

Reimagining Justice: The Intersection of Plea Bargaining and The Shift from Retribution to Restoration

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Abstract

The global criminal justice landscape is shifting from retributive to restorative approaches, challenging long-standing notions of punishment and deterrence. Retributive justice, which emphasizes proportionate punishment as a response to crime, has dominated legal systems for centuries. However, increasing concerns over its effectiveness, fairness, and social impact have led to exploring restorative justice, an alternative model that seeks to repair harm, promote accountability, and engage victims, offenders, and communities in the justice process. As the ancient Chinese philosophy of Daoism talks about living with harmony, Restorative Justice also similarly talks about the concept of giving opportunities to the parties to mitigate the harm caused and stay in harmony.

This paper critically examines the role of plea bargaining within this transitional context. Traditionally viewed as a mechanism to expedite case resolution and reduce court congestion, plea bargaining has often been criticized for undermining due process, coercing guilty pleas, and marginalizing victims. At the same time, its flexibility and adaptability raise the essential question: Can it serve as a bridge between retributive and restorative justice?

This paper explores whether plea bargaining can evolve to support restorative outcomes by analysing theoretical frameworks and comparative legal practices. It identifies the limitations of current plea-bargaining systems such as power imbalances, lack of victim involvement, and opacity and proposes reforms to make the process more participatory and just.

The paper argues that while plea bargaining is not inherently restorative, it holds potential for transformation. With appropriate safeguards, transparency, and the integration of restorative practices, more meaningful justice outcomes could be achieved. The paper concludes that reimagining plea bargaining within a restorative justice framework offers a promising path toward a more humane, accountable, and equitable justice system.

Keywords: *Retributive justice, restorative justice, Daoism, plea bargaining, equitable justice system.*

INTRODUCTION

Crime has existed throughout history. It is regarded as a transgression against the state rather than an individual, which is why the state punishes the perpetrator. By doing so, the government must find a middle ground between safeguarding the defendant's fundamental liberties and preserving society's security. Two significant models exist for addressing crime.¹

In the offense control paradigm, the primary emphasis is on punishing the accused, with little regard for the accused's legal rights. This model prioritizes efficiency above accuracy. The primary objective is to impose punishment on the perpetrator to establish deterrence within society. A different approach is the due process model, which is founded on the principles of an equitable and impartial

¹ Herbert L Packer, *The Limits of Criminal Sanction* 142-160 (Stanford University Press, 1968).

criminal justice system. This strategy prioritizes safeguarding the constitutional freedoms of the accused.

This paradigm ensures the implementation of fair trials, with due consideration to the accused's fundamental rights. The Indian Criminal Justice System operates on the framework of the due process model. The Indian constitution includes provisions for fundamental rights to ensure that the accused's rights are neither compromised nor abolished. The Code of Criminal Procedure encompasses multiple rights regarding the accused. The SC of India has issued rulings that underscore the significance of guaranteeing a just trial and expeditious dispensation of justice.

RESTORATIVE JUSTICE: AN OVERVIEW

Restorative justice aims to rectify the harm caused by a crime to the greatest extent possible. Restorative justice acknowledges that when a crime happens, it causes specific harm and subsequently aims to mitigate the effects of the crime to the greatest extent possible given the circumstances. As the ancient Chinese philosophy of Daoism talks about living with harmony, Restorative Justice also similarly talks about the concept of giving opportunities to the parties to mitigate the harm caused and stay in harmony. An effort is being made to convene all parties involved in the crime, including the victim and offender, to collectively address the consequences of the offense and determine the most effective approach to managing its aftermath. Direct dialogue between the victim and offender is highly significant within the restorative justice framework. The primary objective is to execute tasks with utmost excellence. The concept of restorative justice dates back to ancient times and was practiced among various tribes. The limited notion of revenge was due to a deliberate effort to prevent wars and conflicts. Nevertheless, restorative justice became obsolete during the Norman conquest of Britain in the 11th century. Restorative justice began gaining popularity in modern times, specifically in the 1970s, when it originated in Canada. Restorative justice is a reconciliatory approach used in various situations where one party is seen as the victim. This concept can be applied to domestic disputes and international conflicts. However, it has primarily been developed within the context of crime, making it most suitable for criminal cases. Restorative justice can be seen as a social movement and a comprehensive solution to crime, as it aids both the accused and the victim and strives to reinstate their roles in society. Crime is a prerequisite for the application of restorative justice, as it aims to restore the state that existed before the occurrence of the crime.² This is why restorative justice concepts can be employed in cases where a crime has already occurred, making crime a necessary condition for applying restorative justice principles. Restorative justice prioritizes the principles of peace and mercy.³ Restorative justice also holds theological and moral value. Prominent global religions and secular humanism endorse the concept of restorative justice.⁴ All major global faiths endorse restorative justice. Within the framework of Christianity, both the Old and New Testaments endorse the idea of restorative justice.⁵ Jesus Christ advocated for the rejection of revenge and retaliation, emphasizing the need to offer an opportunity for restitution instead.⁶ Vengeance and reprisal are ultimately incapable of yielding a lasting resolution. Restorative justice provides two advantages: firstly, it acknowledges the rights of the victim, which are entirely disregarded in the retributive framework; secondly, given that the victim is the individual directly affected by the

² Brenda Blackwell & Clark Cunningham, Taking the Punishment Out of the Process: From Substantive Criminal Justice Through Procedural Justice, 67 LAW & CONTEMP. PROBS. 59, 68–69 (2004).

³ Mark Umbreit, Restorative Justice in the 21st Century: A Social Movement Full of Opportunities and Pitfalls, 89 MARQ. L. REV. 251, 254 (2005).

⁴ Lode Waalgrave, Restorative Justice, Self-interest and Responsible Citizenship 2 (Willan Publishing House, 2008).

⁵ Daniel Philpott, Just and Unjust Peace: An ethic of Political Reconciliation 68 (Oxford University Press, 2012).

⁶ U.S. Catholic Bishops, Responsibility, Rehabilitation and Restoration: A Catholic Perspective on Crime and Criminal Justice 17 (United States Catholic Conference, 2000).

offense, it is crucial to address their needs and strive to restore the harm to the greatest extent possible. Restorative justice allows the accused to reintegrate into society as a responsible citizen following the completion of reparations for the damage they have caused. Hinduism also upholds the concept of restoration, which posits that if one individual genuinely desires to atone, it becomes a moral imperative for the affected person to grant forgiveness. In Islam, it is believed that if someone genuinely repents and is forgiven by the person who was harmed, Allah will absolve one of the sins committed by the person who suffered the loss and chose to ignore the wrongdoer. References to forgiveness can also be found in the literary works of Buddhism and Jainism. The world's major religious traditions and secular humanism endorse the restorative justice concept. Society is perceived as a complex network of ties characterized by interdependence and connectivity, necessitating peaceful coexistence. In restorative justice, the objective is to ensure that the accused comprehends the extent of the hurt inflicted upon the victim, acknowledges their duty, and subsequently endeavors to rectify the damage created. The significance of conversations and deliberations has grown significantly. The concept of restorative justice also underscores the importance of openness and attentiveness to one another's perspectives. It is crucial to prioritize active listening and empathetically comprehend differing perspectives. Comprehending the damage we have caused and, after that, making efforts to rectify it to the best of our ability are essential prerequisites for the peaceful continuity of society.

Table: Core Elements of Restorative Justice

COMPONENT	PURPOSE
Victim Participation	Voice and healing
Offender Accountability	Acceptance of responsibility
Community Involvement	Social reintegration
Reparation	Repairing harm
Dialogue	Conflict resolution

RESTORATIVE JUSTICE AND CRIME

Retributive justice is founded on imposing punishment when a criminal law is violated. The government establishes criminal statutes, and whenever an individual violates these statutes, the government punishes the accused. Retributive justice views a crime as an offense against the state rather than against an individual. This is because the state represents the community and has been entrusted with safeguarding itself against all forms of criminal activity. The state's essential role is to protect its population from external aggression and internal law and order issues that arise within a society. Restorative justice diverges from the concept of retribution. The primary objective of restorative justice is to prioritize restoration and rectify the damages incurred to the greatest extent possible. It strives to optimize things to the best of its ability. Restorative justice prioritizes the needs and interests of the victim, recognizing them as the principal persons affected by the crime while assigning a secondary and less active role to the state.⁷ Restorative justice aims to comprehend the victim's viewpoint and empowers the victim to express their thoughts and feelings. It endeavors to understand the whole of the physical and psychological distress experienced by the victim, as well as the victim's specific needs and expectations in such circumstances. The rehabilitation process involves talking and deliberating between the perpetrator and the victim.⁸ Direct interpersonal exchanges between the perpetrator and the victim are widely seen as a critical characteristic of restorative justice. An effort is made to ensure that the accused comprehends the consequences of their acts on the victim and assumes complete accountability while endeavoring to mitigate the effects. The victim is

⁷ David Mieers, *The Responsibilities of the Rights of Victims of Crime*, 55 MOD. L. REV. 482, 496 (1992).

⁸ Paul McCold & Ted Wachtell, *In Pursuit of Paradigm: A Theory of Restorative Justice*, RESTORATIVE PRACTICES FORUM (Aug. 12, 2003), www.restorativepractices.org.

expected to publicly articulate their grievances and the specific needs most suitable for addressing them. The conventional legal system did not completely disregard the victims' concerns; instead, it relegated them to a subordinate place. The concept of restorative justice has altered this attitude. The optimal result of the restorative justice process is the mutual advantage for both the accused and the offender. Retributive justice involves two parties: the offender and the state. In contrast, restorative justice involves the offender, the victim, and the community. In contrast to the traditional legal system, the restorative justice model relegates victims to a subordinate position while assigning a more passive role to the state. Restorative justice perceives crime as an act beyond the simple breach of penal statutes. Society is a complex network of interconnected individuals, and restorative justice recognizes that crime disrupts these interconnections among people. The primary emphasis of restorative justice lies not in the punitive treatment of the wrongdoer but rather in restoring and repairing the harm inflicted. An effort is being made to achieve a mutually agreeable resolution to rebuild the relationship among the people of the community.⁹

CRITICISM OF RESTORATIVE JUSTICE

A prominent critique of restorative justice is its exclusive emphasis on legal transgression, disregarding the moral agency of the accused individual responsible for the wrongdoing.¹⁰ A crime constitutes not only a violation of the law but also a deterioration of the moral standing of the perpetrator.¹¹ Restorative justice does not evaluate this specific component of crime. Moreover, the crime's repercussions are not entirely negated, as there remains room for the community's and state's collective wrath, representing the community. The crime's impact extends beyond the victim, affecting the community and society. Reparation can rectify the tangible damage caused by the crime to a more significant degree, but it cannot alleviate the psychological distress resulting from the act. The victim's enduring psychological anguish cannot be fully alleviated through monetary compensation. If an individual unlawfully confiscates another person's belongings, any psychological distress endured by the victim as a result of the confiscation cannot be fully alleviated with monetary compensation. The issue becomes considerably more severe when the damage inflicted is bodily. If an individual delivers a forceful blow to another person's face, it is irrefutable that the act cannot be reversed or undone. The irreversible physical damage caused by an act cannot be reversed, regardless of the sincerity in expressing remorse. Neither guilt nor sorrow will be adequate in such instances, and such feelings of remorse and repentance can achieve no restitution. Crime also has a pervasive influence. Crime pervasively impacts society, and society as a whole bears the repercussions. The crime's conduct has disrupted the community's peace and tranquility. A tranquil atmosphere is fundamental for individuals to attain their objectives and prosper. Whenever a crime occurs, it affects the victim and has repercussions for the entire society. Crime has a profound effect on society's collective consciousness. Crime can serve as a motivating factor for other members of society to engage in criminal behavior, indicating that society as a whole has a vested interest in the crime, not just the victim. Crime encompasses both the violation of legal statutes and the moral transgression that leads to the moral decline of the perpetrator. Reparation does not eliminate moral deterioration.¹² Hence, the wrongdoer must be subjected to retribution to rectify the transgression in a more holistic manner and for the wrongdoer to restore their moral equilibrium.¹³

RETRIBUTIVE JUSTICE: AN OVERVIEW

⁹ Heather Strang & Lawrence Sherman, *Repairing the Harm: Victims and Restorative Justice*, 15 UTAH. L. REV. 1, 15 (2003).

¹⁰ Gerry Johnson, *Restorative Justice: Ideas, Values and Debates* 85 (Routledge Press, 2011).

¹¹ *Ibid.*

¹² *Ibid.*

¹³ G.W.F. Hegel, *Philosophy of Right* 248 (Clarendon Press, 1952).

A crime is an act that is deemed to be a violation of the law and is punishable through a criminal proceeding initiated by the state.¹⁴ In the retributive paradigm, the state fulfills four crucial roles in crime. The state is responsible for creating and enforcing penal laws, determining guilt through the judiciary, and administering punishment if guilt has been established. The state imposes punitive measures on the perpetrator to safeguard society. The state penalizes wrongdoers to uphold society's organization and security. The punishment also facilitates the offender's moral rehabilitation, which was compromised during the commission of the crime.¹⁵ The state establishes penal statutes, and whenever an individual violates these statutes, the state punishes the accused. Retributive justice views a crime as an offense against the state rather than against an individual, since the state represents the community and is entrusted with safeguarding it from all forms of criminal activity. The state's essential role is to protect its population from external aggression and internal law and order issues that arise within a society. The traditional concept of retribution was founded on seeking revenge, achieved by inflicting suffering. The incremental advancement was that punishment should be commensurate with the offense. According to the revised concept of retribution, it is believed that the wrongdoer merits punishment, and the defendant must be punished after culpability has been shown. Efforts are being made to counterbalance the negative impact on society. To atone for the moral responsibility of the wrongdoer, it is crucial to administer punishment to the wrongdoer. Furthermore, it benefits society by establishing deterrence and discouraging other individuals from engaging in criminal activities. Reparation can compensate for the offense's tangible aspect, whereas enforcing penalties can absolve moral responsibility. The concept of restorative justice was present within the tribes. In addition, Roman law permitted individuals to resolve conflicts using mutual agreement. Nevertheless, retributive justice gained prominence following the Norman conquest in the 11th century.¹⁶ The principle of retribution upholds safeguarding the moral framework, hence promoting the collective welfare of society. The concept of retributive justice is founded upon the notion of human autonomy. The choice made by the perpetrator determines it. Suppose the state has established that engaging in criminal activity x results in penalty y , and the perpetrator chooses to commit said crime. In that case, it is inferred that they have willingly chosen to endure the repercussions. The underlying premise is that punishment is crucial when an offense has been committed, as it is the only way justice can be restored.

CRITICISM OF RETRIBUTIVE JUSTICE AND THE NEED FOR RESTORATIVE JUSTICE

Retributive justice has specific significant concerns. The notion of revenge has proven ineffective in establishing a deterrent for offenders.¹⁷ Furthermore, this practice is deemed unfair to the wrongdoer as it deprives them of sufficient chances to reintegrate into society. Its effectiveness in ensuring social safety has been largely disproven.¹⁸ Additionally, it is pretty onerous due to the expenses associated with social resources. Despite the implementation of retributive principles, there has been a rise in the number of individuals incarcerated. The primary consequence of this situation is experienced by the relatives of the perpetrators, who are profoundly traumatized.¹⁹ The fabric of society relies on dependency and interconnectedness, and the ideas of retribution are not particularly practical in

¹⁴ Halsbury's Laws of England 271 (Bubs Merrill and Co. 1955).

¹⁵ Michael Moore, The Moral Worth of Retribution 182 (Ferdinand Schoeman ed., 1987).

¹⁶ Mark Umbreit, Betsy Vos, Robert Coates & Elizaabeth Lightfoot, Restorative Justice in the Twenty-First Century: A Social Movement Full of Opportunities and Pitfalls 89 MARQ. L. REV. 251, 255 (2005).

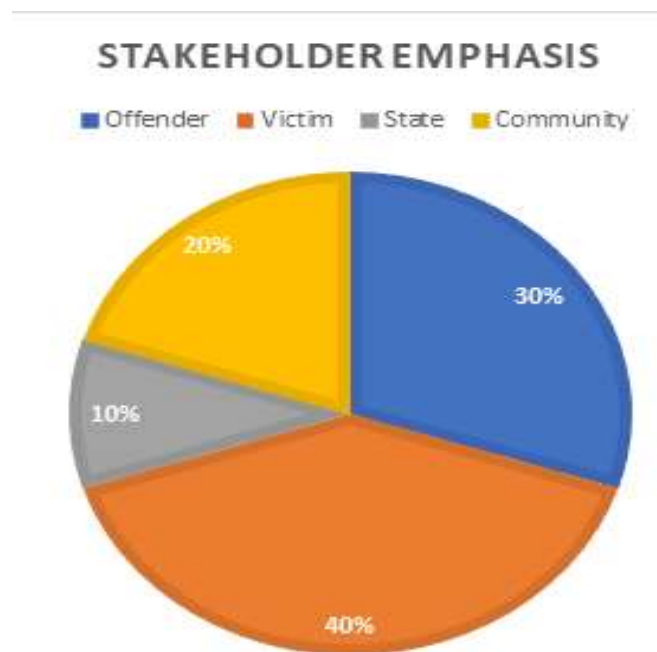
¹⁷ Theo Gavrielides, Reconciling the Notions of Restorative Justice and Imprisonment, 94 PRISON J. 479, 479–80 (2014).

¹⁸ Ibid.

¹⁹ Tom Tyller, Restorative Justice and Procedural Justice: Dealing with Rule Breaking, 62 J. SOC. ACTION 307, 308 (2006).

repairing damaged ties. It could have been more effective in achieving the intended deterrence. The primary drawback of retributive justice is its disregard for the victims.²⁰ Victims have historically been seen as the most neglected component of the conventional legal justice system. The victims are rendered silent and assume a highly passive role within the confines of the traditional legal justice system. The neglect of the victims' wants and requirements exacerbates the challenges in their recovery process. The conventional legal system's deterrence is effective only in specific circumstances and for particular offenses and offenders.²¹ The traditional criminal justice system offers limited opportunities for rehabilitation, and such rehabilitation is infrequent. Instead, it exacerbates the process of stigmatization and categorization, hindering the individual's reintegration into society. An inherent issue with retributive justice is that it does not consistently prioritize the specific needs and desires of the victims.²² Society is a complex network of institutions, and people's well-being contributes to society's overall well-being. Societal alienation is a significant issue, and the implementation of a retributive approach exacerbates this problem. The potential for discussion between the victim and the offender is limited, exacerbating their estrangement. Restorative justice challenges this prevailing viewpoint by prioritizing the victims' voices and elevating their importance. Restorative justice is a comprehensive approach that considers all those affected by a crime, aiming to guide all parties towards a mutually agreeable resolution. The restoration concept revolves around recuperation, encompassing the need for physical and psychological restitution. Restorative justice posits that the damage can be rectified. The victim can be restored to a state of well-being. At the same time, the offender can be afforded the chance to remedy the damage and assume the responsibilities of a law-abiding member of society.

Illustrative representation of the stakeholder-centric approach of restorative justice.



Note: The chart is conceptual and does not represent empirical data. It is prepared by the author to

²⁰ Mark Umbret, Crime Victims Seeking Fairness, Not Revenge: Toward Restorative Justice, 53 FED. PROBATION 52, 52 (1989).

²¹ Lode Wallgrave, Restorative Justice for Juveniles: Just a Technique or a Fully Fledged Alternative, 34 HOWARD J. CRIME & JUST. 228, 229 (1995).

²² Heather Strang & Lawrence Sherman, Repairing the Harm: Victims and Restorative Justice, 15 UTAH L. REV. 1, 15 (2003).

illustrate the relative emphasis placed on various stakeholders within restorative justice theory, based on the works of Howard Zehr and restorative justice scholarship.

JOURNEY FROM RETRIBUTION TO RESTORATION

When a crime occurs, society is obligated to address and manage the crime. Various strategies exist for addressing crime. Retributive justice and restorative justice are the primary methods for addressing the issue of crime. Retribution serves as a rationale for exacting revenge on the wrongdoer. The consequences of vengeance have been identified as severe punishment and a growing incarcerated population.

Nevertheless, an alternative approach is increasingly gaining popularity: restorative justice. Restorative justice aims to rectify the situation to the greatest extent feasible.²³ It endeavors to reinstate the circumstances that existed before the perpetration of the offense. Retribution is based on the notion of administering punishment for a breach of the criminal law established by the government.

The concept of revenge is founded on the premise that a crime is perpetrated against the state,²⁴ Which serves as the embodiment of the community. Any infraction of penal law constitutes an offense against the state rather than against a person. The primary purpose of the state's establishment was to safeguard law and order and ensure its citizens' protection from external threats and internal disturbances. Consequently, whenever a crime is committed, the state assumes the duty of punishing the perpetrator to prevent societal damage and to preserve social harmony.

Restorative justice diverges in its methodology for addressing criminal offenses. Restorative justice centres around examining the inflicted injury, the requirements of the victim and the community, and the duties and obligations of the offender towards the victim and the community. The payback model prioritizes the offender's punishment by the state, with less emphasis on the victim's role within the criminal justice system.

However, restorative justice aims to convene all the individuals and groups involved in the crime and facilitate a resolution that fosters harmony, aiming to address the victim's concerns to the greatest extent feasible. Restorative justice acknowledges that when a crime happens, it causes specific harm. Once this is acknowledged, restorative justice aims to mitigate the effects of the crime to the greatest extent possible given the circumstances. An effort is being made to convene all parties involved in the crime, including the victim and offender, to collectively address the consequences of the offense and determine the most effective approach to handling its aftermath. Direct dialogue between the victim and offender is significant within the restorative justice framework.

The concept of restorative justice dates back to ancient times and was practiced by several cultures. The limited notion of revenge was due to a deliberate effort to prevent wars and conflicts. Nevertheless, restorative justice became obsolete during the Norman conquest of Britain in the 11th century. Restorative justice began to acquire popularity in modern times, specifically in the 1970s, with its origins in Canada.²⁵

While the retribution and restoration models may appear to have distinct tactics and strategies for addressing crime, their ultimate objective is establishing justice and fostering a harmonious community conducive to peaceful living. Advocates of restorative justice support the implementation of Alternative Adjudicatory Mechanism approaches for criminal conflicts to promote the restoration and peaceful settlement of disputes.

²³ Howard Zehr, *The Little Book of Restorative Justice* 37 (Good Books, 2002).

²⁴ Jeffrie G. Murphy, *Forgiveness & Mercy* 28 (Cambridge University Press, 1998).

²⁵ Marian Liebman, *Restorative Justice: How it works* 38 (Jessica Kingsley Publishers, 2007).

Reimagining Justice: The Intersection of Plea Bargaining and The Shift from Retribution to Restoration

The concept of crime has been ingrained in human culture from its inception. Crime is a topic that has been present in even the earliest civilizations. Upon the occurrence of a crime, society bears the obligation to address and manage said crime. Various strategies exist for addressing crime. Retributive justice and restorative justice are the primary methods for addressing the issue of crime. Retribution is employed as a rationale for imposing retribution upon the wrongdoer. The consequences of vengeance have been identified as severe punishment and a growing incarcerated population. Nevertheless, an alternative approach, restorative justice, is increasingly gaining popularity. Restorative justice aims to rectify the situation to the greatest extent feasible.²⁶ It endeavors to reinstate the circumstances that were in place before the perpetration of the offense. The concept of retribution is based on administering punishment for a breach of the criminal law established by the government. The idea of revenge is founded on the premise that a crime is perpetrated against the state, representing the community. Any infraction of a penal law constitutes an offense against the state rather than against a person. The primary purpose of establishing a state was to safeguard law and order and protect its citizens from external aggression and internal disturbances. Consequently, whenever a crime is committed, the state is responsible for punishing the perpetrator to prevent societal harm and maintain social harmony. Restorative justice diverges in its methodology for addressing criminal offenses. Restorative justice centres around examining the inflicted injury, the requirements of the victim and the community, and the duties and obligations of the offender towards the victim and the community. Within the framework of retribution, the primary emphasis lies on the state's punishment of the offender, with relatively little regard for the victim's significance within the broader criminal justice system.²⁷ However, in the context of restorative justice, the objective is to convene all the relevant individuals and groups involved in a crime and facilitate a resolution that promotes harmony, aiming to address the victim's concerns to the fullest extent feasible. While the retribution and restoration models may appear to have distinct approaches and methods for addressing crime, their ultimate objective is to achieve justice and establish a harmonious society where individuals can lead tranquil lives.

PLEA BARGAINING & INDIAN LAW

In the traditional criminal law framework, the burden of proof lies with the state to establish the guilt of the accused beyond a reasonable doubt. The implementation of plea bargaining is a significant departure from the conventional notion. Plea bargaining is a legal arrangement in which the accused and the prosecution negotiate before the trial begins. The accused might choose to admit guilt in exchange for a reduced sentence compared to what is typically given for the crime committed. Plea bargaining has played a key role in the United States, alleviating the burden of cases on the judiciary. It has resulted in the expeditious resolution of cases and attaining swifter justice, a key objective of any criminal justice system.

Plea bargaining's constitutional legality was affirmed in the United States.²⁸ The court has determined that the rights of the accused are crucial in any criminal justice system. It has been established that plea bargaining does not impede the accused's rights, as it is purely the accused's decision to participate in plea bargaining.²⁹ The concept of plea bargaining has generated divergent public opinion. Advocates contend that it expedites legal proceedings, reduces costs for parties involved, alleviates the workload on the courts, and promotes prompt administration of justice.

Conversely, opponents argue that it diminishes the efficacy of the criminal justice system and

²⁶ Ibid.

²⁷ Tony Marshall, *Restorative Justice in Britain International Research Perspectives* 15-28 (Kluwer Academic Publications, 1992).

²⁸ *Brady v. US* 397 U.S.742.

²⁹ 434 U.S. 357.

infringes upon the rights of victims whenever any concessions are granted to the accused. Furthermore, it has been noted that using plea bargaining can potentially lead to an escalation in criminal activity. An essential issue with plea bargaining in India is the potential for the prosecution to coerce the accused into admitting guilt, so violating a fundamental tenet of criminal law and resulting in the wrongful conviction of an innocent individual.

While the Indian Law Commission consistently advised the implementation of plea bargaining, the judiciary was hesitant and resistant because it believed it was unethical and contradicted fundamental principles of the criminal justice system. Multiple reports from law commissions emphasized the necessity of including provisions for plea bargaining, prompting the incorporation of the notion of plea bargaining in India.

The judiciary initially exhibited hesitancy in embracing the very concept of plea bargaining. An evident change can be observed in the judiciary's initial position. The law's primary objective is to facilitate efficient, expeditious, and cost-effective resolution of disputes between parties. The court determined that the statute is subject to change and that significant changes are necessary to alleviate the court's heavy workload, which is already overwhelmed by the large number of unresolved criminal cases.³⁰

In the conventional understanding of criminal law, it is incumbent upon the state to establish the guilt of the accused by providing convincing evidence that leaves no room for doubt. The implementation of plea bargaining is a significant departure from the conventional notion. Plea bargaining is when the accused and the prosecutor agree before the trial begins. The accused might admit to committing the crime in exchange for a reduced sentence than what is usually given for that charge. Plea bargaining has been a prominent and influential practice in the US, aiding in alleviating the judiciary's caseload. It has resulted in the expeditious resolution of cases and attaining swifter justice, a vital objective of any criminal justice system. The constitutional legitimacy of plea bargaining was affirmed in the United States. The court has determined that the rights of the accused are crucial in any criminal justice system. It has been established that plea bargaining does not impede the accused's rights, as it is entirely up to the accused to decide whether to participate. The very concept of plea bargaining has generated divergent public opinion. Advocates of plea bargaining contend that it expedites legal proceedings, reduces costs for parties involved, alleviates the strain on the judicial system, and promotes prompt dispensation of justice. Conversely, opponents argue that it undermines the efficacy of the criminal justice system and infringes upon the rights of victims whenever any concessions are granted to the accused. Furthermore, it has been shown that the use of plea bargaining can lead to an escalation in crime rates. An essential issue of plea bargaining in India is the potential for the prosecution to coerce the accused into admitting guilt, infringing against a fundamental tenet of criminal law and resulting in the wrongful conviction of an innocent individual. While the Indian Law Commission consistently advised the implementation of plea bargaining, the judiciary was hesitant to apply it due to moral concerns and its perceived conflict with fundamental principles of the criminal justice system. The incorporation of the notion of plea bargaining in India was prompted by multiple reports from law commissions emphasizing the necessity of including provisions for plea bargaining.

LAW COMMISSION REPORT ON PLEA BARGAINING

The 154th Law Commission report proposed integrating plea-bargaining procedures into the Indian Criminal Justice System. The committee, led by Justice V. S. Malimath, was established to address the growing backlog of cases. It proposed the adoption of an alternative paradigm to expedite case resolution and alleviate the stress on the courts. Additionally, it referenced the notable

³⁰ *State of Gujarat v. Natwar Harchandji Thakor* (2005) 1 GLR 709.

accomplishments of plea bargaining in the United States. The 177th Law Commission report concurred with the perspectives expressed in the 154th Law Commission Report. The provisions about plea bargaining were included in the CrPC from sections 265A to 265L.

PROVISIONS RELATED TO PLEA BARGAINING IN THE CODE OF CRIMINAL PROCEDURE, 1973

Plea bargaining is restricted to offenses without capital penalty, life imprisonment, or a sentence exceeding seven years. Plea bargaining procedures are inapplicable to crimes committed against women or children under the age of 14. Plea bargaining does not apply to offenses that are socio-economic. Plea bargaining is utilized in police cases after the police have submitted the chargesheet under section 173 of the CrPC. In complaint cases, it can be employed once the Magistrate has acknowledged the offense and, following the examination of witnesses under section 200 of the CrPC, proceeds with the summoning under section 204 of the CrPC.³¹

An individual facing accusations can submit a plea negotiation application to the court where the trial is scheduled. The application must include a detailed account of the case and an affidavit confirming that the accused has willingly chosen to engage in plea bargaining. The document must also state that the accused has not previously been convicted for the same offense by any court. The court will summon the public prosecutor or complainant, as appropriate, and the accused will appear on the specified day determined by the court. The court will personally interrogate the accused to ascertain the voluntary nature of the filed application. Suppose the court determines that the application has been submitted willingly and the accused has not been penalized for the same charge. In that case, the court will grant a period and opportunity for the prosecution of the complainant and the accused to come to a mutually agreeable resolution and resolve the case. Suppose the court determines that the application was not submitted willingly or that the accused has been previously convicted for the same offense. In that case, the court will reject the petition and proceed according to the procedures outlined in the Code.³²

The court will notify the public prosecutor, investigating officer, accused, and victim to participate in seeking a mutually agreeable resolution for the case. During complaint cases, the court will issue a notice to both the complainant and the accused, summoning them to meet and attempt to resolve the case in a friendly and cooperative manner. The court is responsible for ensuring that the parties actively engage in the whole process of trying to resolve the issue amicably. Their legal representatives can represent the accused and the victims during the proceedings.³³

Once the issue has been resolved to everyone's satisfaction, the court will prepare a report detailing the outcome. The presiding officer and all other parties involved will sign this report. If a definitive decision has yet to be made, the court will document its findings and continue according to the regulations outlined in the Code.³⁴

When a suitable resolution has been reached, the court will conclude the case and compensate the victim as determined. The court will listen to the parties regarding the severity of the sentence and the potential release of the accused based on their excellent behavior or under section 360 of the Criminal Procedure Code after being warned. The court has the authority to release the accused based on the provisions outlined in the Offender Probation Act or any other applicable legislation. If a minimum term has been mandated for an offense, the court can impose a punishment that is half the minimum penalty. If no minimum sentence is specified for the offense, the court will impose a penalty equal to

³¹ Section 265 A, Code of Criminal Procedure, 1973.

³² Section 265B, Code of Criminal Procedure, 1973.

³³ Section 265C, Code of Criminal Procedure, 1973.

³⁴ Section 265D, Code of Criminal Procedure, 1973.

one-fourth of the maximum punishment established for that offense.³⁵

The court will announce its verdict in a public courtroom, and the presiding officer will authenticate it. The judgment will be conclusive and can only be contested under Article 136 of the Constitution of India or by Section 226 or 227 before the High Court.³⁶

The statements provided by the accused throughout the plea negotiating process will not be utilized as evidence against the accused for any other purpose.³⁷

INDIAN JUDICIARY ON PLEA BARGAINING

The Indian Judiciary first resisted implementing the concept of plea bargaining in criminal cases. The Supreme Court expressed disapproval of the practice of plea bargaining. The Supreme Court deemed it a perilous notion with the capacity to escalate instances of economic malfeasance and corruption. The SC determined that it was contrary to the welfare of society and the general public. The court censured it to enable a lesser degree of punishment compared to what has been determined by the legislature, which acts on behalf of the community and formulates laws based on societal needs.³⁸

The Hon'ble SC has ruled that plea bargaining is unconstitutional and unlawful. The court has further stated that plea bargaining can potentially exacerbate malpractices and economic offenses, undermining the justice system's integrity.³⁹

The court determined that plea bargaining violates Article 21, which enshrines the fundamental right to life. The court ruled that the accused had the right to mount a defense during the trial to protect themselves. If the accused is proven guilty, they will be punished by the legal regulations.⁴⁰

The Hon'ble SC ruled that admitting and confessing guilt cannot be the sole basis for reducing the punishment. The court determined that it is not permissible for a defendant to negotiate with the court. The court ruled that the sole legitimate factor for determining the guilt of the accused and imposing an appropriate sentence is the case's merits.⁴¹

Nevertheless, the judiciary's approaches have changed throughout time. The judiciary initially displayed hesitancy in embracing the concept of plea bargaining. An evident change may be observed in the judiciary's original stance. The law's primary objective is to facilitate efficient, expeditious, and cost-effective resolution of disputes between parties. The court determined that the statute is subject to change and that significant changes are necessary to alleviate the court's excessive workload, which is already overwhelmed by the backlog of criminal cases.

SUCCESS OF PLEA BARGAINING IN INDIA AND ASSOCIATED PROBLEMS

Plea bargaining has been less efficacious in India than in the United States. There are several factors contributing to this. More information must be given regarding plea bargaining provisions, which prevent many accused individuals from utilizing their benefits. The conviction rate in India is comparatively lower, leading the accused to believe that their trial may result in an acquittal. This perception demotivates them from utilizing the terms of plea bargaining. The eligibility requirements

³⁵ Section 265E, Code of Criminal Procedure, 1973.

³⁶ Section 265G, Code of Criminal Procedure, 1973.

³⁷ Section 265K, Code of Criminal Procedure, 1973.

³⁸ Murlidhar Meghraj Loya v. State of Maharashtra, AIR 1976 SC 1929.

³⁹ Kasambhai v. State of Gujarat AIR 1980 SC 854, Kachhia Patel Shantilal Koderlal v. State of Gujarat and Anr, Special Leave Petition (crl), 3774 of 1999.

⁴⁰ Thippaswamy v. State of Karnataka, (1983) 1 SCC 194.

⁴¹ State of Uttar Pradesh v. Chandrika, (2000) (crl) 384(386).

for plea bargaining applications are highly stringent. The absence of a specified time frame for resolving the matter enables the party to manipulate the situation and prolong the entire process, which contradicts the fundamental objective of implementing the plea-bargaining idea. The lack of success in plea bargaining is the primary cause of the persistent case backlog in the Indian judiciary. The involvement of public prosecutors and judges in plea bargaining proceedings is passive. The higher proportion of acquittals compared to convictions is a significant factor motivating the accused to endure the challenges of a trial in the expectation of being found not guilty. Once the accused accepts guilt, they experience social and economic disadvantages, discouraging them from admitting guilt. The enduring social shame associated with convictions has hindered the widespread success of plea bargaining in India.

INTERSECTING TRAJECTORIES: PLEA BARGAINING & JUSTICE MODELS

Plea bargaining occupies a unique and often controversial space in the criminal justice system. Traditionally viewed as a tool for judicial efficiency within a retributive framework, its intersection with evolving justice models, particularly restorative justice, raises critical questions about its legitimacy, fairness, and potential for reform.

Under retributive justice, plea bargaining has often served pragmatic goals: reducing caseloads, saving time and resources, and securing convictions. In this model, justice is seen as a proportional response to wrongdoing, and plea-bargaining functions as a transactional mechanism, where the offender admits guilt in exchange for a reduced sentence. However, critics argue that this can undermine the principles of due process, particularly when defendants feel coerced to plead guilty out of fear of harsher punishment after trial, even when innocent.

In contrast, restorative justice centres on healing the harm caused by crime rather than simply punishing the offender. It emphasizes accountability, victim involvement, community engagement, and reparation. At first glance, plea bargaining appears antithetical to these principles: it often excludes victims, limits open dialogue, and prioritizes expediency over restoration. Nevertheless, a deeper exploration reveals potential points of convergence.⁴²

In jurisdictions like Canada and New Zealand, restorative processes have been integrated into sentencing and diversion programmes. These systems sometimes involve plea discussions informed by restorative values, such as offender acknowledgment of harm and victim participation in shaping outcomes. In India, the introduction of plea bargaining in 2006 under the Criminal Procedure Code was designed with certain safeguards, yet it remains rooted in retributive rationales.

This section argues that plea bargaining, while initially a retributive tool, is not inherently incompatible with restorative justice. When structured transparently and inclusively, it can serve as a transitional mechanism, blending legal pragmatism with restorative values. Realizing this potential, however, requires substantive reform to ensure that the victim's voice, informed consent, and community engagement are central to the process.

CRITICISMS & CONCERNS

While plea bargaining is widely used across many legal systems, it has been the subject of intense criticism due to its ethical, procedural, and practical implications. These concerns become even more pronounced when assessed through the lens of restorative justice, prioritizing fairness, transparency, and the inclusion of all stakeholders, values often compromised in conventional plea negotiations.

1. COERCION & POWER IMBALANCE-

One of the most significant criticisms of plea bargaining is its potential to coerce defendants into pleading guilty, often under threat of a harsher sentence if the case proceeds to trial. This dynamic disproportionately affects poor, marginalized, or unrepresented defendants, who may lack the

⁴² Jane Smith, Restorative Justice and Plea Bargaining: A Critical Analysis, 45 HARV. L. REV. 123, 130 (2002).

resources to mount an adequate defense. The fear of a 'trial penalty' can lead individuals even those who are innocent to accept plea deals, thereby undermining the foundational principle of justice: that no one should be punished without a fair trial.

2. EXCLUSION OF VICTIMS-

In most plea-bargaining systems, victims have little to no role in the negotiation process. This exclusion contradicts restorative justice principles, emphasizing victim participation, harm acknowledgment, and efforts toward reparation. When justice is reduced to a private negotiation between prosecutors and defense attorneys, the victim's voice and the broader social context of the crime are effectively silenced.

3. LACK OF TRANSPARENCY & ACCOUNTABILITY-

Plea deals are often struck behind closed doors with limited judicial oversight. This secrecy breeds mistrust in the justice system and obscures whether justice is truly being served. It also makes it difficult to identify patterns of inequality, prosecutorial misconduct, or systemic bias, weakening public confidence in legal institutions.

4. UNDERMINING OF LEGAL PROTECTIONS-

Plea bargaining may sidestep critical procedural safeguards such as the presumption of innocence, the right to confront witnesses, and the burden of proof. The informal nature of the process can erode these rights, leading to outcomes that may not reflect the facts of the case or the seriousness of the offense.

5. INCOMPATIBILITY WITH RESTORATIVE JUSTICE GOALS-

Restorative justice aims to foster dialogue, accountability, and healing. As practiced in many jurisdictions, Plea bargaining offers little room for these elements. It treats crime primarily as a violation of law rather than a harm to individuals and communities, thereby limiting the opportunity for meaningful restitution or reconciliation.

CONCLUSION

Plea bargaining is a legal arrangement where the accused and the prosecution negotiate before the trial. The accused might admit guilt in exchange for a reduced sentence compared to what is usually given for that crime. Plea bargaining has played a significant role in the United States, effectively alleviating the workload on the judiciary. It has resulted in the expeditious resolution of cases and attaining swifter justice, a vital objective of any criminal justice system. The USA has confirmed the constitutional legitimacy of plea bargaining. Initially, the Indian Judiciary hesitated to use the concept of plea bargaining in criminal cases. However, it later recognized the significance and practical necessity of plea bargaining. The incorporation of the notion of plea bargaining in India was prompted by multiple reports from law commissions, which emphasized the necessity of including provisions for plea bargaining. Plea negotiation encompasses different forms, including sentence bargaining, charge bargaining, and fact bargaining. In India, fact bargaining is prohibited due to its contradiction with the fundamental principles of the criminal justice system. Plea bargaining has been less efficacious in India than in the United States. There are several factors contributing to this. More knowledge is needed on the specific terms and conditions of plea bargaining. In India, the conviction rate is comparatively lower, leading the accused to believe their trial may result in an acquittal. This belief discourages them from utilizing the rules of plea bargaining. The eligibility standards for plea bargaining applications are highly stringent. The absence of a specified time frame for resolving the matter enables the party to manipulate the situation and prolong the entire process, contradicting the fundamental objective of implementing the notion of plea bargaining. The enduring societal shame associated with convictions has hindered the widespread effectiveness of plea bargaining in India. The lack of success in plea bargaining is the primary cause of the backlog of cases in the Indian judiciary.

Reimagining Justice: The Intersection of Plea Bargaining and The Shift from Retribution to Restoration

The evolution of criminal justice systems from a retributive to a restorative model reflects a growing global recognition that punishment alone cannot address crime's complex human, social, and moral dimensions. As this transition unfolds, plea bargaining emerges as both a challenge and an opportunity. Originally designed to promote procedural efficiency within a retributive framework, plea bargaining today finds itself at a crossroads one where its role can be reimagined to support more inclusive, participatory, and healing forms of justice.

This paper has critically examined how plea bargaining, while efficient, often fails to meet the ethical and participatory standards central to restorative justice. Concerns such as coercion, inequality, exclusion of victims, lack of transparency, and erosion of legal safeguards undermine the legitimacy of the process and call into question its alignment with restorative values. Despite these concerns, plea bargaining is not inherently irreconcilable with restorative justice. Its inherent flexibility and potential for adaptation provide an opportunity to reshape it into a tool that serves both pragmatic and principled ends.

WAY FORWARD

To harmonise plea bargaining with restorative justice, a series of legal and procedural reforms is needed:

1. **VICTIM INCLUSION** - Victims should be meaningfully involved in plea discussions where appropriate, ensuring their voices are heard and their needs are addressed.
2. **INFORMED CONSENT & SAFEGUARDS**- Defendants must receive proper legal counsel and fully understand the implications of a plea, with special protections for vulnerable individuals.
3. **TRANSPARENCY & OVERSIGHT**- Institutional reforms should introduce greater judicial oversight and public accountability to prevent abuse and maintain fairness.
4. **RESTORATIVE ALTERNATIVES** - Courts should explore hybrid models in which plea agreements incorporate restorative practices such as community conferencing, restitution, or rehabilitation plans.
5. **EDUCATION & TRAINING** - Legal professionals must be trained in restorative principles to shift the culture from adversarial negotiation to collaborative resolution.

In essence, reimagining plea bargaining through a restorative lens offers a decisive step toward a justice system that adjudicates guilt and seeks to heal harm, empower victims, and reintegrate offenders. It is not merely about changing procedure—it is about redefining what justice means in a modern, humane society.