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MARATHWADA MITRA MANDAL'S SCLC LAW REVIEW



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1. Introduction

Being established through an inspiration of socially and educationally charged personalities, we, Marathwada Mitra Mandal established in 1967 as a charitable trust, serves with the motto, "Yethe Bahutanche Hit" (Welfare of the Masses). Under the patronage of Marathwada Mitra Mandal, Shankarrao Chavan Law College was established in 2003 with the objective of nurturing future legal professionals and researchers with the ideals and values required for playing a constructive role to create a better world. The College is affiliated to Savitribai Phule Pune University, approved by the Bar Council of India, recognized by the Government of Maharashtra with an ISO Certification and re-accredited with 'A' Grade by NAAC, and thus stands as one of the premier law colleges in India. Our college has the motto, "Quality Legal Education for the Masses." Since inception, our college has been encouraging the students to develop themselves into legal professionals having legal knowledge, acumen, and expertise suitable for the dynamic and globalized legal industry. With this view, apart from academic excellence, we nurture the students with several co-curricular and extra-curricular activities. We are proud to collaborate with University of Colombo (Sri Lanka), Universidad Peruana de Ciencias Aplicadas (Lima, Peru), Transforming Mediation LLC (Georgia, USA), University of Chieti Pescara (Italy), Tribhuvan University (Nepal), Lex Aquila (Mauritius), and with Hong Kong, Poland, Germany, etc. The college also runs the Center for Academic Research, Publication & E- content in Law (CARPEL). In this light, we started publishing this journal in 2022. This Journal is an annual, double-blind, peer-reviewed international journal and invites scholarly, original, unpublished articles on various socio-legal issues.

2. AIMS & SCOPE

- Inculcate research skills and culture in students, faculty, and the masses.
- Develop the research strengths in Law through facilitating intra, cross, multi, inter and trans disciplinary research excellence.
- Create a research and innovation-friendly society aimed at long-term development.

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EDITORIAL

It gives me immense pleasure to introduce and present the fifth volume, first issue of Marathwada Mitra Mandal's SCLC Law Review. This journal is an attempt by our institution to unfold and discuss issues pertaining to Law. In the era of technology and globalization, many laws and legal institutions stumble to cope with new challenges. Rapidly changing governmental policies, and the enactment of new laws sometimes encroach upon our basic human rights. India, as a Nation, is moving fast in all spheres to get recognized as a developed country at the global level but such developments also pose threats like environmental issues, economic instabilities etc. We at SCLC, being a part of the Legal Fraternity, would like to address these issues through the MM SCLC Law Review. In future, we expect contributions from academicians from all corners of India to enlighten us on various legal issues with appropriate solutions. This Journal is the perfect platform for addressing various issues related to Law at the national and international levels.

Here, I would like to take the opportunity to convey my heartfelt thanks to Hon'ble B.G. Jadhav - Executive President of Marathwada Mitra Mandal, Pune and the management members of MM for their constant guidance and support in bringing out this Journal. I also convey my gratitude to the Editor, Co-editor, advisory members, Associate Editors, Assistant Editors and the entire team of MM SCLC Law Review for their relentless efforts in publishing the First issue of this Journal.

We have received an overwhelming response for the fifth volume. The MM SCLC Law Review Fifth Volume focuses on Plea Bargaining, Terrorism, International Trade Dynamics under the New Tariff Policy of USA, Maintenance of Muslim women, Artificial Intelligence in Healthcare, Safeguarding Student Welfare, Transformative Constitutionalism, Foreign Trade in India, the Citizenship Amendment Act, Analysis of the National Education Policy 2020, the Digital Personal Data Protection Act, Human Rights of the LGBTQ Community, Women Empowerment and Economic Justice, Harmful Traditions in India, etc.

Dr. Kranti Deshmukh,

Principal, Marathwada Mitra Mandal's Shanakarrao Chavan Law College, Pune

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1. Plea Bargaining in Focus: Legal Concepts and Theoretical Perspectives in Criminal Justice

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Abstract

This paper discusses a comprehensive legal and theoretical examination of plea bargaining as a mechanism within the administration of criminal justice. It explores the conceptual foundations of plea bargains, including related terms such as plea negotiation, plea agreement, and guilty pleas, while distinguishing their legal meanings and implications. The historical development of plea bargaining is traced, highlighting its evolution as a tool to expedite justice and reduce trial burdens. The paper classifies and analyzes the main forms of plea bargaining, including charge, sentence, and fact bargaining, and evaluates their legal significance. The paper also examines the theoretical frameworks behind plea bargaining, including cognitive theory, deterrence theory, utilitarianism, social and political theories, and others. These theories provide a multidimensional perspective on why plea bargains are offered, accepted, and institutionalized. The work also considers the application of these theories in real-world plea negotiations, assessing their impact on legal actors and the accused. The paper concludes by identifying key issues in the plea bargaining process and offers insights into achieving a balance between judicial efficiency, victims' rights, and the defendant's fair-trial rights.

Keywords: *Constitutionality, remand, proceedings, fair hearing, criminal justice*

1. Introduction

Plea bargaining emerged as a significant component of modern criminal justice systems, offering an alternative route to full trial proceedings by allowing defendants to plead guilty in exchange for certain concessions[1]. Plea bargaining is one of the concepts in the administration of criminal justice. It originated from common law jurisdictions, such as the United States and England, and the practice has become a tool for resolving criminal cases

[1] WJ Stuntz, *Plea bargaining in the United States* (Oxford University Press, 2013); JF Meyer, 'History of Plea Bargaining in the United States' <https://www.britannica.com/topic/plea-bargaining> accessed 17 May 2025

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by allowing defendants to plead guilty in exchange for reduced charges or lighter sentences[2]. However, it remains a subject of legal and theoretical debate. While some view it as a practical necessity in overloaded court systems, others argue it may undermine the principles of justice and due process. This paper examines the concept of plea bargaining through both legal and theoretical lenses, with a view to understanding its structure, evolution, forms, and implications within the broader context of criminal justice administration. The adoption of plea bargaining in Nigeria's criminal justice system has been met with enthusiasm. The paper also discusses theories of plea bargaining. These theories include Deterrence Theory, Utilitarian Theory, Social and Political Theory, Criminal Settlement, Behavioral Theory, and Cognitive Theory. The paper also examines the application of these theories to plea bargaining.

2.0 Nature and Historical Development of Plea Bargain

A plea bargain is a negotiated agreement between the prosecution and the defence. The defendant agrees to plead guilty and the prosecutor in return provides certain concessions or benefits to the defendant[3]. A plea bargain is a significant tool for expediting trials and managing cases within the criminal justice system. This may take the form of reduced charges in cases involving multiple charges or a recommendation for lighter sentencing[4]. Plea bargain is recognized as offering mutual benefits to various stakeholders in the criminal justice system[5]. This includes the prosecutors, defendants, judges, victims, and the public. For defendants, plea bargaining provides a way to achieve the speedy disposal of their cases and helps them avoid the anxiety and uncertainty of a trial, as well as the possibility of facing the maximum penalties prescribed by law. Prosecutors benefit from plea bargains by avoiding time-consuming trials, thereby preserving valuable and limited prosecutorial resources[6].

[2] MI Nuhu and BY Ansab, 'The Use of Alternative Dispute Resolution Mechanisms in the Criminal Justice System: An appraisal of Relevant Nigerian Laws' (2020) 3(1) Bayero Journal of Private and Commercial Law
[3] ES Robert and W.J Stuntz 'Plea Bargaining as Contract', Yale L.J. (1992)101 1911 - 1912.
[4] AW Alschuler 'The Prosecutors Role in Plea Bargaining', U. Chi. L. Rev. (1968)36 50, 50
[5] Ibid
[6] Ibid

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Similarly, judges find relief from congested court cause lists. Plea bargaining also conserves the state and judicial resources due to the expedition in determination of cases. The victims may also benefit from plea bargains because they are saved from the public emotional and psychological strains of trials[7]. Plea bargaining involves negotiations between the defendant and the prosecutor to reach an agreement in which the defendant pleads guilty in exchange for reduced charges or a more favorable sentence[8]. This means that both the defendant and the prosecutor work together to reach a mutual agreement, subject to the approval of the court. Therefore, the defendant is required to plead guilty to a lesser offence or some of the charges in a multiple indictment for a more lenient sentence than what might be imposed for the full charge.

In the United States, plea bargaining was recognized as early as 1967, when an influential report by the President's Commission on Law Enforcement and Administration of Justice documented the widespread use of plea bargaining and recommended its practice[9]. The report suggests that plea agreements would eliminate the inherent risks associated with adversarial litigation. This is because courtroom litigation is a game of chance and regardless of the strength of the evidence and the quality of the prosecution, there is always an element of chance in the outcome of a particular case. Both sides involved in a trial have a vested interest in minimizing these inherent risks.

In Nigeria, Plea bargaining was adopted by Section 270 (1) of the Administration of Criminal Justice Act[10]. Before the enactment of the Administration of Criminal Justice Act, 2015, Section 14(2) of the Economic and Financial Crimes Commission Act[11] introduced the concept in Nigeria[12]. It was applied in several Nigerian cases under the Economic and Financial Crimes Commission Act, *including those of Cecilia Ibru,*[13] *Tafa Balogun,*[14]

[7] R. Acevedo 'Is a Ban on Plea Bargaining an Ethical Abuse of Discretion'? A Bronx County New York Case Study. Fordham L. Rev. (1995) 64 987

[8] JH Langbein 'Torture and Plea Bargain' ed Philosophy of Law Wardsworth, London (1995) 1

[9] JF Meyer, History of Plea bargaining in the United States <https://www.britannica.com/topic/plea-bargaining> accessed 17 May 2025

[10] Administration of Criminal Justice Act, Laws of Federation of Nigeria, 2020

[11] Economic and Financial Crimes Commission Act, CAP E15, Laws of Federation of Nigeria, 2020.

[12] Abifarin Olufemi, *The process and practice of Dispute Resolution and Arbitration in Nigeria* (Princeton and Associates Publishing Co. Ltd: Ikeja Lagos, 2021)

[13] FRN vs Dr (Mrs) Cecilia Ibru FHC/ABJ/CR/L/297/2009

[14] FRN vs Tafa Balogun FHC/ABJ/CR/14/2005

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Igbinedion[15] *and Alamieyeseigha.*[16] With the enactment of the Administration of Criminal Justice Act[17] the practice of plea bargaining has become the norm rather than the exception in the Nigerian criminal justice system.

3.0 Conceptual Framework

The paper defines the terminologies associated with plea bargaining, such as plea bargaining, plea negotiation, plea agreement, plea of guilty, plea of not guilty, and the victim. The paper examines the conceptual foundation necessary for understanding the paper's subsequent discussions. The paper further explains the nature and historical development of plea bargaining, and the administration of criminal justice system traces the evolution of plea bargaining from its origins to the present-day and its application in the administration of the criminal justice system in Nigeria.

3.1.0 Definitions

This section defines the terminologies associated with plea bargaining, such as plea bargaining, plea negotiation, plea agreement, plea of guilty, plea of not guilty, and the victim of the crime.

3.1.1 Plea Bargaining

Plea bargaining is the process by which a defendant and a prosecutor reach a mutually agreeable resolution to a criminal case, with the approval of the court. Section 494 (1) of the Nigerian Administration of Criminal Justice Act defines plea bargaining as "the process in criminal proceedings whereby the defendant and the prosecution work out a mutually acceptable disposition of the case, including the plea of the defendant to a lesser offence than that charged in the complaint or information and in conformity with other conditions imposed by the prosecution in return for a lighter sentence than that for the higher charge subject to the court's approval." Garner[18] defined it as a negotiated agreement where the defendant pleads guilty to a lesser charge or one of multiple charges in exchange for some

[15] FRN vs Igbinedion FHC/EN/68/2008
[16] FRN vs DSP *Alamieyeseigha (2006) 16 NWLR (Pt 1004) 1*
[17] Administration of Criminal Justice Act, 2015
[18] B. A. Garner, *Black's Law Dictionary*, (9th Edition, West Publishing Co., St. Paul, Minn, 2004) 1452

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concession from the prosecutor, a more lenient sentence or the dismissal of other charges. The Supreme Court of Nigeria, in the cases of *Gava Corp. Ltd v. FRN*[19] and *PML (Nig.) Ltd v. FRN*[20] confirmed this definition. Parties in a criminal trial may enter into a plea bargain, with the agreement required to be explicitly made in writing to avoid inconsistencies that can arise with oral agreements.[21]

Plea bargaining refers to a situation where a defendant pleads guilty to a charge or lesser charge in exchange for a lighter sentence.[22] It has also been described as a negotiation process in which the defendant agrees to plead guilty in return for the prosecutor's concessions, either by reducing the severity of the charge or the sentence. Nichi[23] defines a plea bargain as an informal arrangement where the accused agrees to plead guilty to certain charges in exchange for the prosecution dropping other charges or opting for a summary trial.

Plea bargaining therefore is the process of negotiation between the parties in a criminal case involving that defendant's agreement to plead guilty in return for the prosecutor's concession reducing either the sentence or the seriousness of the charge.

3.1.2 Plea Negotiation

Plea negotiation is the process through which a defendant and a prosecutor engage in discussions to reach a mutually acceptable resolution in a criminal case. It involves bargaining over aspects of the case, such as the charges, the defendant's plea or the potential sentence, with the goal of avoiding a full trial.[24] During plea negotiation, the prosecutor may agree to reduce the severity of the charges, recommend a lighter sentence, or dismiss certain charges in exchange for the defendant's agreement to plead guilty to a specific charge. Plea negotiation is a subset of plea bargaining and emphasizes the communication and compromise between the parties to settle the case efficiently.

[19] Gava Corp. Ltd v. FRN (2019) 10 NWLR (pt. 1679) 139 at 160
[20] (2018) 7 NWLR (pt. 1619) 448 at 480 paras B-C. SC.
[21] Gava Corp. Ltd. (n, 18) at 178 para. H.
[22] Jay Albanese, *Transnational Crime and the 21st Century: Criminal Enterprise, Corruption and Opportunity* (Oxford University Press, 2020)
[23] SI Nchi, *The Nigerian Law Dictionary* (2nd edn, Green World Publishing Company Ltd, 2000) 403
[24] A Flynn, 'Bargaining with Justice: Victims, Plea Bargaining and the Victims Charter Act 2006' *Monash University Law Review* (2017) 37 (3) 73.

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3.1.3 Plea Agreement

A plea agreement is the outcome of the plea bargaining process, where the prosecutor and the defendant reach a mutually acceptable resolution in a criminal case.[25] This resolution involves the defendant agreeing to plead guilty to specific charges or a lesser offense in exchange for certain concessions from the prosecution. These concessions often include a reduction in charges, a recommendation for a lighter sentence or the dismissal of other pending charges.[26] The plea agreement reflects the compromises made during the bargaining process. For the prosecution, it ensures a conviction, saving time and resources that would otherwise be spent on a trial. For the defendant, it offers the opportunity to secure a more favorable outcome than might result from a trial, such as reduced penalties or avoiding the uncertainty of a harsher sentence.[27]

A major requirement of the Administration of Criminal Justice Act for a plea bargain agreement is that it must be in writing.[28] By the provision of this Act, a non-written agreement is not acceptable and is invalid. In the case of *Romrig Nig Ltd vs FRN*[29] it was held in the case that reducing a plea bargain into writing is most logical, as it would prevent the inconsistencies that arise from oral evidence, such as the distortion of the agreement by the parties at will.

3.1.4 Plea of Guilty

A plea of guilty is an admission by a defendant in a criminal case that he committed the offence as charged.[30] The defendant must make the plea voluntarily, without any form of coercion or undue influence, and with a clear understanding of the nature of the charges, the potential penalties, and the implications of his plea. The court must ensure that the defendant is competent to make such a decision and that the plea is unequivocal.[31]

[25] Ibid
[26] Agbi v. F.R.N (2020) 15 NWLR (Pt. 1748) 416
[27] WJ Stuntz, *Plea bargaining in the United States* (Oxford University Press, 2013); JF Meyer, 'History of Plea Bargaining in the United States' <https://www.britannica.com/topic/plea-bargaining> accessed 19 August 2024
[28] Section 270(1) Administration of Criminal Justice Act, 2015
[29] (2014) LPELR-22795
[30] Amanchukwu vs FRN (2009) 8 NWLR (PT. 1144) 475
[31] Ibid

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The court of Appeal in *Rickey Tarfa Mustapha vs Federal Republic of Nigeria*[32] held that when a defendant pleads guilty, it eliminates the need for a full trial, thus promoting judicial efficiency and saving the time and resources of the court. However, the prosecution is often required to present a summary of the evidence to establish a prima facie case, even when a guilty plea has been entered. While a guilty plea may result in leniency during sentencing, such as reduced penalties in recognition of the defendant's remorse, the court is not bound to accept a negotiated sentence and retains discretion within the bounds of the law.

The plea of guilty is closely tied to plea bargaining, where the defendant may agree to plead guilty in exchange for reduced charges or a lighter sentence.[33] This mechanism is particularly valuable in managing the caseload of the courts and encouraging cooperation from defendants. In Nigeria, the Administration of Criminal Justice Act, 2015 ensures that a plea of guilty is entered voluntarily, with adequate consultation and in a manner consistent with the interests of justice.[34]

3.1.5 Plea of Not Guilty

A plea of not guilty is a response by a defendant in a criminal case, where he is challenging the prosecution to prove guilt beyond reasonable doubt.[35] Under the Administration of Criminal Justice Act (ACJA), 2015, a plea of not guilty may also be recorded if the defendant remains silent or refuses to respond to the charges.[36] The plea is rooted in the constitutional principle of the presumption of innocence, as enshrined in Section 36(5) of the 1999 Constitution of Nigeria (as amended). This principle ensures that a defendant is considered innocent until proven guilty by the prosecution through credible evidence. Once the plea of not guilty is entered, the case proceeds to trial.

The prosecution bears the responsibility of presenting evidence to substantiate the

[32] (2017) LPELR-43131
[33] Section 270(4) of the Administration of the Criminal Justice Act, 2015
[34] Ibid, section 270(9)
[35] Ibid, section 274
[36] Ibid, 276

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charges, while the defense is afforded the opportunity to challenge the evidence, cross-examine witnesses, and present its case. The trial culminates in the court determining the guilt or innocence of the defendant based on the evidence adduced. The plea of not guilty underscores the right of every accused person to a fair trial, a cornerstone of the justice system aimed at safeguarding the rights of the individual and upholding the rule of law. When a defendant pleads not guilty in plea bargaining, it indicates his intention to contest the charges, thereby initiating a trial.[37]

4.0 Types of Plea Bargains

Plea bargains can be in various forms in the criminal justice system. Different types of plea bargains include:

4.1 Charge Bargain

A Charge Bargain occurs when the prosecutor extends an offer of reduced charges to a defendant facing multiple offences in exchange for a guilty plea on the charges for which the defendant has been arraigned.[38] This situation arises when a defendant who has been subjected to multiple charges agree with the prosecutor to reduce the charges against him. In this arrangement, the prosecutor agrees to withdraw certain charges, provided that the defendant pleads guilty to the charges that will be pursued.[39] For instance, if someone has committed six offences, the prosecutor might propose that if the suspect pleads guilty to one or two of the offences, the remaining charges will be withdrawn.[40]

A charge bargain should neither be employed as a means for the prosecutor to excessively burden the defendant's case with numerous charges nor be with the intention of exerting undue pressure on the accused to plead guilty.[41] It is also essential to uphold the principles of fairness and justice within the criminal justice system and to ensure that plea negotiations are conducted in a manner that respects the defendant's rights and the integrity of the legal

[37] Rickey Tarfa Mustapha SAN vs FRN (2017) LPELR-43131

[38] B Adetomiwa 'The Concept of Plea Bargaining in Nigeria' <https://www.mondaq.com/nigeria/crime/753394/the-concept-of-plea-bargaining-in-nigeria> accessed 22 May 2025

[39] Ibid

[40] JA Agaba Practical Approach to Criminal Litigation in Nigeria (Emerald, Oyo State, Nigeria, 2015)

[41] TC Eze and A. G Eze 'A Critical Appraisal Of The Concept Of Plea Bargaining In Criminal Justice Delivery In Nigeria' Global Journal of Politics and Law Research (2015) 3(4). 31-43

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process.[42] The prosecutor's role in a charge bargain should not be one of strategic manipulation but a pursuit of truth and justice. It should be a balanced process where both the prosecution and the defence engage in good-faith negotiations to arrive at a fair and just conclusion.[43]

A charge bargain should seek a resolution that reflects the merits of the case and the defendant's culpability. It should not exploit the defendant's predicament because unnecessary charges would undermine the spirit of fairness in a plea bargain.[44] The prosecution risks compromising the defendant's ability to make an informed decision regarding his plea when unnecessary charges are framed against him. Framing unnecessary charges against the defendant may coerce him to accept a plea agreement and this contradicts the principles of voluntariness and fairness which are the basis of the legal system.[45] To maintain the credibility and effectiveness of the criminal justice system, it is imperative that both the prosecution and the defence approach charge bargaining with a commitment to fairness, transparency and the pursuit of justice rather than pursuing strategies that might infringe on the defendant's rights or the integrity of the legal process.[46]

4.2 Sentence Bargain

A Sentence Bargain is an agreement that occurs in plea bargain, where the prosecutor and the defendant agree on the expected punishment to be imposed by the court.[47] In a sentence bargain, the defendant consents to pleading guilty at the arraignment, with the understanding that a particular sentence will be imposed.[48] Sentence bargain is essentially an initial agreement between the prosecutor and the defendant because the court retains the discretion to determine the appropriate punishment for any given offence.[49] There are lots of controversies surrounding plea bargains in Nigeria due to a lack of comprehension

[42] Ibid
[43] Ogbuabor, Nwosu, Ezike, 'Mainstreaming ADR in Nigeria's Criminal Justice System' European Journal of Social Science (2014) 45(1) 32-43
[44] JF Parker 'Plea Bargaining' Am J. Crim L. (1972) 1 187 at 188
[45] Border Kircher vs. Hayes 434 U.S 35 357
[46] B.U Odoh, *Alternative Dispute Resolution in Nigeria* (Germany: LAM Lambert Academic Publishing, 2014), 160
[47] J Ogunye, *Criminal Justice System in Nigeria –The Imperative of Plea Bargaining* (Lagos: Lawyers League for Human Rights and Open Society Initiative for West Africa: 2005) 150-159
[48] *Slap v. Attorney General of the Federation* (1968) NMLR 326
[49] W.A Alaschula 'The Prosecutor's Role in Plea Bargaining' Yale L.J 84, 1179

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regarding the intricacies of a sentence bargain. An example of such complexity can be seen in the case involving the conviction related to the pension scam and the subsequent suspension of Justice Talba of the Federal High Court by the National Judicial Council (NJC) in 2013.[50] The National Judicial Council (NJC) suspended Justice Abubakar Talba of the Abuja High Court, who allowed Mr. John Yusuf, a former deputy director in the police pension office, to pay a fine of N750,000 and be released without imprisonment, after convicting him of embezzling N1.3 billion.[51] This case highlights the need for comprehensive knowledge and expertise in the practice of plea bargaining by all participants in the criminal justice system.

In sentence bargain, when a judge is inclined to deviate from the agreement reached between the prosecutor and the defence, it is vital for the judge to communicate his disagreement with the party's agreement before imposing a sentence.[52] This open communication allows the prosecutor and the accused to reconsider their positions. In such a situation, the accused may choose to withdraw their earlier guilty plea and the prosecutor may withdraw the charges and subsequently re-arraign the defendant on the original offence. This mechanism ensures a measure of transparency and fairness in the plea bargaining process. It also offers an opportunity for the accused to make an informed decision about their plea based on the position of the judge.

4.3 Fact Bargain

A Fact Bargain occurs when a prosecutor and a defendant reach an agreement that involves the non-disclosure of specific facts to the court.[53] The defendant may agree to plead guilty to a charge with the agreement of non-disclosure of certain facts that could potentially be prejudicial to the accused during legal proceedings and lead to more severe sentencing for subsequent offences.[54] This form of negotiation involves the selective disclosure or non-

[50] Channels TV <https://www.channelstv.com/2013/04/26/njc-suspends-justice-talba-for-12months-over-pension-scam-ruling/> accessed 22 July 2024
[51] Ibid
[52] Welling S, 'Victims Participation in Plea Bargains' Wash U.L Q (1937) 65, 301
[53] E. Azinge 'Plea Bargaining in Nigeria: Law and Practice' Lagos Nigerian Institute of Advanced Legal Studie (2012) s 4
[54] R. Jacobs, 'Procedural Issues in Plea Bargaining' (Paper Presented at the West African Regional Workshop on plea Bargaining held at le Meriden Hotel, Abuja, 2005)

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disclosure of certain facts to provide a more equitable resolution in cases where the accused may face disproportionately severe consequences due to their past history.[55]

5.0 The Administration of the Criminal Justice System in Nigeria

The criminal justice system consists of the societal tools designed to uphold and enforce the standards of behavior vital for safeguarding individuals and communities.[56] It constitutes the collective efforts of the society towards protecting society from criminal actions.[57] The Nigerian criminal justice system involves a sequence of stages and it begins with law enforcement agencies investigating suspected crimes and making arrests as required to maintain peace and uphold criminal laws.[58] Subsequently, the accused undergoes a court trial where his innocence or guilt is determined. While the system aims to protect innocent individuals and ensure justice for victims, its complexity can be overwhelming and intimidating for those that are not familiar with the system.[59]

A plea bargain can complement the criminal justice process.[60] It focuses on repairing the shame caused by criminal behavior rather than solely punishing the offender. This approach involves bringing together victims, offenders, and community members to discuss the impact of the crime and agree on ways to make amends. It can enhance the justice process by addressing the victims' needs and encouraging offender accountability and rehabilitation.

The criminal justice system can be strengthened through plea bargains, which have emerged as a potential alternative to the prevailing punitive system in Nigeria. Plea bargaining is different from the traditional retributive justice, which came up as a result of prioritizing healing, rehabilitation and community involvement in resolving crimes. It draws

[55] O.B Akeem 'Plea Bargaining in the Prosecution of Complex Crimes' (Paper Presented at the West African Regional Workshop on Plea Bargaining held at Le Meriden Hotel, Abuja, 2007)
[56] The President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society (United States Government Printing Office, Washington D. C., February, 1967), 7
[57] F Adler, GOW Mueller and WS Laufer, Criminal Justice: An Introduction (2nd Edn, McGraw Hill Higher Education, 2000) 7
[58] M I Nuhu and BY Ansab, 'The Use of Alternative Dispute Resolution Mechanisms in the Criminal Justice System: An appraisal of Relevant Nigerian Laws' *Bayero Journal of Private and Commercial Law* (2020) 3(1)
[59] U Shankar and V Mishra, 'Exploring viability of introducing ADR in Criminal Law' *Journal of Alternative Dispute Resolution* (2008) 7(3), 37-48.
[60] Ugwuanyi, E. 'Nigeria's Criminal Justice System: Problems and Challenges' <https://www.elombah.com…id=9135:nigerias-criminal-justice-system-problems.> accessed 6 September 2024

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on traditional and religious beliefs to emphasize repairing harm and seeking resolution outside the conventional criminal justice system.[61] The implementation of plea bargaining could significantly impact Nigeria's justice system by shifting the focus from punitive measures to a more inclusive, community-driven approach. By involving victims, offenders and affected community members, plea bargaining seeks to restore relationships, address harm, and promote accountability, offering an alternative to imprisonment and prosecution. Its promising outcomes include reduced recidivism rates and positive rehabilitation for both offenders and victims.[62]

Administration of criminal justice encompasses the integration of governmental mechanisms in addressing criminal activities. This consists of various entities, law enforcement agencies, the prosecuting agencies, the court, and the correctional centers. Law enforcement agencies are important in the maintenance of law, order, and public safety in any society. In Nigeria, several agencies play specific roles in combating crime, corruption, and social vices. These agencies include the Nigeria Police Force, the Economic and Financial Crimes Commission (EFCC), the Independent Corrupt Practices and Other Related Offences Commission (ICPC), the National Drug Law Enforcement Agency (NDLEA), and the Nigeria Security and Civil Defence Corps (NSCDC).

The Nigeria Police Force is the primary law enforcement agency responsible for maintaining public order, protecting lives and property, preventing and investigating crimes, and enforcing laws.[63] It operates under the Nigeria Police Act[64] and is organized into various departments, including criminal investigation, operations, and training. The Police Force also plays a central role in intelligence gathering, counter-terrorism efforts, and community policing initiatives aimed at fostering trust between the police and the public.

The Economic and Financial Crimes Commission (EFCC) was established to combat economic and financial crimes, including money laundering, embezzlement, fraud, and

[61] B Ayorinde, 'A reformatory approach to the criminal justice system in Nigeria' (2014) <http://www.mondaq.com/x/293894/Public+Order+/A+Reformatory+Approach+To+> accessed 6 September 2024

[62] BJ Lester, 'System failure: The Case for Supplanting Negotiation with Mediation in Plea Bargaining' *Ohio State Journal on Dispute Resolution* (2005) 20(2), 563-595. <https://search-ebscohost-com.ezp.waldenulibrary.org/login.aspx?>

[63] Section 4 of the Nigeria Police Act, 2020

[64] Ibid, Section 1

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corruption.[65] The EFCC has prosecutorial powers and collaborates with other national and international agencies to track, investigate, and prosecute offenders. It also engages in public enlightenment campaigns to raise awareness about the consequences of financial crimes. On the other hand, the Independent Corrupt Practices and Other Related Offences Commission (ICPC) focuses on curbing corruption in public and private institutions.[66] Its mandate includes investigating and prosecuting corrupt practices, educating the public on the effects of corruption, and promoting ethics and integrity. The ICPC differs from the EFCC in that its primary focus is on public sector corruption and abuse of power, making it a key player in promoting accountability in governance.

The National Drug Law Enforcement Agency[67] (NDLEA) is tasked with combating drug trafficking, abuse, and related offenses. Its functions include enforcing drug laws, arresting and prosecuting offenders, and working to reduce the demand for illicit drugs through public education and rehabilitation programs. The NDLEA plays a vital role in Nigeria's efforts to curb the menace of drug-related crimes, which have both domestic and international dimensions. On the other hand, the Nigeria Security and Civil Defence Corps (NSCDC) is responsible for protecting critical national infrastructure, including pipelines, power installations, and public buildings. It also provides security during national emergencies, resolves disputes at the community level, and assists in disaster management.[68] The NSCDC works closely with other security agencies to ensure peace and stability while serving as a bridge between formal law enforcement and community-based security initiatives.

The state also plays a crucial role in the prosecution of criminal cases. The Ministry of Justice, through the office of the Attorney General, is responsible for prosecuting criminal cases on behalf of the state.[69] The state ensures that there is a legal framework in place that governs the prosecution of crimes, including statutes, regulations, and procedural rules. Similarly, the judiciary is constitutionally mandated to be independent and is the pillar upon

[65] Section 1 of Economic and Financial Crimes Commission Act, 2004
[66] Section 1 of the Independent and Corrupt Practices and Other Related Offences Commission Act, 2000
[67] Section 1 of the National Drug and Law Enforcement Agency Act
[68] Section 1 of the Nigeria Security and Civil Corps Act
[69] See Section 174 and 211 of the Constitution of the Federal Republic of Nigeria

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which the criminal justice system rests. The judiciary through the courts perform diverse functions encompassing the trial and adjudication of criminal cases, the interpretation of laws, the protection of constitutional rights, and the enforcement of legal sanctions. When a person is accused of committing a crime, it is the responsibility of the courts to determine their guilt or innocence through a fair and impartial trial.[70] This involves evaluating evidence presented by both the prosecution and the defense, interpreting the relevant laws, and applying them to the facts of the case.[71]

6.0 Theoretical Perspective

The major theories on plea bargaining revolve around its function and effects on the criminal justice system. The major ones are discussed hereunder:

6.1 Cognitive Theory

The Cognitive Theory was propounded by Jean Piaget.[72] The theory focuses on how individuals learn, understand, and engage with various academic subjects.[73] It emphasizes identifying underlying mechanisms of learning to help both successful learners and those who struggle by providing insights into their learning processes.[74] Aaron Beck[75] while explaining the theory opined that behavior is not solely shaped by external stimuli (as suggested by behaviorism) but also by internal cognitive processes. Piaget believed that learning occurs through the interplay of two processes, assimilation, where new experiences are adjusted to fit existing concepts, and accommodation, where existing concepts are modified to incorporate new experiences.[76] The dynamic interaction between these processes not only facilitates short-term learning but also drives long-term developmental changes, which are the central focus of Piaget's cognitive theory.

Piaget proposed that cognitive development unfolds in distinct stages, progressing from birth to adolescence through close observation of children. These stages represent a

[70] Section 6(1-3) of the Constitution of the Federal Republic of Nigeria, 1999 as amended
[71] Ibid, Section 6(6)a-b
[72] Jean Piaget, *The Origins of Intelligence in Children* (Margaret Cook tr, Routledge 1952)
[73] RK Helm 'Cognitive Theory and Plea Bargaining' (2018) 5(2) *Sage Journal* 111
[74] Ibid
[75] A T Beck, 'The Past and Future of Cognitive Therapy' (1997) 61 Journal of Psychotherapy Practice and Research 281.
[76] Jean Piaget, *The Psychology of Intelligence* (Malcolm Piercy and D. E. Berlyne tr, Routledge 2001).

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sequence of thinking patterns characterized by specific features. The stages always occur in a fixed order, with none skipped. Each stage marks a significant transformation from the one before it, and later stages build upon the earlier ones. This progression resembles a staircase model of development. Piaget identified four major stages of cognitive development: sensorimotor intelligence, preoperational thinking, concrete operational thinking, and formal operational thinking. While each stage corresponds to a general age range in childhood, the timing may vary slightly among individuals.[77]

The relevance of the theory to plea bargaining is on the psychological processes and decision-making biases that influence how defendants, prosecutors, and judges approach plea negotiations.[78] This occurs when individuals rely too heavily on the first piece of information offered when making decisions. In plea bargaining, the prosecution's initial offer may serve as an anchor, influencing the defendant's perception of what a good negotiation looks like. The defendants may accept a plea negotiation based on the prosecutor's initial charge or sentence offer, even when better alternatives could exist, because they anchor their decision-making on that first offer.[79]

Cognitive theory highlights how plea bargaining decisions are not always rational or based purely on legal merits.[80] Instead, they are shaped by cognitive biases and mental shortcuts that can lead to unjust outcomes. These psychological processes can provide insight into how defendants are influenced and how the plea bargaining process might be reformed to mitigate these biases.

6.2 Deterrence Theory

The Deterrence Theory of Punishment has its roots in the works of classical philosophers such as Thomas Hobbes (1588–1678), Cesare Beccaria (1738–1794), and Jeremy Bentham (1748–1832). These thinkers challenged the longstanding legal policies and spiritualistic explanations of crime that had shaped European thought for over a millennium.

[77] MBrown, 'Cognitive Theory and Its Applications' (Lecture delivered at King's College London, London, 15 October 2024).
[78] Ibid
[79] GM Gulati 'Plea Bargaining in the United States: A Psychological Perspective' (2011) 36(4) *Criminal Justice Review* 467-487.
[80] Ibid

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By advocating for rational approaches to crime and punishment, these social contract theorists laid the groundwork for the modern concept of deterrence in criminology.[81]

The Deterrence Theory postulates that a threat of punishment will deter people from committing a crime.[82] The Deterrence Theory heavily influences criminal justice policies, particularly those that advocate for harsh penalties, visible policing, and strict enforcement of laws. The theory is a foundational concept in understanding crime prevention and the philosophy behind punitive measures in legal systems.[83] The theory is based on the idea of two types of deterrence—general deterrence, which aims to prevent crime by instilling the fear of punishment in the general population through publicized penalties, and specific deterrence, which seeks to prevent recidivism by making an example of individual offenders through personal experiences of punishment.[84]

The relevance of the theory to plea bargaining is on how plea negotiations influence the behavior of both offenders and the broader society in relation to criminal activity. This theory posits that criminal justice processes, including plea bargaining, should serve to prevent future crimes by creating fear of punishment. In plea bargaining, the Deterrence Theory raises important questions about whether offering reduced sentences through plea negotiations diminishes the deterrent effect of the justice system. It focuses on preventing an individual offender from committing future crimes by imposing punishment that discourages recidivism.[85]

However, in plea bargaining, the reduction of charges or sentences could undermine this goal. If a defendant receives a significantly reduced sentence through a plea negotiation, they may not feel sufficiently deterred from reoffending. They might perceive that even if caught in the future, they can negotiate another favorable negotiation, reducing the specific deterrent impact.

The Deterrence Theory holds that the perceived severity of punishment is crucial in

[81] Thomas Hobbes, *Leviathan* (first published 1651, Penguin Classics 1985

[82] AR Piquero and A Blumstein 'Does Imprisonment Reduce Recidivism? A Meta-Analysis of the Effects of Incarceration on Recidivism' (2007) 35(4) *Journal of Criminal Justice* 321-331.

[83] Ibid

[84] Cesare Beccaria, *On Crimes and Punishments* (David Young tr, Hackett Publishing 1986).

[85] Ibid

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preventing crime. Plea bargaining, by its nature, often involves reducing the severity of sentences in exchange for a guilty plea. If the public or potential offenders perceive that most cases are settled through plea negotiations with lighter sentences, it may erode the perceived seriousness of criminal punishment. This could diminish both general and specific deterrence, as offenders no longer fear significant penalties.[86]

By this theory, the certainty of being caught and punished is a more effective deterrent than the severity of punishment. Plea bargaining may enhance the certainty of punishment by ensuring convictions without the risks of trial. Even if sentences are reduced, plea negotiations ensure that offenders face some form of punishment, which may deter future crime. Without plea bargaining, some cases could go to trial and result in acquittals due to weak evidence or procedural issues, reducing the certainty of punishment.[87]

6.3 Utilitarian Theory

The Utilitarian Theory was postulated by Jeremy Bentham[88] and John Stuart Mill.[89] The theory evaluates actions based on their outcomes. It asserts that the morally right action is the one that produces the greatest good for the greatest number of people. This principle, often called the Greatest Happiness Principle, emphasizes maximizing overall happiness or utility while minimizing pain and suffering. The theory heavily influences policies focused on deterrence, incapacitation, and rehabilitation. For example, penalties are structured not only to punish offenders but also to serve as a warning to others and to reform individuals to reduce recidivism. Utilitarianism underpins restorative justice practices that aim to repair harm done to victims and communities while reintegrating offenders into society.

The Utilitarian Theory is based on the principle of maximizing overall societal welfare by balancing the benefits and harms of legal processes.[90] The relevance of the theory to plea bargaining is evaluated based on its capacity to produce the greatest good for the greatest

[86] CA Bennett and KM Hess 'An Examination of the Relationship Between Plea Bargaining and Deterrence: A Focus on Drug Offenses' (2021) 74 *Journal of Criminal Justice*, 101-120.
[87] Cesare Beccaria, *On Crimes and Punishments* (first published 1764, Cambridge University Press 1995)
[88] Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (JH Burns and HLA Hart eds, Clarendon Press 1970).
[89] John Stuart Mill, *Utilitarianism* (Roger Crisp ed, Oxford University Press 1998).
[90] MA Cohen and T Kyckelhahn 'The Role of Utilitarianism in Criminal Justice Policy: A Case Study on Plea Bargaining' (2021) 46(3) *American Journal of Criminal Justice*, 582-604.

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number of people. This theory focuses on the practical outcomes of plea bargaining rather than on questions of fairness or justice in individual cases. Utilitarianism emphasizes efficiency and the use of resources in a way that maximizes societal benefit. Plea bargaining allows the criminal justice system to resolve cases more quickly and with fewer resources, freeing up courts, prosecutors, and public defenders to handle more serious cases. By resolving a large number of cases through plea negotiations, the justice system can focus its limited time, personnel, and financial resources on trials for more serious or complex cases. This efficiency leads to a net benefit for society because it reduces backlog and ensures faster resolution of cases, which may be particularly important in systems facing overwhelming caseloads.[91]

The relevance of the theory to plea bargaining is how it seeks to reduce overall harm to society. Plea bargaining helps to avoid the potentially harmful effects of lengthy pre-trial detention, overburdened courts, and delayed justice.[92] When cases are resolved efficiently through plea bargaining, individuals do not spend excessive time in pre-trial detention, which can be financially and emotionally draining. It also reduces harm to victims and society by providing quicker resolutions, which can help restore social order and bring closure to affected parties.

In utilitarian terms, plea bargaining can contribute to crime prevention by ensuring that offenders are punished without the risk of acquittals due to procedural errors or weak evidence in a trial. The certainty of punishment can serve as a deterrent, potentially reducing future criminal acts.[93] From this perspective, plea bargaining contributes to public safety by providing consistent punishment and deterring crime, thus maximizing the welfare of the broader community. Even if the punishment is less severe than what might be imposed after a trial, the utilitarian argument is that any punishment is preferable to the risk of no punishment, which could happen if cases go to trial and result in acquittals.

Utilitarian theory involves a cost-benefit analysis where the collective good often

[91] Ibid
[92] DP Mears and JC Cochran 'Utilitarianism and Plea Bargaining: A Review of Evidence and Implications for Policy.' (2024) 37(1) *Criminal Justice Studies* 10-29.
[93] Ibid

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outweighs individual rights or interests.[94] Plea bargaining is justified under this theory if it serves to maximize societal well-being by improving the efficiency of the criminal justice system, reducing the burdens of trials, and ensuring swift punishment and resolution of cases. While it offers significant societal benefits in terms of cost savings and time efficiency, careful attention must be given to ensuring that these benefits do not come at the expense of fairness, especially for vulnerable individuals.[95] For utilitarian, the ultimate measure of plea bargaining's success is whether it increases the overall welfare of society, which includes balancing efficiency with justice and fairness.

6.4 Social and Political Theory

The Social and Political Theory examines the principles, structures, and dynamics of human societies and political systems. It draws on disciplines such as sociology, philosophy, and political science to understand and critique the foundations of social order, governance, and justice.[96] Social theory focuses on understanding how societies are organized, how individuals and groups interact within them and the processes that bring about social change. It examines themes like social structure, power dynamics, cultural norms, and inequality.

The basis of modern social theory can be attributed to key thinkers like Karl Marx, Émile Durkheim, and Max Weber. Karl Marx[97] emphasized the role of economic structures in shaping society, focusing on class struggle and material conditions as drivers of historical change. He argued that the conflict between the bourgeoisie (owners of production) and the proletariat (working class) was central to understanding social transformation. Emile Durkheim[98] highlighted the importance of social cohesion and collective consciousness, examining how shared norms and values bind societies together. He also studied the consequences of rapid modernization, such as social anomie. Max Weber[99] brought a

[94] J Reiman, J *The Rich Get Richer and the Poor Get Prison: Ideology, Class, and Criminal Justice* (New York: Addison-Wesley, 2021) 119
[95] Ibid
[96] AA Isiaq *Nigerian Government and Politics* (Royal Gate Publishers, Ibadan, 2008)
[97] Karl Marx, The Communist Manifesto (first published 1848, Penguin 2002).
[98] Émile Durkheim, The Division of Labour in Society (first published 1893, Macmillan 1984).
[99] Max Weber, Economy and Society: An Outline of Interpretive Sociology (Guenther Roth and Claus Wittich eds, University of California Press 1978).

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cultural and interpretive approach to social theory, analyzing how ideas, beliefs, and institutions (such as bureaucracy) influence social action and the development of societies.

Political theory on the other hand examines governance, authority, justice, and the organization of power within societies. It seeks to answer both normative questions about what a just society should look like and empirical ones how political systems function. Plato[100] is considered one of the earliest proponents of political theory, advocating in The Republic for a society led by philosopher-kings guided by reason and justice. Aristotle,[101] his student, took a more pragmatic approach, papering existing political systems and classifying governments based on their structure and purpose. In the modern era, thinkers like Thomas Hobbes, John Locke, and Jean-Jacques Rousseau developed social contract theories. Thomas Hobbes, in Leviathan, argued that a strong central authority was necessary to prevent the chaos of the state of nature, where life would be solitary, poor, nasty, brutish, and short. John Locke[102] proposed a more optimistic view, advocating for natural rights (life, liberty, and property) and a government limited by the consent of the governed. Jean-Jacques Rousseau emphasized the collective will, arguing that true freedom could only be achieved through direct participation in self-governance. John Rawls, a leading 20th-century political theorist, developed the theory of justice as fairness in *A Theory of Justice.* He introduced the veil of ignorance as a thought experiment for designing a just society.

The boundaries between social and political theory often blur, as both fields address questions of power, rights, and social justice. Feminist theorists like bell hooks and Judith Butler challenge patriarchal norms and highlight the intersection of gender and power. Critical theorists, such as Theodor Adorno and Jürgen Habermas, critique capitalist societies and dominant ideologies, seeking paths to emancipation. Frantz Fanon and Edward Said provide postcolonial perspectives, examining the lasting impact of colonialism on social and political systems.

[100] Plato, The Republic (Robin Waterfield tr, Oxford University Press 1993).
[101] Aristotle, *Politics* (Ernest Barker tr, Oxford University Press 1998).
[102] John Locke, *Two Treatises of Government* (Peter Laslett ed, Cambridge University Press 1988).

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Social and political theories are crucial for addressing contemporary challenges like global inequality, climate change, the rise of populism, and technological surveillance. By examining these issues through theoretical frameworks, they provide valuable insights into how societies can evolve toward greater justice, equality, and sustainability. The relevance of the theory to plea bargaining highlights the ways in which the practice is shaped by power dynamics, social inequality, political pressures, and broader societal norms.[103] Plea bargaining is not just a legal mechanism for resolving cases efficiently; it is also a reflection of how society manages crime, maintains social control, and reinforces existing power structures[104]. While plea bargaining can provide practical benefits in terms of efficiency and resource management, it also raises concerns about fairness, transparency, and the impact on marginalized communities. Understanding plea bargaining through a social and political lens reveals its broader implications for justice, equality, and the role of the state in maintaining order.

6.5 Criminal Settlement Theory

The Criminal Settlement Theory is a framework in criminal justice that emphasizes resolving cases through negotiated agreements rather than adversarial trials.[105] The theory is rooted in principles of efficiency, restorative justice, and rehabilitation, seeking to balance the interests of the state, victims, and offenders. It is often associated with mechanisms such as plea bargaining, restorative justice programs, and diversionary processes, aiming to reduce delays, alleviate case backlogs, and provide tailored outcomes.[106]

The proponents of this theory include Albert W. Alschuler, who critically examined plea bargaining as a central mechanism for resolving criminal disputes, highlighting its efficiency and potential pitfalls. John Braithwaite, a leading advocate of restorative justice, contributed to the theory by emphasizing the importance of offender accountability and victim

[103] LM Friedman 'The Role of Politics in Criminal Justice and Plea Bargaining' (2025) 57(3) *Law & Society Review*, 555-578.
[104] Ibid
[105] AR Piquero and TE Moffitt 'Social Theory and Criminal Justice: Insights into the Role of Plea Bargaining' (2022) 41(2) *Justice Quarterly*, 280-305.
[106] DP Mears and JC Cochran 'The Intersection of Behavioral Economics and Criminal Justice: Insights for Plea Bargaining' (2022) 47(4) *American Journal of Criminal Justice* 758-775.

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involvement in non-adversarial resolutions. Herbert Packer's crime control and due process models of criminal justice indirectly influenced the Criminal Settlement Theory by balancing the need for efficiency with the protection of defendants' rights. Malcolm M. Feeley examined the procedural management of cases in criminal courts, contributing to the theory's focus on pragmatic case resolution. Restorative justice scholars such as Howard Zehr and Mark Umbreit also played pivotal roles by emphasizing reconciliation, community involvement, and reparation in resolving criminal cases.

The relevance of the theory to plea bargaining is how it views the practice as a form of negotiation and settlement, similar to how civil disputes are resolved outside of court. In this framework, plea bargaining is seen as a consensual agreement between the prosecution and the defense, where both sides come to a compromise to avoid the uncertainties and costs associated with a trial. This theory focuses on the idea that criminal cases, like civil disputes, can be settled through negotiation rather than full adjudication.[107]

Under the Criminal Settlement Theory, plea bargaining is akin to a negotiated settlement in a civil case. The prosecutor and defendant, each with their own incentives, negotiate an outcome that avoids the time, expense, and uncertainty of trial. In this sense, the courtroom operates like a marketplace where legal outcomes are bargained for, rather than determined solely by judicial fact-finding.[108] This approach treats the resolution of criminal charges as a contractual agreement where both parties make concessions. The prosecution may reduce the charges or recommend a lighter sentence, while the defendant agrees to plead guilty, accepting some level of responsibility in exchange for a more favorable outcome. Like in civil settlements, the focus is on achieving a mutually acceptable resolution rather than determining absolute guilt or innocence through a trial.[109]

The prosecution and defence benefit from plea bargaining in ways similar to settlement of civil disputes. The prosecution benefits by securing a conviction without the risks associated

[107] T Eisenberg and K McGuire 'The Role of Social Context in Plea Bargaining: A Political Perspective' (2021) 46(2) Criminal Justice Review 175-190.
[108] Ibid
[109] A Harris 'The Politics of Plea Bargaining: Social Justice and Criminal Justice Reform' (2022) 112 *Journal of Criminal Law and Criminology* 25-55.

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with trial, while the defendant benefits from receiving a reduced sentence or lesser charges. Plea bargaining, from this perspective, is about minimizing risk for both parties.[110] The prosecutor avoids the potential for acquittal or a hung jury, while the defendant avoids the possibility of receiving a much harsher sentence if convicted at trial. This mutual benefit mirrors the logic of settlement in civil cases, where both parties aim to avoid the uncertainty of litigation by reaching a compromise.[111]

The relevance of the theory to plea bargaining is that it is a practical tool for managing overwhelming caseloads in criminal courts, similar to how civil settlements are used to avoid backlogs in civil litigation. The plea bargaining process helps courts manage the high volume of criminal cases, particularly in jurisdictions where trials are costly and time-consuming. This focus on case management can sometimes overshadow the goal of achieving substantive justice, as the system becomes more concerned with processing cases efficiently rather than ensuring that every case is fully adjudicated on its merits.

The Criminal Settlement Theory must balance the goals of efficiency with the need for justice. While plea bargaining allows for efficient case resolution, it can sometimes conflict with the goal of delivering justice to victims, defendants, and society at large. Proponents of this theory argue that plea bargains are necessary for the efficient functioning of the justice system, but they also acknowledge the risks of sacrificing fairness for efficiency.[112] To address these concerns, some suggest reforms that ensure greater oversight of plea negotiations, such as judicial review or stricter guidelines for plea negotiations, to maintain a balance between settlement efficiency and the delivery of justice.[113]

The Criminal Settlement Theory of plea bargaining conceptualizes the practice as a negotiated settlement, similar to civil litigation.[114] It focuses on the benefits of efficiency, risk management, and the mutual advantages for both the prosecution and defense. However,

[110] Ibid
[111] J Schneider and A Walden 'Social Justice and the Politics of Plea Bargaining: A Critical Analysis' (2025) 34(1), *Criminal Justice Policy Review* 35-58.
[112] AR Piquero and TE Moffitt 'Social Theory and Criminal Justice: Insights into the Role of Plea Bargaining' (2022) 41(2) *Justice Quarterly*, 280-305.
[113] Ibid
[114] Ibid

it also highlights the challenges and criticisms, particularly regarding power imbalances, the potential for coercion, and the tension between efficiency and substantive justice. While plea bargaining allows the criminal justice system to function more efficiently, it also raises questions about fairness, accountability, and the role of public interest in criminal proceedings.[115]

6.6 Behavioral Model Theory

The Behavioral Model Theory is rooted in the principles of behavioral psychology. It focuses on how individuals learn and respond to their environment through observable behaviors. It posits that all behaviors, whether normal or deviant, are learned through interaction with the environment and can be unlearned or modified through conditioning and reinforcement. This theory places less emphasis on internal thought processes or innate traits, instead focusing on external stimuli and responses.[116]

The Behavioral Model Theory draws heavily from the work of early behaviorists such as John B. Watson, who is considered the founder of behaviorism. Watson[117] argued that psychology should focus only on observable behaviors rather than introspective methods, as behaviors can be objectively measured and studied. B.F. Skinner,[118] another leading proponent, expanded on Watson's ideas through his work on operant conditioning, which examines how reinforcement (rewards) and punishment shape behavior. Skinner's studies highlighted the importance of environmental factors in determining future actions, demonstrating that behaviors followed by positive reinforcement are more likely to recur, while those followed by punishment are less likely to be repeated.

Ivan Pavlov[119] another contributor to the Behavioral Model Theory whose experiments with dogs laid the foundation for classical conditioning. Pavlov's work demonstrated how behaviors could be conditioned by associating a neutral stimulus with an unconditioned

[115] Ibid
[116] Albert Bandura, *Social Learning Theory* (Prentice Hall 1977).
[117] John B Watson, *Behaviorism* (University of Chicago Press 1930).
[118] B.F. Skinner, *Science and Human Behavior* (Macmillan 1953).
[119] Ivan P. Pavlov, *Conditioned Reflexes* (Oxford University Press 1927).

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stimulus to elicit a specific response. For example, the sound of a bell (neutral stimulus) paired with food (unconditioned stimulus) eventually caused dogs to salivate (conditioned response) at the sound of the bell alone.

The Behavioral Model Theory has been widely applied in fields such as education, therapy and criminal justice. In education, it informs techniques such as positive reinforcement to encourage desired behaviors in students. In therapeutic settings, behavioral therapy seeks to replace maladaptive behaviors with healthier ones, often using techniques like systematic desensitization and token economies. Within the criminal justice system, the theory has influenced rehabilitation programs designed to modify criminal behavior through behavior-based interventions. The Behavioral Model Theory focuses on understanding how psychological factors and social influences affect individuals' decisions and behaviors. With regards to plea bargaining, it applies to psychological and behavioral insights to understand how individuals make decisions in the plea-bargaining process. This theory focuses on how cognitive biases, heuristics, and emotions influence the decision-making of defendants, prosecutors, and defense attorneys, often leading to outcomes that deviate from the rational, calculated decisions predicted by traditional legal and economic models.[120]

The relevance of the theory to plea bargaining is that it recognizes that cognitive biases, such as loss aversion, anchoring, and confirmation bias, heavily influence decisions in plea bargaining. Defendants and prosecutors may make choices based on distorted perceptions of risk and reward, leading to decisions that are not always in their best interest.[121] For defendants, loss aversion, the tendency to prefer avoiding losses over acquiring equivalent gains, can lead them to accept plea bargains to avoid the possibility of a harsher sentence at trial, even if they might be acquitted. Prosecutors, on the other hand, may be influenced by anchoring, where their initial offer in plea negotiations sets a baseline for the outcome, skewing negotiations in their favor.[122]

[120] A Harris and D Huber 'Understanding Behavioral Factors in Plea Bargaining: A Comprehensive Analysis' (2024) 62(1) *Criminology* 99-120.
[121] Ibid
[122] JP Gibbs 'The Behavioral Model of Criminality: Implications for Sentencing and Plea Bargaining' (2025) 22(3) *Criminology & Public Policy*, 905-924.

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The available option can significantly affect the decision-making process in plea bargaining. For instance, presenting a plea bargain as a way to avoid a lengthy sentence may lead defendants to accept it, even if their chances of acquittal are relatively high. Framing effects shape how defendants perceive the choices available to them. If a prosecutor frames a plea bargain as a safe option that minimizes risk, defendants may overestimate the dangers of going to trial, leading them to accept the negotiation even if they have a viable defense. This manipulation of perceptions can result in guilty pleas that would not have occurred if the decision had been framed differently.[123]

Behavioral psychology suggests that decisions made under time pressure or after prolonged stress are often less rational. Defendants may feel pressured to accept plea bargains quickly to avoid the emotional and psychological strain of prolonged legal proceedings. Decision fatigue the deterioration of decision-making quality after a long session of decision-making can make defendants more likely to accept a plea negotiation without fully considering the consequences. When faced with the stress of arrest, pre-trial detention, and uncertainty, defendants may feel overwhelmed and choose a plea negotiation simply to end the process, even if it means accepting a harsher penalty than necessary.[124]

The theory provides a deeper understanding of how human psychology and behavior affect decisions in the plea bargaining process.[125] By highlighting cognitive biases, emotional influences, and decision-making shortcuts, this theory explains why plea negotiations are often accepted, even when they may not align with a defendant's best legal interest. Recognizing these behavioral factors is crucial for reforming the plea bargaining system to ensure that decisions are made with greater awareness and fairness, minimizing the influence of irrational factors and psychological pressure.

6.7 Application of the Theories

The various theories explored, including Deterrence Theory, Utilitarian Theory, Social and

[123] Ibid
[124] Ibid
[125] TR Tyler 'Procedural Justice and Plea Bargaining: A Behavioral Perspective' (2021) 46(1) *Criminal Justice Review*, 95-113.

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Political Theory, Criminal Settlement Theory, Behavioral Model Theory, and Cognitive Theory, are all relevant to the application of plea bargaining in the criminal justice system. Each theory provides an insight into the motivation, outcome, and psychological dynamics of criminal behavior and decision-making. However, among these, the Deterrence Theory and Criminal Settlement Theory stand out as particularly well-suited for understanding and shaping plea bargaining practices in Nigeria.

The Deterrence Theory is fundamentally concerned with the ability of legal mechanisms to prevent criminal behavior by imposing credible penalties or consequences. In the context of plea bargaining, it emphasizes the importance of ensuring that the outcomes of plea negotiations act as an effective deterrent to both potential offenders and repeat offenders particularly restitution. Furthermore, Nigeria faces unique challenges, including high rates of corruption, prolonged legal proceedings, and prison overcrowding.

The Criminal Settlement Theory is also suitable for plea bargaining because it promotes efficiency in resolving criminal cases, reducing delays and backlogs in the justice system. By encouraging negotiated agreements, it ensures timely resolution while avoiding the prolonged and costly process of a full trial. This benefits both the prosecution and the defense, conserving resources and enabling the courts to focus on more complex cases. The theory provides flexibility by allowing outcomes tailored to the specific circumstances of each case. It enables defendants to negotiate for reduced charges or lighter sentences, creating an incentive for them to plead guilty while ensuring that justice is still served. This approach also considers the interests of victims and the community, allowing for compensation, restitution, or other remedies that align with restorative justice principles.

Adopting Deterrence and Criminal Settlement theories as the guiding framework for this research will help to highlight their potential as tools for crime reduction. It will also guide policies and reforms that aim to balance fairness, justice, and efficiency in the criminal justice system, thus making plea bargaining an integral part of Nigeria's efforts to achieve a more streamlined and effective criminal justice process.

Conclusion

The examination of the conceptual and theoretical frameworks of plea bargaining in Nigeria highlights the diverse aspects of the concept. From the definitions of plea bargaining, plea negotiation, and plea agreement, to the historical development and various types of plea bargaining, such as Sentence Bargaining and Charge Bargaining, it is evident that plea bargaining plays a critical role in the administration of criminal justice in Nigeria. The perspectives of the theories examined such as Deterrence Theory, Utilitarian Theory, Criminal Settlement Theory, and others, provide essential perspectives on how plea bargaining can function as a tool for achieving justice. These theories highlight the importance of deterrence, fairness, and efficiency in the plea bargaining process, particularly in a justice system that faces challenges like overcrowded prisons and delayed trials. The application of these theories to Nigeria's legal system explains the need for a balance between reducing crime, ensuring accountability, and protecting the rights of defendants.