



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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PLEA BARGAINING UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023: DOCTRINAL CONTINUITY OR BREAK FROM THE CRPC?

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Abstract:

The introduction of plea bargaining in India through the Criminal Procedure Code (Amendment) Act, 2005, marked a significant shift in criminal jurisprudence by enabling negotiated justice in specific cases. However, with the enactment of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, a legislative overhaul intended to replace the CrPC, questions have arisen regarding the continuity or transformation of this concept. This research paper undertakes a doctrinal analysis of the plea bargaining provisions under the BNSS, comparing them with those under the CrPC. It critically examines whether the new statute signifies a continuation of the existing legal framework or a paradigmatic break. The paper explores the legislative intent, structural changes, and underlying jurisprudential rationale to assess the practical and doctrinal implications of the transition. Additionally, it evaluates key reports, judicial interpretations, and policy critiques to suggest reforms for making plea bargaining more effective and just within India's evolving criminal justice system.

Keywords: Plea Bargaining, BNSS 2023, CrPC 1973, Criminal Justice Reform, Doctrinal Continuity, Legal Transition

1. Introduction:

The Indian criminal justice system has long struggled with issues of delay, case backlog, and inefficiency. To address these concerns, legislative innovations such as plea bargaining were introduced to expedite the delivery of justice. Originally introduced into the Code of Criminal Procedure, 1973 (CrPC) through the Criminal Law (Amendment) Act, 2005, plea bargaining marked a significant shift in India's procedural criminal law by introducing a framework for negotiated guilty pleas¹.

¹ Law Commission of India, Report No. 142 on Concessional Treatment for Offenders who Plead Guilty

With the introduction of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), set to replace the CrPC, the plea bargaining provisions have been retained but restructured. This development raises a doctrinal question: does the BNSS maintain continuity with the CrPC's approach to plea bargaining, or does it signify a conceptual or procedural departure?

This paper aims to examine the nature, scope, and doctrinal basis of plea bargaining under both statutes. It assesses whether the BNSS merely replicates the CrPC's provisions with linguistic changes or embodies a substantive reformation in approach.

Objectives of the Paper:

- The objective is to examine the origin and development of plea bargaining in India.
- To analyse the provisions under the CrPC and BNSS.
- To determine whether the BNSS reflects a doctrinal continuity or break from the CrPC.
- To provide a critical evaluation of the effectiveness of these provisions.

Research Methodology:

This paper follows a doctrinal legal research methodology, relying primarily on statutory interpretation, judicial decisions, and scholarly commentary. Comparative textual analysis of CrPC and BNSS provisions will form a key part of this study.

2. Plea Bargaining – Concept and Origin:

2.1 Meaning and Definition:

Plea bargaining is a process where the accused voluntarily agrees to plead guilty to a lesser offence or the original charge in exchange for a reduced sentence or concessions from the prosecution. It's essentially a negotiated settlement between the accused and the prosecution, subject to judicial approval.

While this concept is deeply embedded in the American legal system, its introduction into Indian law was gradual and cautious, primarily due to concerns about voluntariness, misuse, and compatibility with constitutional safeguards.

2.2 Origin in Common Law Jurisdictions:

Plea bargaining has its roots in the U.S. criminal justice system, where over 90% of

without Bargaining (1991); Code of Criminal Procedure (Amendment) Act, 2005.

criminal cases are settled through negotiated pleas. It is based on pragmatic considerations—saving time, judicial resources, and achieving faster closure for victims.

Notable U.S. Cases:

- *Brady v. United States*, 397 U.S. 742 (1970) – upheld the constitutionality of plea bargaining.
- *Santobello v. New York*, 404 U.S. 257 (1971) – emphasised the need for fairness in plea agreements.

2.3 Indian Context: Initial Resistance:

India initially rejected plea bargaining due to:

- The adversarial nature of its legal system.
- The potential for coercion.
- The idea that it may violate Article 21 (right to fair trial).

However, the growing pendency of cases and judicial delays pushed lawmakers to reconsider.

2.4 Recommendation of the Law Commission:

The 154th Report of the Law Commission of India (1996) strongly advocated for the incorporation of plea bargaining into the Criminal Procedure Code (CrPC) to alleviate the judicial workload and facilitate prompt justice delivery. It emphasised:

- Voluntariness of the plea.
- Judicial scrutiny.
- Exclusion of serious offences.

This led to the Criminal Law (Amendment) Act, 2005, which inserted Sections 265A–265L into the CrPC.

2.5 Statutory Recognition in CrPC (2005 Amendment)

Plea bargaining in India was officially recognised in 2005 through legislative reforms.

- Section 265A: This applies to offences that are punishable by imprisonment for less than seven years.
- Section 265B: Application procedure.
- Section 265C–265L: Steps, role of court, disposal of cases, and confidentiality.

Unlike the U.S., India permits only sentence bargaining and case disposal in certain minor offences, not charge bargaining.

References for This Section:

- Law Commission of India, 154th Report (1996) – Link to official report (PDF)
- Brady v. United States, 397 U.S. 742 (1970)
- Santobello v. New York, 404 U.S. 257 (1971)
- Indian cases:
 - Thippeswamy v. State of Karnataka, (1983) 1 SCC 194 – on involuntary confessions
 - State of Gujarat v. Natwar Harchandji Thakor, 2005 Cri LJ 2957 (Guj) – upholding plea bargaining
- CrPC, 1973 – Sections 265A to 265L

3. Plea Bargaining under the Code of Criminal Procedure (2005–2023)

The introduction of plea bargaining in India through the Criminal Law (Amendment) Act, 2005, was a landmark development aimed at reducing delays in criminal trials. The provisions were codified under Chapter XXIA of the Code of Criminal Procedure, 1973 (CrPC), comprising Sections 265A to 265L².

3.1 Legislative Intent:

The Statement of Objects and Reasons of the 2005 Amendment highlighted the need to address the increasing number of undertrial prisoners and pending cases in courts. Plea bargaining was introduced as a means of encouraging voluntary admissions of guilt in less serious offences to enable quicker resolution.

The intent was reformatory, not punitive—offenders could admit guilt and receive reduced punishment, while the criminal justice system conserved time and resources.

3.2 Scope and Applicability:

According to Section 265A, plea bargaining is available to:

- Offences that can result in imprisonment for a maximum of seven years,
- Not affecting the socio-economic condition of the country, and
- Not committed against a woman or a child under the age of 14.

² Code of Criminal Procedure, 1973, sections 265A–265L.

3.3 Procedure under CrPC:

Sections 265B to 265F outline the process:

- The accused may file a plea bargaining application in the court where the case is being heard.
- Preliminary Examination: The court examines the accused in camera to ensure voluntariness.
- Mutual Agreement: Accused, prosecution, and victim (if any) are given time to reach a mutually satisfactory disposition.
- Report of Settlement (Sec 265C–265E): If a settlement is reached, a report is submitted to the court.
- Judgment (Sec 265F): The court delivers judgment based on the settlement.
- Punishment (Sec 265E(2)): The court may sentence:
 - 1/4th of the punishment prescribed for the offence in case of a negotiated settlement.
 - 1/2 in case no settlement is reached, but the accused pleads guilty.

3.4 Key Features:

- Voluntariness: The Court must ensure that the plea is made freely and without any form of coercion.
- Confidentiality: Proceedings are to be held in camera.
- Non-appealability: As per Section 265G, no appeal lies against the judgment.
- Bar on Use: Statements made during plea bargaining cannot be used for any other purpose.

3.5 Judicial Interpretation:

- State of Gujarat v. Natwar Harchandji Thakor, 2005 Cri LJ 2957 (Guj): Upheld the validity of plea bargaining as a pragmatic legal development.³
- Thippeswamy v. State of Karnataka, (1983) 1 SCC 194: While pre-dating the amendment, it highlighted the concern that admissions of guilt must be truly voluntary and not result from inducement.⁴
- Kasambhai Abdul Rehmanbhai Sheikh v. State of Gujarat, 1980 AIR 854: Criticised informal plea bargaining before its statutory backing⁵.

³ State of Gujarat v. Natwar Harchandji Thakor, (2005) 1 GLH 37 (Guj.).

⁴ Thippeswamy v. State of Karnataka, (1983) 1 SCC 194

⁵ Kasambhai Abdul Rehmanbhai Sheikh v. State of Gujarat, 1980 AIR 854

3.6 Criticisms and Limitations:

- Low Utilisation: Despite statutory backing, plea bargaining remained underused due to a lack of awareness, reluctance among prosecutors, and social stigma.
- Lack of Clear Guidelines: The CrPC provisions were seen as vague in parts (e.g., defining “socio- economic offences”).
- Risk of Coercion: Concerns that poor and undertrial prisoners may be pressured into pleading guilty.

References for this Section:

- Code of Criminal Procedure, 1973 – Sections 265A to 265L
- Criminal Law (Amendment) Act, 2005
- State of Gujarat v. Natwar Harchandji Thakor, 2005 Cri LJ 2957 (Guj)
- Thippeswamy v. State of Karnataka, (1983) 1 SCC 194
- Kasambhai Abdul Rehmanbhai Sheikh v. State of Gujarat, AIR 1980 SC 854
- Law Commission of India, 154th Report (1996)

4. Plea Bargaining in accordance with the Bharatiya Nagarik Suraksha

Sanhita (BNSS), 2023:

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, which is set to replace the CrPC, retains the provisions for plea bargaining. These are codified under Chapter XXIII (Sections 289 to 302)⁶. A close reading of these provisions reveals that, while much of the structure and language of the CrPC provisions are maintained, there are minor textual updates and recodification, raising the central doctrinal question: Does the BNSS merely replicate the CrPC model, or does it reflect a shift in approach?

4.1 Structure of Plea Bargaining under BNSS:

CrPC Provision	Corresponding Provision	BNSS	Subject
Section 265A	Section 289		Application of Chapter
Section 265B	Section 290		Application for plea bargaining
Section 265C	Section 291		Guidelines for mutually satisfactory disposition

⁶ Bharatiya Nagarik Suraksha Sanhita, 2023, section 289–300.

Section 265D	Section 292	Report of disposition
Section 265E	Section 293	Disposal by court
Section 265F	Section 294	Judgment in terms of disposition
Section 265G	Section 295	Finality of judgment
Section 265H	Section 296	Power of the court to issue directions
Section 265I	Section 297	Period of detention to be set off
Section 265J	Section 298	Savings
Section 265K	Section 299	Statements to be inadmissible
Section 265L	Section 300	Non-applicability to certain offences

4.2 Textual and Substantive Comparison:

Similarities:

- Same eligibility: Plea bargaining under BNSS is still available for offences punishable with imprisonment up to 7 years.
- Same exclusions: Offences affecting socio-economic conditions, or committed against women or children, are excluded.
- Same procedure: Application by accused → in camera examination → settlement process → report → court judgment.
- Same safeguards: Voluntariness, confidentiality, and bar on appeal.
- Non-applicability clause: BNSS retains the bar on using statements made during plea bargaining elsewhere.

Minor Updates in Language:

- Language has been updated to reflect BNSS drafting style, e.g., more gender-neutral phrasing, standardised terminology.
- Sections have been renumbered and restructured, but the core doctrinal and procedural framework remains unchanged.

New or Noteworthy Aspects:

- No major doctrinal shift is evident. There are no new categories, no broader scope, and no significant procedural modifications.
- Unlike expectations of stronger victim participation or expanded eligibility, the BNSS version keeps the system largely intact.

4.3 Legislative Intent and Context

The Parliamentary Standing Committee on Home Affairs reports and the Statement of Objects and Reasons for BNSS do not suggest any special emphasis on plea bargaining reforms. The inclusion of the existing plea bargaining structure appears more as a transfer of existing law into the new code, aligning with the government's aim to Indianize the criminal laws⁷.

4.4 Summary of Key Observations:

- The BNSS retains the CrPC framework for plea bargaining with no substantive changes.
- It reflects a doctrinal continuity—plea bargaining remains a limited tool, aimed at resolving minor offences and reducing pendency.
- The language is modernised, but there is no conceptual innovation in its design.

References for this Section:

- BNSS, 2023 – Sections 289 to 300
- CrPC, 1973 – Sections 265A to 265L
- Government of India, Statement of Objects and Reasons for BNSS, 2023
- Parliamentary Standing Committee Report on BNSS (2023)
- Select comparative commentaries (e.g., Ratanlal & Dhirajlal on Code of Criminal Procedure, 2024 edition)

5. Doctrinal Analysis: Continuity or Break?

The question at the heart of this research—Does the BNSS represent a doctrinal continuity or a break from the CrPC with respect to plea bargaining?—requires evaluating the purpose, structure, scope, and underlying philosophy of both statutes. This section critically examines whether the BNSS merely reproduces the CrPC's plea bargaining provisions or reimagines them in any meaningful way.

5.1 Understanding 'Doctrinal Continuity' vs 'Doctrinal Break'

- A doctrinal continuity occurs when a new statute retains the conceptual foundation,

⁷ Statement of Objects and Reasons, The Bharatiya Nagarik Suraksha Sanhita, 2023, Bill No. 120 of 2023.

objectives, and legal framework of its predecessor with no material change in purpose or scope.

- A doctrinal break implies either:
- A shift in legislative intention or policy,
- Introduction of new elements that alter the character or application of the law,
- There is a deviation from the legal rationale underpinning the provision⁸.

5.2 Comparative Analysis

Criterion	CrPC (2005 Amendment)	BNSS (2023)	Conclusion
Eligibility Criteria	Punishable up to 7 years; excludes socio-economic offences, crimes against women/ children	Same	Continuity
Procedure	Accused applies, in-camera hearing, mutually satisfactory disposition, judicial scrutiny	Same	Continuity
Role of Victim	Limited, mostly involved in compensation and mutual agreement	Same	Continuity
Judicial Discretion	Present; court must ensure voluntariness and fairness	Same	Continuity
Language/Structure	Legal-technical CrPC drafting	Modernized syntax, same substantive content	Cosmetic change only
Innovations	Introduction in 2005 as a novel reform tool	No innovation in BNSS	No doctrinal shift

5.3 Legislative Intent and Context:

A close reading of:

- The Statement of Objectives and Justifications for BNSS, 2023.Parliamentary Standing Committee Reports, and
- Drafting committee commentary;

⁸ Ministry of Home Affairs, Report of the Committee for Reforms in Criminal Laws (2020).

- shows no evidence of a policy shift in how plea bargaining is conceived or applied. The purpose remains procedural efficiency and case disposal.

In fact, the absence of reforms, such as:

- Expanding eligibility to more offences,
- Strengthening victim involvement,
- Allowing charge bargaining or sentence recommendations, suggests that the legislature chose continuity over change⁹.

5.4 Doctrinal Implications:

While the BNSS has restructured procedural law in many areas (e.g., FIR registration, arrest provisions), plea bargaining has been transferred almost verbatim.

Thus:

- No new jurisprudential rationale is advanced.
- The reform is symbolic, not substantive.
- Constitutional safeguards and interpretive rules under the CrPC remain fully applicable to the BNSS.

5.5 Judicial Perspective:

As courts begin to apply BNSS from July 1, 2025, they are likely to:

- Continue relying on the CrPC-era case law to interpret plea bargaining provisions,
- Treat the BNSS as a code re-enactment, not a new law on this topic.

Conclusion of Analysis:

- The BNSS provisions on plea bargaining demonstrate a clear doctrinal continuity with the CrPC.
- The reforms are cosmetic, not conceptual.
- There is no new jurisprudential framework, no expanded scope, and no change in legal reasoning or safeguard structure.

⁹ Parliamentary Standing Committee Report on the BNSS, Rajya Sabha Secretariat, 2023.

6. Challenges and the Way Forward:

While plea bargaining offers a pragmatic mechanism to address case backlogs and reduce trial delays, its limited adoption and cautious scope in both the CrPC and BNSS reveal systemic and structural challenges. This section examines those challenges and proposes a roadmap for reform.

6.1 Challenges in Implementation:

1. Low Awareness and Reluctance

- Many accused persons, particularly undertrials, are unaware of plea bargaining as a legal option.
- Legal aid lawyers and prison authorities often do not proactively inform eligible persons.
- Prosecutors and judges tend to favour traditional trial routes, partly due to institutional inertia

2. Victim Marginalisation

- Although victims are part of the “mutually satisfactory disposition,” their role is often symbolic, especially in cases involving public wrongs (like theft or drug possession).
- The system lacks structured victim support to facilitate their participation.

3. Stigma and Coercion Concerns

- Admitting guilt—even in exchange for a lighter sentence—can carry a social and legal stigma, particularly in rural or conservative communities.
- There is concern that accused persons from vulnerable backgrounds may feel compelled to plead guilty due to pressure or fear of prolonged detention.

4. Restricted Scope

- The exclusion of offences against women, children, and economic offences significantly limits applicability.
- No allowance for charge bargaining (pleading guilty to a lesser charge) or fact bargaining, unlike in the U.S.

5. Lack of Monitoring Mechanism

- There is no national data repository that tracks how often plea bargaining is used.

- Courts rarely publish detailed orders on the process, reducing transparency and judicial consistency.

6.2 Opportunities and Recommendations:

1. Broaden the Scope

- Reconsider blanket exclusions and allow judicial discretion in select economic offences and non-violent crimes.
- Introduce charge bargaining in a regulated framework.

2. Institutionalise Awareness

- Mandate legal aid institutions and public prosecutors to inform accused persons of plea bargaining options at the pre-trial stage.
- Train judges and prosecutors to apply plea bargaining fairly and consistently.

3. Strengthen Victim Participation

- Define structured guidelines for victim involvement, including support services.
- Provide compensation norms for cases disposed of through plea bargaining.

4. Ensure Voluntariness and Safeguards

- Require an independent legal advisor or judicial officer to confirm the voluntariness of the plea.
- Include provisions to review or withdraw a plea if coercion is later discovered.

5. Monitor and Publish Data

- Create a central database under the National Judicial Data Grid (NJDG) to track plea bargaining cases, duration, outcomes, and compliance.
- Encourage publication of anonymised court orders to develop jurisprudence¹⁰.

6.3 Learnings from Comparative Jurisdictions:

- The United States: Allows a broad scope of plea bargaining, but criticisms of coercion have led to recent reform discussions on transparency.
- South Africa and the UK: Use structured sentencing guidelines and judicial oversight to ensure fairness and proportionality.

India can adopt a hybrid model—limited bargaining scope but robust procedural

¹⁰ Malimath Committee Report on Reforms of Criminal Justice System (2003).

protections—to better balance speed and justice¹¹.

Conclusion:

While the BNSS provisions represent doctrinal continuity, their potential remains largely untapped due to structural, procedural, and social limitations. If India aspires for a faster and fairer criminal justice system, reforming and strengthening the plea bargaining regime is not just optional—it is essential.

7. Conclusion

The introduction of plea bargaining in India through the Criminal Procedure Code (Amendment), 2005, marked a significant shift towards procedural efficiency in the criminal justice system. However, nearly two decades later, the transition from the CrPC to the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, offers little in terms of doctrinal evolution.

This research aimed to examine whether the BNSS reflects a doctrinal continuity or a break from the CrPC in the context of plea bargaining. The findings reveal that:

- The BNSS retains the same eligibility conditions, procedural steps, safeguards, and exclusions as the CrPC.
- There is no material change in the legal philosophy or scope of the plea bargaining provisions.
- Both statutes emphasise voluntariness, limited judicial discretion, and confidentiality, with no shift in policy or jurisprudential approach.

Therefore, it is clear that the BNSS does not innovate or deviate from the 2005 CrPC model. It simply re-enacts the existing framework in a restructured form, without addressing the key limitations or operational gaps that have hindered the system's effectiveness since its inception¹².

The lack of significant reform presents both a challenge and an opportunity. It calls

¹¹ Justice M. Jagannadha Rao, Plea Bargaining in India: Promise and Pitfalls, in *Essays on Criminal Law and Justice* (2007).

¹² K.T.S. Tulsi, Plea Bargaining: An Analysis, (2010) 3 SCC J-45.

for introspection on why plea bargaining has underperformed and what can be done to enhance its relevance. For plea bargaining to serve as a meaningful tool of restorative and efficient justice, reforms must go beyond statutory continuity and aim for structural clarity, broader applicability, and procedural fairness.

As India prepares to implement the BNSS from July 1, 2024, this moment offers a timely opportunity to re-examine, re-imagine, and reinvigorate the promise of plea bargaining in India's criminal justice framework.

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