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PLEA BARGAINING UNDER BNSS: COMPARATIVE STUDY WITH GLOBAL PRACTICES

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Abstract

Plea Bargaining is the pretrial negotiation between the defendant and the prosecution during which accused pleads guilty in exchange for certain concession by the prosecutor. This usually involves negotiation to reduce either the sentence or the seriousness of the charge. Before 2005, plea bargaining was not officially recognized in India and was often viewed as unconstitutional and not suitable to our society by the courts, The Law Commission of India has addressed the concept of plea bargaining in multiple reports, recommending its introduction as a remedy to expedite criminal justice. These recommendations finally paved through the Criminal Law (Amendment) Act, 2005, and CrPC was replaced with the BNSS in the year 2023. Plea bargaining, though a relatively recent addition to India's criminal justice system, has emerged as a practical way to deal with the ever-increasing burden on courts. It offers a chance for cases to be resolved quickly, saving time and resources for everyone involved: accused, victims, lawyers, and judges. It benefits both the State and the accused under the scheme of Plea Bargaining[1]. Plea Bargaining will not apply when such offence affects the socio-economic condition of the country or has been committed against a woman or children under the age of 14 years.[2] The Central Government has the right to determine which offenses affect the socio-economic conditions of the country. Plea bargaining has been established as an antidote to the issue of overcrowded jails, overburdened courts and abnormal delays[3]. The nature and scale of plea bargaining in India indicate that it cannot simply be replicated from the United States While plea bargaining offers several benefits, including reduced sentences for defendants and compensation for victims, it must be applied judiciously to ensure justice is served and the rights of all parties are protected.

[1] https://www.studocu.com/in/document/guru-gobind-singh-indraprastha-university/indian-penal-code/plea-bargaining/9047661
[2] https://cdnbbsr.s3waas.gov.in/s3d04863f100d59b3eb688a11f95b0ae60/uploads/2024/06/2024062513322170 37.pdf
[3] https://unacademy.com/content/upsc/study-material/law/plea-bargaining

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Key words:

Plea Bargaining, Judicial Framework, Bhartiya Nagarik Suraksha Sanhita, 2023, Negotiated Settlements, Comparative oversight, Victim-centric justice, Criminal case pendency.

INTRODUCTION

India's criminal justice system is frequently described as slow and burdened. As per the National Judicial Data Grid (NJDG)[4] statistic's, millions of cases remain pending across various courts, with criminal trials often stretching over decades. Over 4 crore cases are still waiting to be resolved across different levels of courts, justice is delayed for years, sometimes even decades. This delay not only undermines the constitutional guarantee of a speedy trial under Article 21 of the Constitution of India, but also erodes public confidence in the justice delivery system.

Against this backdrop, plea bargaining has been brought in as a practical and humane tool to help clear the backlog and deliver quicker justice. Introduced in India through the Criminal Law (Amendment) Act, 2005[5], and now reaffirmed under the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023[6] ,plea bargaining allows an accused to voluntarily admit guilt in exchange for a reduced sentence or other concessions. This mechanism seeks to balance efficiency with fairness, ensuring quicker disposal of cases while safeguarding constitutional values. It acknowledges the suffering caused by delays, seeks to restore public confidence, and aligns India with global practices while retaining safeguards suited to its socio-legal context, plea bargaining under BNSS represents not merely a procedural reform but a human-cantered legal tool.

Plea-bargaining is constituted of two words which is the plea and second is the bargaining. Plea means the formal statement given by the accused where he accepts his guilt and states about the offence he commits and the term bargaining means the negotiation which is like settlement between the accused and the victim.

As the saying goes "Justice Delayed is Justice Denied"[7] and in the current situation, victims suffer as a result of delays in the trial process and having to wait for a longer period of time to

[4] https://njdg.ecourts.gov.in/njdg_v3/
[5] https://www.mha.gov.in/sites/default/files/2022-09/TheCCP%28Amendment%29Act%2C2005%5B1%5D.pdf
[6] https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf
[7] https://www.manupatra.com/roundup/326/articles/plea%20bargaining.pdf

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achieve justice, which causes them to lose faith in the judicial system[8]. As a result, the concept of "Plea bargaining" was established in India as part of the alternative dispute resolution system to solve these challenges, minimise the burden of the court, provide rapid hearing of cases, and ensure speedy justice for the people.[9]

Plea bargaining consists of three main types used to resolve over 90% of criminal cases by avoiding trial. Charge bargaining (reducing charges), sentence bargaining (agreeing to a lighter sentence), and fact bargaining (agreeing to certain facts),

Definition of Plea Bargaining According to Britannica

Plea bargaining, in law, the practice of negotiating an agreement between the prosecution and the defence whereby the defendant pleads guilty to a lesser offense or (in the case of multiple offenses) to one or more of the offenses charged in exchange for more lenient sentencing, recommendations, a specific sentences, or a dismissal of other charges. Supporters of plea-bargaining claim that it speeds court proceedings and guarantees a conviction, whereas opponents believe that it prevents justice from being served. The great majority of criminal cases in the United States involve some form of plea bargaining.[10]

Statutory Framework under BNSS

Plea bargaining was formally introduced in India through Chapter XXIA (Sections 265A to 265L) of the Criminal Procedure Code (CrPC). By way of the Criminal Law (Amendment) Act, 2005[11]. The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, has now carried forward this framework in Chapter XXIII Sections 289 to 300, refining and modernizing it to suit contemporary needs.[12]

Section 289 of BNSS sets the scope of plea bargaining. It applies only to offences punishable with imprisonment of less than seven years, while expressly excluding cases involving death penalty, life imprisonment, or socio-economic offences such as corruption and corporate

[8] https://www.ijlra.com/details/plea-bargaining-in-india-%E2%80%93-the-new-normal-for-solving-legal-cases-in-high-gear-by-prissha-chawla
[9] https://www.ijlra.com/details/plea-bargaining-in-india-%E2%80%93-the-new-normal-for-solving-legal-cases-in-high-gear-by-prissha-chawla
[10] https://www.britannica.com/topic/plea-bargaining
[11] https://journal.thelawbrigade.com/salrj/article/view/1173
[12] Taxmann, *BNSS 2023: Law & Practice* (2023)

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fraud[13]. This mirrors CrPC Section 265A but is drafted with greater clarity, reflecting India's cautious approach compared to the United States, where plea bargaining dominates criminal justice[14].

Section 290 provides the procedure for application. The accused must file an application before the Magistrate, stating the particulars of the case and affirming that the request is voluntary. This safeguard is crucial, as Indian courts have historically been wary of coercion in confessions, as seen in Murlidhar Meghraj Loya v. State of Maharashtra (1976)[15]. BNSS strengthens this safeguard by requiring explicit declarations and permitting audio-video recording of proceedings, a modernization absent in the CrPC.

Section 291 outlines the hearing process. The Magistrate issues notice to the prosecutor and the victim, and conducts a hearing to verify voluntariness.[16] Importantly, any statement made during plea bargaining cannot be used against the accused in subsequent proceedings. This protection was present in CrPC Section 265B but is reinforced in BNSS with clearer procedural safeguards.[17]

Section 292 introduces the concept of a mutually satisfactory disposition, where the accused, prosecutor, and victim negotiate terms. These may include compensation to the victim, reduced sentence, or probation. BNSS gives victims a stronger participatory role than the CrPC, aligning with global trends toward victim-centric justice[18].

Section 293 requires the Magistrate to record the terms of settlement in writing, signed by all parties.

Section 294 empowers the court to award compensation, reduce the sentence, or release the accused on probation.[19] BNSS explicitly caps sentence reduction at half of the minimum punishment prescribed, whereas the CrPC left this largely to judicial discretion. This codified limit ensures consistency and prevents arbitrary reductions[20].

[13] BNSS, 2023, Section 289
[14] https://www.book2look.com/embed/9781136297717
[15] https://indiankanoon.org/doc/739213/
[16] https://www.britannica.com/topic/plea-bargaining
[17] BNSS, 2023, Section 291
[18] Law Commission of India, 154th Report (1996); 177th Report (2001)
[19] https://indiankanoon.org/doc/1439610/
[20] BNSS, 2023, Section 294

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Sections 295 to 300 provide safeguards and finality. Judgments delivered under plea bargaining cannot be appealed, ensuring speedy resolution. Records are sealed to protect voluntariness, and the accused must comply with the agreed sentence or probation terms. These provisions echo CrPC Sections 265G–265L but are updated with modern language and procedural clarity.[21]

Judicial Precedents on Plea Bargaining

1) State of Gujarat v. Natwar Harchandji Thakor, (2005) 1 GLR 709; 2005 Cri LJ 2957.

The Gujarat High Court recognized plea bargaining as a legitimate mechanism to reduce pendency and promote efficiency. It observed that "every criminal trial is a search for truth, and if truth can be discovered by a process of mutual settlement without compromising justice, it should be welcomed."[22] This statement reflected a pragmatic approach: rather than viewing plea bargaining as a dilution of justice, the Court acknowledged its potential to balance efficiency with fairness. The judgment highlighted that the criminal justice system was overburdened with delays, and plea bargaining could serve as a constructive solution to expedite trials while safeguarding the rights of the accused. The significance of *Natwar Harchandji Thakor* lies in its forward-looking vision. By legitimizing plea bargaining, the Gujarat High Court anticipated the need for reforms to address systemic delays and inefficiencies. Its reasoning provided the intellectual and judicial foundation for later statutory changes, ensuring that plea bargaining became an accepted part of Indian criminal procedure.

2) Murlidhar Meghraj Loya v. State of Maharashtra, 1976 SC 1929; (1976) 3 SCC 684.

The Supreme Court in this case emphasized voluntariness in confessions and cautioned against coercion or inducement. The Court stressed that any plea or confession must be free from external pressure, laying down principles that later shaped statutory safeguards in BNSS Sections 289–300. The Court held that any confession or plea must be free from coercion, inducement, or external pressure, and that the judiciary has a duty to scrutinize the circumstances under which such statements are made. This principle was rooted in the constitutional safeguard under Article 20(3), which protects individuals from self-incrimination.

[21] BNSS, 2023, Sections 295–300;
[22] https://indiankanoon.org/doc/69949024/

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3) Union of India v. Ashok Kumar, (2005) 8 SCC 760

The Supreme Court upheld the statutory framework for plea bargaining introduced by the Criminal Law (Amendment) Act, 2005. It legitimized plea bargaining as part of Indian criminal procedure under Chapter XXI-A of CrPC, now in Chapter XXIII Sections 289 to 300 of BNSS, 2023. Before this amendment, plea bargaining was considered alien to Indian jurisprudence, often criticized as being contrary to public policy. The Court recognized that plea bargaining, when regulated by law, serves important purposes: reducing case backlogs, expediting trials, and providing a pragmatic resolution to criminal disputes. It emphasized that the process must be voluntary, transparent, and subject to judicial oversight to prevent misuse. By doing so, the Court aligned Indian criminal procedure with global practices, where plea bargaining is a widely accepted tool for efficient justice delivery.

The significance of this case lies in its transformative impact: it marked the judicial acceptance of plea bargaining in India, shifting the system from rigid trial procedures to a more flexible, negotiated form of justice. By upholding the amendment, the Supreme Court not only reduced the burden on courts but also reinforced the principle that justice can be achieved through consensual, fair, and voluntary mechanisms.

Comparative Study with Global Practices

- The United States of America

The United States has embraced plea bargaining as the backbone of its criminal justice system. More than 90% of criminal cases are resolved through negotiated pleas rather than full trials. The U.S. Supreme Court in Brady v. United States (1970)[23] upheld guilty pleas entered voluntarily and intelligently, even if motivated by the desire to avoid harsher punishment. While this system ensures efficiency and reduces backlog dramatically, critics argue that it risks coercion, inequality, and "assembly-line justice,"[24] From a systemic perspective, plea bargaining ensures efficiency and expediency. Trials are resource-intensive, and negotiated pleas allow courts to handle massive caseloads without collapsing under backlog. Prosecutors benefit by securing convictions quickly, while defendants often receive reduced sentences in exchange for cooperation. Where defendants, especially from marginalized backgrounds, may plead guilty under pressure. Justice Kennedy's majority opinions, by contrast, rested heavily on the dominance of plea bargaining today and its central role in setting sentences as well as

[23] https://supreme.justia.com/cases/federal/us/397/742/
[24] https://www.law.cornell.edu/

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convictions. Even a fair trial cannot wipe away an earlier tactical decision that results in a much longer sentence after trial.[25]In *Lafler v. Cooper* and *Missouri v. Frye*,[26] a five-to-four majority of the Court held that ineffectiveness that leads defendants to reject plea bargains can satisfy both the performance and prejudice prongs of *Strickland v. Washington*.[27]

- The United Kingdom

The United Kingdom follows a more balanced approach. In R v. Goodyear (2005)[28], the Court of Appeal introduced "Goodyear Indications," allowing judges to indicate the likely sentence if the accused pleads guilty. The Court ruled that even if a defendant's decision was motivated by the desire to avoid a more severe punishment, the plea remained valid so long as it was made knowingly, voluntarily, and with competent legal advice. This case established the principle that plea bargaining is not inherently coercive if proper safeguards are observed. This judicially supervised model ensures transparency and voluntariness, preventing prosecutorial dominance, the UK system places judges at the centre of plea negotiations, thereby safeguarding fairness while still promoting efficiency. Plea bargaining does not exist within one statute but incorporates judicial discretion and prosecutorial guidance[29]. At its core, plea bargaining is a judicial mechanism through which an accused individual voluntarily admits guilt in exchange for concessions by the prosecution, which may involve a lesser inculpation, a diminished penalty, or, in few occurrences, both[30]. This approach is in line with the Sentencing Council's guidelines on sentence reduction following a guilty plea, issued pursuant to section 144 of the Criminal Justice Act 2003. The guidelines provide that entering a guilty plea at the earliest opportunity may result in a sentence being reduced by as much as one-third.[31]

- Comparative Insights

The comparison highlights three distinct philosophies. The U.S. model of plea bargaining prioritizes efficiency, resolving the majority of cases quickly but risking coercion and inequality. The UK model of plea bargaining emphasizes judicial transparency, striking a balance between efficiency and fairness. India's BNSS framework aligns more closely with the

[25] https://harvardlawreview.org/print/vol-126/incompetent-plea-bargaining-and-extrajudicial-reforms/
[26] https://supreme.justia.com/cases/federal/us/566/156/
[27] https://supreme.justia.com/cases/federal/us/466/668/
[28] https://www.casemine.com/judgement/uk/5b46f1f82c94e0775e7ef2ba
[29] https://docs.manupatra.in/newsline/articles/upload/585db32a-3e8f-4a0f-a580-2d02778b5bfa.pdf
[30] https://medium.com/@sharayukadam03/plea-bargaining-a-comparative-study-of-india-the-united-kingdom-and-the-united-states-of-america-72ef1ea20a11
[31] https://medium.com/@sharayukadam03/plea-bargaining-a-comparative-study-of-india-the-united-kingdom-and-the-united-states-of-america-72ef1ea20a11

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UK approach, prioritizing fairness, victim rights, and judicial supervision over sheer efficiency.

In the United States, plea bargaining is the dominant mechanism of criminal justice, resolving over 90% of cases. It is largely prosecution-led, with courts upholding guilty pleas as valid if entered voluntarily and intelligently, even when motivated by fear of harsher punishment *Brady v. United States*[32]. While this ensures efficiency and reduces backlog, critics highlight risks of coercion, inequality, and disproportionate impact on marginalized defendants.

The United Kingdom adopts a more balanced, judicially supervised model. Through *R v. Goodyear (2005)*[33], judges may give "Goodyear Indications" of likely sentences, ensuring transparency and voluntariness. Sentence reductions are guided by the Sentencing Council under section 144 of the Criminal Justice Act 2003, with up to one-third reduction for early guilty pleas. This system places judges at the centre, preventing prosecutorial dominance and safeguarding fairness while still promoting efficiency.

In India, plea bargaining was introduced by the CrPC Amendment of 2005 and is now part of the BNSS (2023)[34]. It applies only to offences punishable with imprisonment up to seven years, excluding serious crimes. The process requires voluntary initiation, judicial oversight, and mandatory victim participation, including compensation. India's framework is cautious and victim-centric, prioritizing fairness and justice over speed, aligning more closely with the UK model but with stricter statutory limits.Overall, the U.S. model emphasizes efficiency but risks coercion, the UK model balances fairness with efficiency through judicial transparency, and India's statutory framework prioritizes fairness and victim rights, representing a middle path between the two.

Critical Analysis

Plea bargaining in India under BNSS (2023) is a cautious reform designed to reduce case backlog and ensure speedy justice, but its limited scope, cultural resistance, and risks of coercion make its impact uneven.[35] With over 4 crore pending cases, plea bargaining offers a practical solution to ease judicial congestion and uphold the constitutional right to a speedy trial under Article 21. BNSS strengthens victim participation in the mutually satisfactory

[32] *Brady v. United States*, 397 U.S. 742 (1970) – U.S. Supreme Court upheld voluntariness of guilty pleas
[33] *R v. Goodyear* [2005] EWCA Crim 888 – Court of Appeal introduced judicial sentence indications
[34] Criminal Procedure Code (Amendment Act, 2005), Chapter XXIA; Bharatiya Nagarik Suraksha Sanhita (BNSS, 2023), Chapter XXIII – India's statutory framework for plea bargaining
[35] https://www.ijllr.com/post/plea-bargaining-a-visit-understanding-its-impact-on-indian-criminal-justice-systemhttps://www.ijllr.com/post/plea-bargaining-a-visit-understanding-its-impact-on-indian-criminal-justice-system

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disposition (MSD)[36] process, allowing compensation and restitution, which aligns with restorative justice principles. BNSS mandates explicit declarations, judicial oversight, and audio-video recording of proceedings, reducing risks of forced confessions. Plea bargaining provides closure for victims and predictability for accused persons, reducing prolonged uncertainty.[37] A critical weakness of plea bargaining in India lies in its strict eligibility criteria, which exclude offences against women, children, and socio-economic crimes such as corruption and fraud, thereby limiting its applicability and reducing its potential impact on the backlog of cases. Another weakness is the risk of coercion, Where accused persons, particularly those from marginalized or economically weaker backgrounds, may feel compelled to plead guilty under pressure to avoid lengthy trials, undermining the principle of voluntariness. Limited awareness and weak legal aid services hinder its effective use, as many accused individuals are unaware of their rights or the safeguards built into BNSS Sections 289–300.

Conclusion

Plea bargaining under BNSS is a positive step toward a faster, fairer justice system, but its success depends on thoughtful reforms. It offers a practical solution to the chronic problem of case pendency and provides a humane alternative for minor offenders. However, for it to truly succeed, systemic reforms, increased awareness, and a shift in legal culture are essential. With the right safeguards, plea bargaining can evolve from a lesser-known tool to a cornerstone of efficient and equitable justice in India. While it holds immense potential for efficient justice delivery, victim empowerment its effective implementation depends on strong procedural safeguards, adequate legal aid for the accused, and vigilant judicial oversight. Continued critical evaluation and adaptation are crucial to ensure that plea bargaining truly serves the ends of justice and not merely administrative convenience.

India’s cautious, victim-centric model represents a middle path in global practice, learning from the efficiency of the U.S. while adopting the fairness safeguards of the UK. With thoughtful reforms and vigilant implementation, plea bargaining under the BNSS can evolve into a cornerstone of India’s justice delivery system. It holds immense promise not only for reducing backlog but also for empowering victims, rehabilitating offenders, and ensuring that justice remains both swift and equitable. In this way, India positions itself as a global example of how plea bargaining can be adapted to uphold dignity, fairness, and efficiency together.

[36] https://delhicourts.nic.in/public/Circulars/2025/02/31aaa.pdf
[37] https://prsindia.org/billtrack/overview-of-criminal-law-reforms