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Historical Origins of Plea Bargaining

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ABSTRACT

Plea bargaining has a complicated and lengthy history and is a contentious practice in criminal judicial systems all around the world. This essay examines its beginnings, following its development from mediaeval Europe to modern uses in the United States and India. The paper dives deeply into important issues, covering the distinctions between explicit and implicit plea bargaining, the functions of judges and prosecutors, and the ongoing discussions over its ethical and procedural ramifications. Plea bargaining is under scrutiny owing to issues with justice and due process, despite benefits like reduced caseloads and increased efficiency. The varying levels of acceptance and implementation across various legal systems are clarified, as well as the impact of Supreme Court rulings on how it is to be applied. This essay aims to provide a thorough account of plea bargaining's historical development and current significance. It encourages reflection on past and contemporary dynamics with the goal of guiding future improvements and reforms in criminal justice systems around the world.

Keywords: *plea bargaining, implicit plea bargaining, historical perspective, prosecution, criminal justice.*

I. INTRODUCTION

In the Merriam-Webster dictionary, plea bargaining is defined as 'the negotiation of an agreement between a prosecutor and a defendant whereby the defendant is permitted to plead guilty to a reduced charge' [2] The practice of plea bargaining is very controversial. Often, the historical origin of plea bargaining has been taught to be either an innovation or corruption of the courts after World War II; however, it has much deeper historical roots. Until recently, the History of Criminal Justice, until recently, has been generally neglected by historians. Thus, it is hardly any surprise that the history of plea bargaining is a fairly blank chapter in the history of criminal justice. According to American Legal Historian Lawrence M. Friedman, as given in his paper, "Plea Bargaining in Historical Perspective", the available materials are local and elusive, and these scattered materials are nothing more than guesswork.

Some reports have suggested that traces of plea bargaining can be seen during the Salem Witch

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[2] Marriam Webster, https://www.merriam-webster.com/dictionary/plea%20bargaining, accessed on: March 16, 2023

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Trials, a series of hearings and prosecutions of people accused of witchcraft in colonial Massachusetts in 1692. The 17th-century Puritans may not have used the term. However, they were well-versed in the concept. Any defendant who confessed to witchcraft and named others as witches were allowed to live.[3]

Friedman has called it "one law review note put together a rather skimpy collection of cases from the nineteenth and twentieth centuries" [4] Professor Milton Heumann, presenting a quantitative historical study of plea bargaining, has exerted that plea bargaining is as old as the nineteenth century.[5] Friedman acknowledges that the study is valuable, but he has argued that Heumann has failed to provide any direct evidence, and the inferences have been made based on the high rate of guilty pleas.

II. PLEA BARGAINING IN THE 19TH CENTURY

Friedman has pointed out that the existing sources suggest that, at least in certain places, there was some sort of plea bargaining in the nineteenth century. While systematic studies go as back as 1880, a letter from the Home Office in England to a magistrate complaining about the practice as, in order to avoid the charges of robbery, which carried a heavier penalty, offenders plead guilty to the charges of "stealing from the person", portray that the allusions to the practice of plea bargaining can be traced back to 1860s. The Home Office had contended that "Permission to plead guilty followed by a trifling sentence" was no deterrent to crime at all.[6]

Around roughly the same time, the District Attorney in New York encouraged defendants to plead guilty to lesser offences; however, such bargains were "under the table". [7] In the early twentieth century, such bargains became common, and it was attributed to the congestion in the courts. Plea bargaining was more widely discussed in the 1920s and 1930s, with more and more data appearing in different studies, articles and crime commission reports. The popularity of plea bargaining from the 1950s on gave rise to an enormous amount of literature on the subject from scholars like Miller, Heumann and Alschuler[8]

While the origin of plea bargaining has been attributed to the congestion in the courts, the study

[3] Kevin O'Kelly, *The Evidence of Things Unseen: The Legal World of the Salem Witch Trials*, 2006
[4] Lawrence Friedman, *Plea Bargaining in Historical Perspective*, Law & Society Review, *13*(2), 247–259., 1979 https://doi.org/10.2307/3053251
[5] Milton Heumann, *The Experiences of Prosecutors, Judges, and Defense Attorneys*, 1978
[6] Public Records Office, Home Office Papers No. 60, Vol. 7, p. 57 (from H. Waddington, Whitehall, to T. B. Burcham, Esq., Southwark, 1862
[7] Herbert Miller et. al., *Plea Bargaining in the United States* Accessed by: https://www.ojp.gov/pdffiles1/Digitization/40484NCJRS.pdf
[8] Justin Miller, *The Compromise of Criminal Cases*, 1 S.Cal.L.Rev. 1 (1927); Milton Heumann, *The Experience of Prosecutors, Judges and DEfense Attorneys*, Chicago: Chicago University Process, 1978

 [ISSN 2581-5369]

conducted in Alameda County by Friedman shows that that is not the case. The Superior Court of Alameda County was organised in 1880, and the presence of plea bargaining can be felt from the very beginning. Most cases have unambiguous characteristics– notably a change in the plea from innocent to *guilty of a lesser charge*. For instance, in 1880, Albert McKenzie, an agent of the Willcox and Gibbs Sewing Machine Company, was accused of embezzlement. The charge was that he took in $52.50 in "gold coin" and simply kept the money. On December 15, 1880, McKenzie pleaded not guilty. However, on February 7th, 1881, the date the court had set the case down to be tried, McKenzie asked to withdraw his plea, and offered to plead guilty to embezzling an amount less than $50, "which with the consent of the District Attorney is by the court allowed". He was sentenced to six months in jail.[9] This was a clear case of plea bargaining, and this was not a unique case as multiple such cases can be seen. Sometimes the "deal" consisted of forgetting about prior convictions. For instance, in 1888, when Charles Dana was arrested, he told the policeman that "he would go down and plead guilty if we would take priors off him" [10]

The aforementioned cases show that plea bargaining is by no means a recent development; to the contrary, it is a century old or even older. Thus, the argument that the crowded dockets of modern cities are to be attributed to the origins of plea bargaining does not stand. The population of Alameda County was about 60,000 in 1880, and the felony caseload was mere 100 cases a year in the 1880s. It cannot be shrugged off as the product of "corruption either.

However, the current version of plea bargaining is different from what was prevalent in the nineteenth century, and it was less dominant in the nineteenth century than it is today in some places. The negotiation usually led to a guilty plea to a lesser charge in the nineteenth century. However, in the current scenario, the defendant is charged with a long list of offences by the prosecution and then bargains to drop some or most of them. However, in the nineteenth century, "Overcharging", if it existed at all, was rare.

Writing in the 1960s, Alschuler talks about prosecutors who throw in every charge there is even spitting on the sidewalk. An Oakland prosecutor has been quoted as saying that if a robber forced his victim to move from one room to another, he'd file a kidnapping charge.[11] There is very little evidence showing this happened in the nineteenth century, but we cannot be absolutely sure that it did not happen once in a while.

The prosecutors were willing to bargain for obvious reasons. When the case against the

[9] Crim. No. 51 (1880), Alameda County Superior Court, Case Files
[10] Crim. No. 930 (1888), Alameda County Superior Court, Case Files
[11] Crim. No. (1968), Alameda County Superior Court, Case Files

 [ISSN 2581-5369]

defendant was weak, he would try to salvage the situation by persuading the defendant to plead guilty to *something*. For instance, in 1902, a horse trainer named William McCormick was charged with murder for shooting and killing a groom on the ranch. Admitting that he could not prove malice as McCormick had been dead drunk when he killed the groom, The Assistant District Attorney moved the Superior Court to reduce the charge from murder to manslaughter, and the court granted the motion; McCormick pleaded guilty to manslaughter.[12] In Another case in 1890, John Ulrich was accused of larceny. The victim refused to come to court for the trial because she lived far away and her child was sick. Perhaps doubtful about a conviction without his main witness, the District Attorney let him plead guilty to petty larceny.[13]

Judges have a limited role in bargaining, and they rarely object to the practice of changing pleas. For instance, in the aforementioned McKenzie case, the judge allowed him to plead guilty to embezzling less than $50 despite evidence showing that he either stole more or nothing. Similarly, In 1888, John Feno was charged with breaking into a railway car. He pleaded guilty to second-degree burglary, and the court accepted the plea. However, second-degree burglary meant burglary by day and first-degree burglary were those that were carried out at night. E. H. Howard, Feno's companion had been charged and convicted with first-degree burglary implying that the burglary *had* taken place at night.[14] However, Ah Young, who was charged with petty larceny but had a prior conviction that made petty larceny a felony. He offered to plead to petty larceny if the prosecution would look past his prior conviction. The defendant was convicted as the judge refused. Mostly, judges did not question whatever was irrational or inconsistent in the system.

III. IMPLICIT PLEA BARGAINING

The phrase "implicit plea bargaining" is used by Milton Heumann to describe a situation where the defendants plead guilty when they realise that they are better off if they plead guilty and thus, there is no "bargaining" *per se*.[15] Many plead guilty in order to avoid the punishment of a heavier sentence if they go to trial. There is an understanding between the prosecution and the judges and the defense attorneys pass the word to the client. Thus, a bargain is made inspite of the fact that not a word has been spoken alluding to a deal.

Undoubtedly, implicit plea bargaining takes place even today; however, it is hard to find evidence due to its subjectivity as implicit plea bargaining depends on a number of factors like

[12] Oakland Tribune, pg. 3, May 16, 1903
[13] Crim. No. 1142 (1890), Alameda County Superior Court, Case Files
[14] Crim. No. 840 (1888), Alameda County Superior Court, Case Files
[15] Milton Heumann, *The Experiences of Prosecutors, Judges, and Defense Attorneys*, 1978

 [ISSN 2581-5369]

the state of mind of the judge and the defendant which cannot be followed systematically as they are not standardised. Occasionally, however, we can see what is going on behind the curtains as was the case in Alameda County in 1910 when Louis Schroeder pleaded guilty to grand larceny, the Judgev Everett Brown informed him that Schroeder would be dealt with leniently for the cooperation and be given the "full benefit" and "credit" for having entered a plea of guilt.

It is possible to capture the effect of implicit plea bargaining in numbers, once in a while. For instance, according to Missouri Crime Survey, an urban defendant reduced his chances of going to prison by 50%, if he pleaded guilty. The knowledge that pleading guilty was rewarded had become ubiquitous and sometimes, it even became a matter of life and death! For instance, in 1927, Joseph Sandoval was awarded the death sentence by the Governor of California but everyone believed that if he had not acted in accordance with the wishes of his lawyer and had pleaded guilty, the death sentence would not have been imposed.[16]

The data collected by Friedman and Percival indicate that implicit plea bargaining was higher than explicit bargaining. According to the questionnaire sent out by the Yale Law Journal in the 1950s, two-thirds of the federal district judges acknowledged that the defendant's plea was taken into consideration when awarding the sentence, it was especially relevant plea of guilt where a defendant who pleaded guilty was rewarded with a "more lenient" sentence than the defendant who pleaded innocent. [17]

Irrespective of implicit or explicit plea bargaining, it has been argued by Milton Heumann that a high percentage of guilty pleas is a sign of plea bargaining. Unless the defendant expects something out of it, there is no reason for him to plead guilty and give up any chance at all to go free, for, even in open-and-shut cases, there is always a chance of getting an acquittal. While some defendants plead guilty out of remorse, sheer hopelessness or self-hatred, to avoid spending money on a trial and be done with things, or to avoid the humiliation and shame that comes with the process, it hardly explains the behaviour of the great mass of defendants.

Guilty Pleas had become quite prevalent in the US for more than a century which is indicated by the data collected by Raymond Moley, which shows that guilty pleas in the 1920s accounted for more convictions than bench or jury trials in rural as well as urban areas. For instance, in the state of New York, in 1839, one-quarter of the cases resulted in guilty pleas; by 1850, guilty

[16] Govenor Clement Calhoun Young, *Reprieves, Commutations, and Pardons*, pg. 34 (1927-1928)
[17] "*Comment: The Influence of the Defendant's Plea on Judicial Determination of Sentence"*, 66 Yale Law Journal 204, 1956

 [ISSN 2581-5369]

pleas accounted for half of all convictions.[18]

High rates of guilty pleas also indicate some sort of inducement. Case in point, in Franklin County, Ohio, in the 1930s, 84.7% of the 450 convictions was the result of guilty pleas. When analysed closely, it can be seen that most of them were in jail, and the prosecutors promised them that their cases would be brought up sooner but only if they pleaded guilty, while others were left to contemplate their errors. The Defense Attorneys appointed by the court were young, inexperienced and underpaid lawyers whose best strategy was to convince their clients to plead guilty, which saved time and effort all around. [19]

In 1906, Arthur Train wrote about the conditions prevalent in New York. He writes about the court officers who, in order to get popular as the "plea getters", would go to the prison pen and haggle with the prisoners over pleas; they would paint a pessimistic and daunting picture of the trial, going as far as to describe the jury as a heartless crew and the prosecutors as relentless and fierce. The end result was an entire population of prison pens pleading guilty. However, the flow of the guilty pleas was dependent upon what happened to the first batch of prisoners who pleaded guilty; if they were awarded a harsh sentence in spite of pleading guilty, the flow dried up.[20]

Until after the Second World War, implicit plea bargaining was more than explicit plea bargaining, evident from the fact that *initial* guilty pleas were prominent till the 1930s, levelled and declined. In the 1970s, the defendants pleaded not guilty at the beginning of the trial and later, through their lawyers and bargained.

Between 1880 and 1970, there was a shift from a mixed system where some chose a trial by jury; others plea-bargained; and still, others pleaded guilty and claimed their "reward", a system which was prevalent at the beginning of the twentieth century to a system where defendants pleaded guilty, hoping for a lenient sentence which lasted till about the 1950s and finally, the modern system where the defendants, through their lawyers have an outright negotiation rather than an "understanding" while conversely, the prosecutors, in order to strengthen their bargaining position would "overcharge". The proportion of acquittals shrank as Trial by Jury was chosen by fewer and fewer defendants.

IV. THE TRIAL BY JURY

Alameda County was not an anomaly; however, there were places in the nineteenth century

[18] Raymond Moley, *Politics and Criminal Prosecution,* 1929
[19] William James Blackburn Jr., *The Administration of Criminal Justice in Franklin County, Ohio*, 1935
[20] Arthur Train, *The Prisoner at the Bar*, 1906

 [ISSN 2581-5369]

where guilty pleas were rare, and defendants mostly went for a trial by jury. However, it is imperative to note the manner in which these trials unfolded. These were not long-drawn, tense trials; on the contrary, they barely lasted for half an hour. A jury was selected haphazardly; the victim and one or two witnesses were heard; sometimes the defendant brought in a witness or made a statement; arguments were advanced, and within a span of few minutes, the jury was charged, retired, voted and returned; the court immediately moves on to hear the next case on the list. For instance, in Leon County in Florida, known for handling severe offences, as many as 6 "trials" took place a day in the 1890s, including jury selection and verdict delivery. The average time spent on such trials could not have exceeded an hour per trial, possibly even shorter. [21]

Even today, where plea bargaining is not common, full-length trials are not the norm either; they have "brief informal trials".[22] Even if a full-scale trial were ever the norm, the eventual rise of prosecutors and professional police would have put an end to it anyhow. In the course of the nineteenth century, with the advancement in society and the increase in professionals in the system, society started looking at full-length trials in a new light– they realised that trial need not always be the sole manner to deal with an accused. Perhaps, a part of the public felt that an additional stage— trial by jury, after the accused had already been tried by the police and the prosecution was an unnecessary financial burden and a waste of time. The nineteenth-century criminal system also transformed itself to implement reformative measures such as probation and parole to deal with delinquents. However, in the case of "hardened criminals", the people were indifferent to the police deviating from the due processes that needed to be followed. The better class of citizens preferred that the police were brutal and uncompromising in dealing with such criminals.

(A) Albert W. Alschuler

According to Alschuler, who has admitted to his bias as a strong opponent of plea bargaining, plea bargaining consists of the exchange of official concession for the act of self-conviction and the defendant may be rewarded with a concession in the sentence, offences charged etc. The benefit that the defendant has to offer remains the same— a plea of guilt.

From the earliest days of common law, it has been possible for an accused to get convicted by acknowledging one's own guilt. [23] In fact, even before the Norman Conquest of 1066, "Confession" was a possible means of conviction. None of the famous common law treaties

[21] *Minute Book*, Volume 10, Circuit Court, Leon County
[22] Martin Levin, *Urban Politics and Criminal Courts*, 1977
[23] Chap. 3, The Constition of Clarendon, 1164; Chap. 13, The Assize of Clarendon, 1166

 [ISSN 2581-5369]

written by scholars such as Glanville, Bracton, and Britton has mentioned or alluded to guilty pleas. On the contrary, defendants in the medieval period were known for denying every sort of charge, which is evident from the hundreds of reported cases. Pleading guilty can be found only in a handful of cases. [24]

Even when common law treaties alluded to the guilty plea, they indicate that judges did not accept the guilty plea without any hesitancy. For instance, in the 1689, Matthew Hale had written that when the defendant confessed it was a conviction however judges, many a times, insisted that the defendants plead and put himself on the trial. [25] According to Ferdinando Poulton, plea of not guilty was common and was received with great favour by the law. [26] Blackstone's *Contemprories on the Laws of England* observed in the mid-18th century that courts generally advised defendants to retract guilty pleas.[27] English and American writers like Chitty [28] and Stephen [29] noted and approved the judicial phenomenon.

However, the most notable critic of the established procedure in guilty plea cases was Jeremy Bentham.[30] He argued that when an accused, out of his own guilty consciousness, for atonement to his sins pleads guilty, as the appointed minister of righteousness, the judges should accept the guilty plea and not encourage them to repent the repentance and substitute the truth with a barefaced lie. Rather than advocating for a liberal acceptance of guilty pleas, he argued that it should be abolished and in place should be placed a system which would carefully and rigorously examine the defendant to ensure that he is guarded against undue influence brought upon himself by his own imbecility and imprudence.

According to the study conducted by Professor John H. Langbein of the Old Bailey during the late seventeenth and eighteenth centuries , jury trials were very rapid and especially in cases where neither of the parties were represented by a counsel, jury hastily and informally chosen that would hear several cases before retiring, and the underdeveloped law of evidence. Between twelve to twenty were heard in a single day. Accordingly, Langbein observed that pressure for plea bargaining was accordingly small and however, he found that there were a number of cases where the defendants were urged to stand for trial despite initially pleading guilty.[31] For instance, in the case of Stephen Wright in 1973, Wright agreed to plead guilty for robbery to

[24] Roy Hunnisett, The Medieval Coroner 69, 1961
[25] Matthew Hale, *History of the Pleas of the Crown* 225, 1736
[26] Ferdinando Pulton, *De Pace Regis et Regni,* 184, 1609
[27] William Blackstone, *Commentaries on the Laws of England,* 1765
[28] Joseph Chitty, *Criminal Law* 429, 1816
[29] Henry John Stephen, *Commentaries on the Laws of England,* 394, 1874
[30] Jeremy Bentham, *Rationale of Judicial Evidence*, 316, 1827
[31] John Langbein, *The Criminal Trial before the Lawyers,* 45 **U. CHI. L. REV. 263 (1978)**

 [ISSN 2581-5369]

spare the court the troubles of holding a trial and in exchange, hoped that the court and the jury would recommend executive commutation of the death sentnec mandated for the crime. However, the court urged him to stand for trial and he was informed that he would not get any favourable verdict unless he agreed to stand trial and eventually Wright yielded to the court's advice.

Similarly, in the earliest reported American decision on guilty plea reveals that it was no different in America. In Commonwealth v Battis [32], a black man was accused of raping a 13 year old white girl, breaking her head with a stone and throwing her body into the water and thereby, killing her. The defendant pleaded guilty to the indictments for rape and murder however, the court informed him of the consequences of his actions and told him that he has no moral or legal obligation to plead guilty. He was told that he can deny the charges and the government had the burden to prove. When he refused to retract the guilty plea, he was remanded to prison and thereupon he was told by the court that he would be given a reasonable time to think about his decision. The clerk was directed not to record his plea. Upon returning, the defendant still pleaded guilty and the court examined the sanity of the defendant and an enquiry was conducted to see if there was any undue influence inducing him to plead guilty. When it was found that neither was he insane nor as there any undue influence, the clerk was then directed to record the plea on both the indictments. The report concluded that defendant had since been executed. United States v Dixon was the other case before the Civil War to discuss guilty plea extensively and the court was successful in this case in convincing he defendant to withdraw his plea.

During the formative years of common law, the court was reluctant to receive pleas of guilty. Firstly, these pleas were distrusted because, as William Auckland, a contemporary of Blackstone, points out, many pleaded guilty for offences that were not even committedout of sheer hopelessness and thus there was a major possibility of driving the innocent to destruction. [33]

Another factor was the English felony defendants were not represented by a counsel and thus, it was the basic duty of the trial judge that the defendants should not suffer due to the sole reason that they are not well-versed with legal technicalities. This meant that the court had to act like the defendant's counselor and not solely in judicial capacity. Another reason for the discouragement of guilty pleas was that the punishment for every felony was death. Thus, every

[32] Common Wealth v Battis, 1 Mass, 95, 1804
[33] William Auckland, *Principles of Penal Law*, 167, 1771

 [ISSN 2581-5369]

guilty plea meant an act of suicide. However, a recommendation from the trial judge ensured the King's Pardon and there were other reprieves to nullify a death penalty.[34] Thus, judges did exercise substantial descrition as far as executive clemency was concerned, however in spite of this, there was no exchange of leniency for pleas of guilty.

Staundford's Pleas to the Crown published in 1560, [35] the first English treatise solely dedicated to Criminal Law formally requires that a guilty plea has to be voluntary and one arising from "fear, meanace or duress" cannot be recorded. In Rex v. Warickshall, [36] one of the most popular confession cases, it was declared that a confession obtained by promise of favour was inadmissible; a confession obtained by promises of hope or fear was not credible and should be inadmissible. Thus, the basic rule now and then is that an out-of-court confession obtained in exchange of promise of leniency by an authority is not admissible. By this rule, almost all pleas of guilty, even the modern-day plea bargaining would be inadmissible. The modern-day courts and scholars have attempted to escape this predicament by introducing a difference between guilty pleas and out-of-court confessions. [37] Thus, even though the judicial phenomenon of guilty plea existed 8 centuries ago, the uage of the term "guilty plea" is very recent; prior to that it has been simply called "confession".

The practice of "approvement" is the common law's earliest form of bargaining for information. The private felon agreed to confess to his guilt and indict the other participants in the crime. The judge would then balance the benefits and danger of pardoning the accused for, if the appeal of the defendant is successful, he would automatically be pardoned. Thus whether or not to approve the defendant's offer was a matter of grace and discretion.[38] However, according to the later practice that became prevalent in the late 19th century, whenever a felon was permitted to testify against his accomplices, he gained an equitable title to pardon. Until the mid-nineteenth century, the courts forbade the accused from testifying against less-culpbale accomplices and prosecutors from bargaining for such a testimony on the ground that the power to grant leniency was a judicial power. On the other hand, public prosecutors in many American jurisdictions were allowed to displace the trial judge in deciding whether to allow an accomplice to testify in exchange for a pardon on the reasoning that the prosecutor was best suited to judge whether an accomplice's testimony was needed in light of the other evidence available to the state. [39]

[34] Fenton Bresler, *Reprieve: A Study of a System*, 1965
[35] Staundeford, *Pleas to the Crown*, 1560
[36] Rex v. Wrickshall, 168 E.R. 234, 1783
[37] Albert Alschuler, *The Supreme Court, The Defense Attorney, and the Guilty Plea*, 47 U. COLO. L. REV.1, 52-55 & n. 172, 1975
[38] Matthew Hale, *History of the Pleas of the Crown* 225, 1736
[39] The Whiskey Case, 99 U.S. 594, 603, 1878

 [ISSN 2581-5369]

V. PLEA BARGAINING IN INDIA

In India, plea bargaining is dealt with by Section 265A to 265L, Chapter XXIA of the Criminal Procedure Code.[40] This was inserted through the Criminal Law (Amendment) Act, 2005 that amended the Criminal Procedure Act, 1973 and it allows for plea bargaining in offences where the maximum punishment is 7 years; the socio-economic conditions of the country is not affected by the offense; the offence is not committed against a woman or a child below 14 years.

Plea bargaining in the Indian Criminal System was first recommended by the 154th Law Commission Report as an alternative to deal with the immense burden of cases.[41] A committee was formed under the chairmanship of Justice V. S. Malimath called the Malimath Committee. The report produced by the Committee suggested that the introduction of plea bargaining would reduce the number of criminal cases pending in India and thus, reduce the burden of the courts. The success of the plea bargaining system in the US was cited.[42]

Plea Bargaining in India is somewhat controversial; critics argue that this can lead to prsocutors being given too much power and may lead to wrongful convictions. Some argue that it is against Article 20 (6)[43] of the Constitution which gives the right against self-incrimination. On the other hand, the supporters of plea bargaining argue that there would be a reduction in the burden on the courts and it would also lessen the financial costs incurred when holding a trial as well as save time.

The Supreme Court of India has played a significant role in shaping the use of plea bargaining in the country. In 2005, the Supreme Court issued a landmark decision in the case of Murlidhar Meghraj Loya v. State of Maharashtra[44], which paved the way for the introduction of plea bargaining as a formal legal procedure in India. In this case, the court recognized the potential benefits of plea bargaining, such as reducing the burden on the courts and promoting efficiency in the criminal justice system. However, the Supreme Court has also been cautious about the use of plea bargaining, particularly in cases where the defendant may not fully understand their rights or the implications of pleading guilty. Overall, the Supreme Court of India has played a vital role in shaping the use of plea bargaining in the country. While the court has recognized the potential benefits of plea bargaining, it has also been careful to ensure that defendants are fully informed and that the process is fair and transparent. As plea bargaining continues to

[40] Section 265A to 265L, Chapter XXIA of the Criminal Procedure Code, 1973
[41] 154th Law Commission Report, 1996
[42] The Committee on Reforms of (the) Criminal Justice System, 2000
[43] Article 20(6), The Constitution of India, 1950
[44] Meghraj Loya v. State of Maharashtra, (1976) 3 SCC 684

 [ISSN 2581-5369]

evolve in India, the role of the Supreme Court will remain crucial in ensuring that it is used effectively and ethically in the criminal justice system.

Despite the legal provisions ensuring that plea bargaining is an option, it is still not as widely practiced as it is the US where 90% of the cases end up un plea bargaining. Many of the lawyers as well as defendants are either unaware about such provisions or reluctant to use it. There are also concerns particularly in cases where the defendant may not necessarily be aware of their rights or understand the implications of pleading guilty.

VI. CONCLUSION

In conclusion, plea bargaining has a long and complex history. From its origins in medieval Europe to its current form in modern-day America and beyond, plea bargaining has evolved and adapted to meet the changing needs of the criminal justice system. While there are many criticisms of plea bargaining, including concerns about fairness and due process, it remains a widely-used tool for resolving criminal cases around the world. As our understanding of plea bargaining continues to develop, it is important to critically examine its historical roots and consider how it can be used to improve our criminal justice systems in the future.

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