be reduced to a private transaction between the accused and the victim. However, the BNSS introduces a critical procedural shift by imposing a 30-day time limit under Section 290[15] of BNSS for filing a plea-bargaining application from the date of framing charges.

---

[14] Section 289 – Application of Chapter- (1) This Chapter shall apply in respect of an accused against whom—
a) the report has been forwarded by the officer in charge of the police station under section 193 alleging therein that an offence appears to have been committed by him other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force; or
(b) a Magistrate has taken cognizance of an offence on complaint, other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years, has been provided under the law for the time being in force, and after examining complainant and witnesses under section 223, issued the process under section 227,
but does not apply where such offence affects the socio-economic condition of the country or has been committed against a woman, or a child.
(2) For the purposes of sub-section (1), the Central Government shall, by notification, determine the offences under the law for the time being in force which shall be the offences affecting the socio-economic condition of the country.

[15] Section 290- Application for Plea bargaining- (1) A person accused of an offence may file an application for plea bargaining within a period of thirty days from the date of framing of charge in the Court in which such offence is pending for trial.
(2) The application under sub-section (1) shall contain a brief description of the case relating to which the application is filed including the offence to which the case relates and shall be accompanied by an affidavit sworn by the accused stating therein that he has voluntarily preferred, after understanding the nature and extent of punishment provided under the law for the offence, the plea bargaining in his case and that he has not previously been convicted by a Court in which he had been charged with the same offence.
(3) After receiving the application under sub-section (1), the Court shall issue notice to the Public Prosecutor or the complainant of the case and to the accused to appear on the date fixed for the case.
(4) When the Public Prosecutor or the complainant of the case and the accused appear on the date fixed under sub-section (3), the Court shall examine the accused *in camera*, where the other party in the case shall not be present, to satisfy itself that the accused has filed the application voluntarily and where—
(a) the Court is satisfied that the application has been filed by the accused voluntarily, it shall provide time, not exceeding sixty days, to the Public Prosecutor or the complainant of the case and the accused to work out a mutually satisfactory disposition of the case which may include giving to the victim by the accused the compensation and other expenses during the case and thereafter fix the date for further hearing of the case;
(b) the Court finds that the application has been filed involuntarily by the accused or he has previously been convicted by a Court in a case in which he had been charged with the same offence, it shall proceed further in accordance with the provisions of this Sanhita from the stage such application has been filed under sub-section (1).

As the Indian system provides no legal pathway for plea bargaining in GBC cases, a shadow system of informal compounding has emerged in its place.[16] In many matrimonial disputes under the Protection of Women from Domestic Violence Act or Section 85 BNS[17] (corresponds to Section 498A IPC), the parties often reach a settlement through mediation or community intervention. To give this legal effect, the parties must approach the High Court under its inherent powers provided under Section 528 BNSS[18] (corresponds to Section 482 CrPC) to quash the criminal proceedings on the grounds that the dispute is personal or matrimonial in nature. This is in essence a form of de facto plea bargaining. The danger here is that these settlements are often reached in a vacuum of judicial oversight, where a survivor may be coerced by family pressure or financial desperation to compromise her pursuit of justice in exchange for a peaceful divorce or child custody.[19]

However, Compounding of offences under Section 359 of BNSS is not the same as plea bargaining. In compounding, there is no admission of guilt, and the accused is not punished. Therefore, he goes away with a clean record. On the other hand, in plea bargaining, there is an admission of guilt, and the accused is convicted and punished, maybe for reduced charges or a reduced sentence.

The Plea-Bargaining Dilemma in GBC

However, the ethical dilemma involved in the application of plea bargaining to the GBC raises the fundamental question whether justice for a violation of bodily integrity truly be bargained? Plea bargaining in these cases possibly trivialises the gravity of the offences. When a charge of sexual assault is bargained down

[16] Gian Singh v. State of Punjab, (2012) 10 SCC 303 and B. S. Joshi v. State of Haryana, (2003) 4 SCC 675.
[17] Section 85 - Whoever, being the husband or the relative of the husband of a woman, subjects such womantocrueltyshallbepunishedwithimprisonmentforatermwhichmayextendto three years and shall also be liable to fine
[18] Section 528- Saving of inherent powers of the High Court- Nothing in this Sanhita shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.
[19] UN Women, Handbook on Justice for Victims of Abuse of Power, (2024).

to simple battery to ensure a quick win, the legal system disregards the survivor's experience. This process of downgrading offences through the plea-bargaining process obscures the gendered nature of the violence, treating a systemic human rights violation as a mere administrative hurdle. Furthermore, it undermines the principle of deterrence. Every potential offender may perceive that the legal consequences of GBC are negotiable, which may in turn extinguish the fear of severe punishment. Here, the law loses its power to express that such behaviour is intolerable in a civilised society.[20]

Another significant risk in negotiated justice is the imbalance of power between the parties. In GBC, there is no parity between the offender and the survivor. Survivors often face extreme psychological trauma, societal pressure, preservation of family honour, or economic dependence on the perpetrator, especially in domestic violence cases, and usually accept the option of plea bargaining.[21] This shows that the survivors are weak and are susceptible to exploitation in the guise of plea bargaining in the hands of the powerful and influential offenders. In such a situation, consensual resolution can easily become a mask for coercion. If the prosecution prioritises disposal rates over the survivor's long-term welfare, then the survivor may feel pressured to accept a plea that does not reflect the harm suffered.[22]

Unlike open trials, plea bargaining often occurs behind closed doors. This lack of transparency is particularly dangerous for GBC, which are crimes against the public conscience and morality. When justice is negotiated in private, the community is deprived of its right to see the law enforced in the case and the

[20] Coker, D. (2001). Crime Control and Feminist Law Reform in Domestic Violence Law: Critical Review. Buffalo Criminal Law Review.

[21] Pleas, Plea Bargaining, and Domestic Violence: Procedural Fairness as an Answer to a Failing Process, by David Suntag (2021), https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1769&context=ajacourtreview&hl=en-IN#:~:text=Page%201,David%20Suntag

[22] Lynch, G. E. (1997). Our Administrative System of Criminal Justice. Fordham Law Review.

society's interest to see that the perpetrator is held publicly accountable.[23] This system of shadow justice created by plea bargaining can lead to inconsistent sentencing, where the outcome of a case depends more on the negotiating skill of a lawyer or the caseload of a prosecutor than on the merits of the case or the needs of the victim. For a legal system to be credible, it must be seen to be doing justice, which plea bargaining often fails to satisfy.[24]

To bridge the gap between efficiency and justice, the discourse must shift toward a restorative model of negotiation. A survivor-centric approach to plea bargaining should not just be about a lighter sentence, but about reparative measures. This could include mandatory sensitivity training for the offender, financial restitution that covers therapy and medical costs, and a formal admission of the specific harm caused. By integrating restorative principles, plea bargaining can move from being a "shortcut" to a meaningful tool for empowerment. It requires the law to treat the survivor not as a mere witness for the state, but as a central stakeholder with the right to be consulted and heard during the negotiation process.

The USA Context

In the United States, the legal landscape for plea bargaining in gender-based crimes is fundamentally different from India. While India strictly prohibits plea bargaining for crimes against women, the U.S. legal system allows and frequently uses plea bargaining for almost all types of criminal cases, including domestic violence and sexual assault[25].

In fact, roughly 95% of criminal cases in the U.S. are resolved through plea bargains rather than trials. In the U.S., prosecutors have prosecutorial

[23] UN Women, Handbook on Justice for Victims of Abuse of Power, (2024).
[24] Schulhofer, S. J. (1992). Plea Bargaining as Disaster. Yale Law Journal.

[25] Plea Bargaining Under BNSS - Legal Eagle Elite, https://legaleagleweb.com/articalsdetail.aspx?newsid=100&hl=en-IN

discretion to offer deals. In gender-based crimes, this usually takes two forms. First, a defendant charged with Aggravated Sexual Assault (a high-level felony) might be allowed to plead guilty to Sexual Battery or Fourth-Degree Assault. Secondly, the defendant pleads guilty to the original charge in exchange for the prosecutor recommending a lighter sentence, e.g., probation instead of 5 years in prison.[26]

Plea bargains are often utilised in gender-based crimes for specific reasons; trials for sexual assault can be deeply re-traumatising. A plea deal ensures a conviction without forcing the victim to testify and face aggressive cross-examination. Further, the case relies solely on he-said, she-said, without DNA or physical evidence, prosecutors may offer a deal to ensure some punishment rather than risking a not guilty verdict at trial.[27]

In many states of the USA, first-time domestic violence offenders are offered plea deals involving Diversion Programs like anger management or batterer intervention. If completed, the charges may be dismissed.

In the Jeffrey Epstein Case[28] (2008 - Florida): Epstein was accused of sex trafficking dozens of underage girls. The Federal prosecutors entered into a Non-Prosecution Agreement (NPA). Epstein pleaded guilty to only one state-level charge of soliciting a minor for prostitution. He served only 13 months in a private wing of a county jail with work release. This case is widely cited as an example of a "sweetheart deal" that failed to reflect the gravity of the gender-based violence committed.

[26] Plea Bargaining Research Summary - Bureau of Justice Assistance, https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/PleaBargainingResearchSummary.pdf?hl=en-IN
[27] ibid.
[28] U.S. Department of Justice - Office of Professional Responsibility Report on the Epstein Investigation, https://www.justice.gov/opr/page/file/1336471/dl?hl=en-IN

In the "Jay" Case[29] (2024 - Washington State): A child rape case that took four years to resolve. Despite strong opposition from the victim and her family, the prosecutor dropped the first-degree child rape charges. The defendant pleaded guilty to third-degree child molestation. The defendant received only 12 months in jail. This case illustrates charge bargaining, where serious sexual assault is reduced to a lesser offence to ensure a guaranteed conviction without the risk of a trial.

In Ray Rice[30] (2014 - New Jersey)The NFL player was caught on camera punching his then-fiancée in an elevator. He entered a Pre-Trial Intervention (PTI) program, a form of diversion plea. After completing the program, the third-degree aggravated assault charges were completely dismissed.

The statistical data show that in the U.S., a majority of gender-based crimes never reach a jury. Recent data from King County, Washington (2024), reveals that over 60% of sex crime convictions are the result of plea deals. In many of these deals, the defendant pleads to a non-sex offence like simple assault or disorderly conduct.[31]

Because plea deals are often made behind closed doors, many states have passed Marsy's Law. This gives victims of gender-based crimes the right to be first notified that a plea deal is being discussed. Secondly, consult with the prosecutor before the deal is finalised. Thirdly, address the judge during the Plea Colloquy, which is the hearing where the judge accepts the deal.[32] Even with Marsy's Law,

[29] Over half of sexual assault cases in King County end in plea deals - Cascade PBS/InvestigateWest, https://www.cascadepbs.org/news/2024/09/over-half-sexual-assault-cases-king-county-end-plea-deals/?hl=en-IN

[30] Ray Rice Elevator Assault Timeline - TIME Magazine, https://time.com/3329351/ray-rice-timeline/?hl=en-IN

[31] King County Sexual Assault Resource Center (KCSARC) - Navigating Justice Report, https://www.kcsarc.org/en/navigating-justice-report/?hl=en-IN

[32] U.S. Courts - Types of Sentences/Plea Bargaining, https://www.uscourts.gov/about-federal-courts/types-cases/criminal-cases?hl=en-IN

the victim typically does not have the power to veto a plea deal. The prosecutor ultimately decides what is in the interest of the state.[33]

The study till now raises two important research questions for consideration, firstly, should there be plea bargaining for GBC? Secondly, should the plea bargaining in GBC be victim-centric?

In answering the first research question, we can refer to the success of plea bargaining in GBC cases in the USA, where it is achieving guaranteed conviction in a difficult crime case scenario.

In Ghislaine Maxwell & Associate Deals (2021–2025): While Maxwell herself was convicted at trial, several associates in the broader Epstein investigation were offered "non-prosecution agreements" or plea deals in exchange for cooperation. These are considered successful by the Department of Justice (DOJ) as they provided the testimony necessary to secure a 20-year sentence for Maxwell, the primary enabler.[34]

In Julian Assange Plea (2024): Though primarily a national security case, it involved complex gender-based legal history (related to past sexual assault allegations in Sweden). The 2024 plea deal resolved a decade-long international standoff, showing how the U.S. uses "time served" pleas to close high-stakes cases without the unpredictability of a new trial.[35]

In the case of Larry Nassar, a federal case against the former USA Gymnastics doctor, plea bargaining allowed dozens of victims to see a guaranteed life

[33] Marsy's Law for All Official Site, https://www.marsyslaw.us/?hl=en-IN

[34] Restorative Justice: A New Conversation for Victims and Offenders, https://judicature.duke.edu/articles/restorative-justice-a-new-conversation-for-victims-and-offenders/?hl=en-IN

[35] Domestic Violence and Sexual Assault Fact Sheet, http://nnedv.org/wp-content/uploads/2025/06/DVSA%20Fact%20Sheet%20-%20May%202025%20-%20FINAL.pdf?hl=en-IN

sentence without every single one of the hundreds of survivors having to undergo a gruelling cross-examination in a federal trial.[36]

In the USA, according to the USSC 2024-25 Annual Report, the conviction by plea is 89.2% for GBC as compared to 97.3% for federal offences. Conviction by trial in GBC cases 10.8%, and for federal offences it is 2.7%.[37]

Efficiencies and Inefficiencies of Negotiated Justice

Plea-bargaining is a very flexible approach in the adjudication of GBC. First, GBC cases in India often drag on for decades. Plea bargaining could provide immediate closure, sparing victims the trauma of repeated court appearances and aggressive cross-examinations. Secondly, in many GBC cases, witnesses turn hostile due to social pressure or fear. Plea bargaining ensures the perpetrator receives some punishment, rather than a total acquittal due to lack of evidence.[38] Thirdly, under now Chapter XXII of the BNSS (Chapter XXI-A of the CrPC), plea bargaining requires a satisfactory disposition which includes compensation. This provides immediate financial support to the victim for rehabilitation. Fourthly, with millions of cases pending, allowing bargaining for lesser gender-based offences like stalking or voyeurism could free up resources for more heinous crimes like rape.[39]

The Supreme Court of India and the legislature remain opposed to plea bargaining in GBC for several fundamental reasons. First, allowing a man to negotiate his way out of a crime against a woman sends a message that the woman's dignity has a price. It undermines the social stigma and deterrent effect of criminal law. Secondly, in State of Uttar Pradesh v. Chandrika[40] The SC held

---

[36] Criminal Victimization, 2024, https://bjs.ojp.gov/library/publications/criminal-victimization-2024?hl=en-IN

[37] 2004 Annual Report, Unites States Sentence Commission, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2024/2024-Annual-Report.pdf?hl=en-IN

[38] Madanlal Ramachandra Daga v. State of Maharashtra, (2007) 11 SCC 372.

[39] State of Gujarat v. Natwar Harchandji Thakor, (2005) 1 GLR 706.

[40] State of Uttar Pradesh v. Chandrika, (1999) 8 SCC 638

that serious crimes are not private matters between two people but are against the conscience of society. Bargaining away justice is seen as polluting the fount of justice. Thirdly, there is a grave risk that victims may be coerced into a satisfactory disposition by their families or the accused's families, leading to forced settlements under the guise of plea bargaining. Fourthly, in Kasambhai Ardul Rehmanbhai Shaikh v. State of Gujarat[41] The Court observed that plea bargaining could lead to an unreasonable, unfair and unjust procedure, potentially violating Article 21 Right to Life and Liberty.

Need for Survivor Centric Negotiated Justice

In answer to the second research question i. e., there is a need to move from expediency to gender-sensitive justice. The Indian framework must evolve beyond a binary of full trial or total exclusion. A Survivor-Centric Negotiated Justice model could be introduced into the Indian Criminal Justice System. There should be a judicial vetting of settlements. Even in quashing petitions, courts must conduct a prima facie inquiry to ensure the settlement is not a result of coercion. Further, there has to be restorative justice integration. Instead of just dropping charges, the BNSS should allow for Compounding with Conditions, where the accused must undergo mandatory gender-sensitisation or provide long-term maintenance or reparations. The law should provide for legal aid at the negotiation stage. Survivors must have access to independent legal counsel during any mediation or settlement discussions to mitigate power imbalances.[42]

In the USA, several cases of plea bargaining have been described as misuse of law by pressurising the victim, with no veto power given to the victim, as the prosecution decides the case in the interest of the state, which is to reduce the

[41] Kasambhai Ardul Rehmanbhai Shaikh v. State of Gujarat, (1980) 3 SCC 120

[42] Verma, J. S. (2013). Report of the Committee on Amendments to Criminal Law (India), https://adrindia.org/sites/default/files/Justice_Verma_Amendmenttocriminallaw_Jan2013.pdf?hl=en-IN

burden of the judiciary, etc. Cases like Jeffrey Epstein[43], Jay[44], Ray Rice[45], etc., are instances of the fact that the prosecution has entered into sweetheart deals with the accused by dropping the charges of severe crimes to lesser ones, despite opposition from the victims and their family members. By merely undergoing a diversion program of anger management, serious charges of assault have been dismissed. Therefore, in all these cases, justice for the victim is only a myth. Therefore, there is a need to have a victim-centric plea-bargaining process.

Conclusion

While Indian statutes maintain a rigid prohibition against plea bargaining in gender-based crimes, a parallel shadow system of informal compounding has effectively bypassed these barriers. This de facto plea bargaining, however, operates within a judicial vacuum. Without robust oversight, the pursuit of justice is often traded for economic or domestic finality, leaving survivors vulnerable to coerced compromises where systemic pressure rather than genuine restoration dictates the legal outcome.[46] Further, there is also a possibility of a 'sweetheart deal', which refers to a plea bargaining or settlement that is considered excessively lenient or unusually favourable to the defendant, often at the expense of justice or the public interest. While a standard plea bargaining involves a fair trade, i. e., a slightly reduced sentence in exchange for a guaranteed conviction, a 'sweetheart deal' is characterised by a perceived gross imbalance in the concessions made by the prosecution.[47] This system of plea-

[43] U.S. Department of Justice - Office of Professional Responsibility Report on the Epstein Investigation, https://www.justice.gov/opr/page/file/1336471/dl?hl=en-IN

[44] Over half of sexual assault cases in King County end in plea deals - Cascade PBS/InvestigateWest, https://www.cascadepbs.org/news/2024/09/over-half-sexual-assault-cases-king-county-end-plea-deals/?hl=en-IN

[45] Ray Rice Elevator Assault Timeline - TIME Magazine, https://time.com/3329351/ray-rice-timeline/?hl=en-IN

[46] UN Women, Handbook on Justice for Victims of Abuse of Power, (2024).

[47] U.S. Department of Justice - Office of Professional Responsibility Report on the Epstein Investigation, https://www.justice.gov/opr/page/file/1336471/dl?hl=en-IN

bargaining already exists in the criminal justice system; however, there is a need to change the law to curtail this practice.

Plea bargaining is an imperfect but perhaps inevitable tool in the modern criminal justice system. Its application to gender-based crimes, however, must be guarded with rigorous ethical safeguards. There should not be a blanket prohibition of plea bargaining for GBC. Plea bargaining is a very suitable method for the quick disposal of cases of domestic violence and cruelty. In such cases, speedy resolution of cases that otherwise take 5 to 10 years to complete gives quick financial support to the party in the form of alimony and preserves the marital relationship as well. However, the chances of misuse of this plea-bargaining process cannot be denied. For instance, in the Sacred Heart Case[48] and Flynn and Moffa[49] cases, the accused, though being innocent, entered into a plea-bargaining agreement due to the fear of social stigma, fear of losing a job or custody over the child, etc. But this cannot be the reason why plea bargaining should be refused in GBC, like domestic violence, cruelty, stalking, voyeurism, etc. However, serious crimes like rape, dowry death, etc., cannot be bartered.

The quest for judicial efficiency must never be allowed to supersede the dignity of the survivor or the state's obligation to challenge systemic gender inequality. Negotiated justice in GBC should be measured not by how quickly a case is disposed of, but by how effectively it empowers the survivor and upholds the sanctity of human rights.[50]

[48] Judge: Woman who made false rape claim must finish probation, https://apnews.com/general-news-b874c331f0b3eed428f4b429427b213e?hl=en-IN

[49] Misidentified Victim-Survivors as Domestic and Family Violence Perpetrators: Plea Negotiations as a Tool for Justice? https://academic.oup.com/bjc/article/65/5/1053/7941850?hl=en-IN

[50] U.S. Department of Justice - Office of Professional Responsibility Report on the Epstein Investigation, https://www.justice.gov/opr/page/file/1336471/dl?hl=en-IN