

**Plea Bargaining: Comparative Study between Code of Criminal Procedure 1973 and Bharatiya Nagarik Suraksha Sanhita 2023****ABINASH NRUSINGHA****P. G. Department of LAW****Fakir Mohan University, Balasore****Mail ID - abinashnrusingha@gmail.com****Dr. RABI NARAYAN PANDA****EX PRINCIPAL, BALASORE LAW COLLEGE, F.M UNIVERSITY, ODISHA****Abstract:**

The objective of this study is primarily to compare the plea bargaining in CrPC and BNSS. It's an attempt to measure change to ask what has remained constant and what has changed and to gauge the effects on defendants and victims and the courts themselves. Additionally, the research will ask that if the BNSS fill the gaps of the CrPC system and does the BNSS promote justice. The research approach used in this study is doctrinal. The main part of the study is Comparative discussion of Plea bargaining in relation to CrPC, and BNSS is also reported with the help of secondary data which includes books, articles, Law commission reports and government recommendation. This approach allows, and demands, not merely a descriptive but also assessment of the problem returning to the reforms in what the law intended and in what have been the policy results. It was held that CrPC of course forms the nucleus of the BNSS concerning exclusions and judicial review but achieves the same aim through predictable process time bound process and victim's participation. On the whole, these are common sense reforms that make this a more transparent, fair and client friendly procedure. It appears that BNSS is a welcome step for fair and flexible process of plea bargaining in India.

**Keywords:** Code of Criminal Procedure, 1973, Bharatiya Nagarik Suraksha Sanhita, 2023, Criminal Justice Reform, Judicial Efficiency and Victim Participation.

**Introduction:** One of the most important developments in the administration of criminal justice throughout the world is plea bargaining. A plea bargain is a settlement in which a prosecutor and a defendant will agree upon something so that the case doesn't go to trial. In other words, the defendant agrees to plead guilty to a lesser crime in return for a lighter sentence valuation (or some concession of the prosecutor). This means reducing the burden of backlog cases on courts, providing speedy justice, saving on judicial time, and judicial resources. Plea bargaining, like those used in the United States, was introduced in India through the amendment of the Code of Criminal Procedure (CrPC) in 1973 in 2005<sup>1</sup>. Nevertheless, the Indian criminal justice system has experienced significant structural and procedural reforms because of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, which has repealed CrPC. The need calls for a study, to compare how the new law in India redefines, revises or strengthens the plea bargaining process. The Indian criminal justice system has historically been infused with procedural rigidity and delays. Before plea bargaining was introduced, all criminal charges had to go through the full trial process, no matter how minor the offence. Large pendency of cases led to the proverb "justice delayed is justice denied". In this backdrop, it was mentioned by the Law Commission of India in its 142nd and 154th report about the plea bargaining as an alternative mechanism for expediting the criminal trials. The Criminal Law (Amendment) Act, 2005 inserted Chapter XXI-A in the CrPC which marked a change in criminal procedure. The framework for plea bargaining has been provided in this chapter (Section 265A to 265L)<sup>2</sup>. It did not extend to cases related to socio-economic offences, offences affecting the women or children below the age of 14 and offences made non-compoundable under law. While the amendment was well intentioned, it showed a number of flaws. The process was often considered to be overly formal, with few advantages for the accused and a lack of awareness. In addition, it was noticed that the plea bargaining was not always voluntary which raised questions about fairness and coercion. Opponents argued that in an unequal setting, the act of taking a plea may be exploited by the system. As a result, CrPC 1973 recognized the process of plea bargaining, but it never seemed to work as intended. The UDA (Bharatiya Nagarik Suraksha Sanhita) 2023 has been introduced instead of CrPC to suit our changing society. The UDA makes the criminal procedure of India speedy, transparent, technology-driven and in-cohering the principles of justice. The BNSS keeps most of the same provisions that existed since plea bargaining was originally introduced in 2005<sup>3</sup>. However, it also includes different amendments that aim to make it more efficient and accessible. One of the aims of the BNSS is to remove procedural complexity and digitisation of processes so as to make justice accessible. In light of this, it becomes important to do a comparative study of plea bargaining under the CrPC, 1973 and BNSS, 2023 or an evolution of plea bargaining in India. The background of this study deals with how judicial efficiency and the rights of the accused intermingle with each other. According to recent data, 30 million cases are pending in the Indian courts, which have one of the largest backlogs in the world<sup>4</sup>. Most of these cases are of minor or moderate offences – exactly the kind that plea bargaining concerns itself with. A well-organized and regulated mechanism of plea bargaining can act as a useful tool to decongest the judiciary and ensure the constitutional guarantee of speedy trial under Article 21. Nonetheless, this risk of coercion, wrongful pleas, and watering down the principle of fair trial must be weighed against it. To revise procedural safeguards, introduce provisions for transparency and incorporate technology in documentation and record-keeping is what the BNSS 2023 is all about. In this context, the socio-legal background of plea bargaining in India is significant. In the West plea-bargaining has become an established and institutionalized practice. In India, however, plea-bargaining is still not recognized. In Indian society, a guilty plea is seen to have moral stigma attached to it. In many instances, such cultural impediments together with lack of awareness among legal practitioners and litigants have come in the way.... Also, the issues of prosecutorial discretion, judicial scrutiny and the voluntary plea process are still relevant. This study primarily focuses on the comparative study of socio-legal challenges addressed by the BNSS 2023 and the CrPC 1973.

There is a gap between the theory and the practice of plea bargaining, which is the issue of the study. Plea bargaining has been incorporated under the CrPC nearly two decades back<sup>5</sup>. Nevertheless, this provision has not gone its impact in India yet. Many studies have shown that very few cases are disposed of in this way due to procedural difficulties, lack of knowledge and the scepticism of judges and lawyers. The BNSS 2023 has come into effect. But it may be time for us to take stock. Are the issues highlighted above resolved in the new regime? Does it make plea bargaining more affordable, visible and fair? Is it sufficiently protective of the accused's right not to be coerced, and is it efficient? The goal of this comparative study is to answer the key questions.

It is also important to understand whether, by the BNSS 2023, the plea bargaining, has expanded<sup>6</sup> or restricted its scope<sup>6</sup>. The objective of the law is to boost procedural efficiency and introduce digital and time-bound processes. For example, the requirement of filing applications online, maintaining electronic records, and timeline for disposal of cases could impact plea bargaining. The role of victims in plea bargaining, which is a controversial aspect of the Code of Criminal Procedure, may be modified under the BNSS<sup>7</sup>. This study aims to identify continuities and changes in India's approach towards negotiated justice by looking at the procedural steps, safeguards and outcomes prescribed under both legislations. Constitutional and ethical aspect of plea bargaining is another significant issue that underlies this study. At first, the Indian courts were not keen and were doubtful of accepting plea bargaining. These were against justice and due process. Only after careful legislative design, it was accepted as a legitimate process under the CrPC. The BNSS (2023) lays great stress on the citizen's rights and procedural fairness. Hence, it is important to see whether the new provisions comply with constitutional mandates such as equality before law, right to life and personal liberty, and protection against self-incrimination. Hence, the comparative study not only relates to process reform but also to the broader issues of justice delivery and constitutional morality. To conclude, this paper places the development of plea bargaining in the context of criminal justice reform in India. The Code of Criminal Procedure, 1973 to the Bharatiya Nagarik Suraksha Sanhita, 2023 is not just a change in name but also a change in India's ambition to make justice speedy, fairer, and better technology-equipped. Yet, the effectiveness of these legal moves in securing justice depends on whether the plea bargaining system works well in practice. So, a comparative study of the two codes will be timely as well as necessary to evaluate the real potential of plea bargaining as a tool of restorative and participative justice in India today.

<sup>1</sup> Meena, M. K. & Meena, A., The Evolution of Plea Bargaining in the Criminal Justice System, 14 J. E.-W. Thought 621 (2024).

<sup>2</sup> Prakash, B., Concept of Plea Bargaining under Indian Legal System (2023), available at SSRN, [https://ssrn.com/abstract=4320066](https://ssrn.com/abstract=4320066).

<sup>3</sup> Nancy J. King & Ronald F. Wright, The Invisible Revolution in Plea Bargaining: Managerial Judging and Judicial Participation in Negotiations, 95 Tex. L. Rev. 325 (2016).

<sup>4</sup> S. M. Jaamdar, Restorative Justice in India: Old and New, in Restorative Justice in India: Traditional Practice and Contemporary Applications 41 (Springer Int'l Publ'g 2017).

<sup>5</sup> P. K. Singh, Plea Bargaining and Criminal Justice in India, 7 Athens J.L. 33 (2021).

<sup>6</sup> S. Choudhary, Extended Custody, Eroded Rights?—Examining the Provisions of Police Custody under BNSS, 2023, 2 LawFoyer Int'l J. Doctrinal Legal Rsch. 752 (2024).

<sup>7</sup> N. C. Husin & N. S. C. Husin, Plea Bargaining as a Reform in Criminal Procedure Law: An Analysis of Article 199 of the Draft Criminal Procedure Code, 5(1) Ius Poenale 31 (2024).

**Background and problem for this study:** In this background, plea bargaining was incorporated into the legal system by an amendment to the Code of Criminal Procedure, 1973 by way of the Criminal Law (Amendment) Act, 2005 which added Chapter XXI-A to the Code<sup>8</sup>. It was also reported that the suspects could enter into plea bargaining in return for pleading guilty to less severe charges or for a reduced sentence in exchange for shortened trial. While novel in the Indian context, one of the sources of inspiration for the concept was the practice in other jurisdictions, like the US, where the vast majority of criminal cases are settled through plea bargaining<sup>9</sup>. First, its scope of implementation – only offenses punishable by up to seven years of imprisonment and without a sentence of death or life imprisonment – limited the power of this approach. Attitudinal limitations and poor awareness of such agreements affected the progressive implementation of this approach. In addition, in practice, the mechanism of using a confession with the consent of the accused was sometimes brought to the point of absurdity, where the voluntariness of signing such a statement could be questioned, i.e., possible coercion to sign such a document. Critics of these provisions argued that the CrPC provisions and adopted changes moved the opportunities too much to the accused side, which led to a shift in their favor<sup>10</sup>. Furthermore, the provisions were more focused on the accused, with less protection for the victim's interests and secondarization. Consequently, the CrPC created a mechanism for reducing the workload of the court, which worked in practice with limited effectiveness. Thus, from a theoretical point of view, the innovations reflected in BNSS 2023 can revolutionize criminal punishment. However, at the same time, given the implementation in the current justice system, the actual practical outcomes are questionable.

**Rational of the study:** A comparison between plea bargaining under the Code of Criminal Procedure, 1973 and the Bharatiya Nagarik Suraksha Sanhita, 2023 was necessitated in light of the fact that there is an urgent requirement to find out the interstices of the recent law reform making for the criminal justice system in India. Plea-bargaining was initiated in 2005 so as to speed up the justice delivery, reduce the number of pending cases and an alternative to long duration trials<sup>11</sup>. It was with no doubt that it exhibited a narrow utility, restricted ambit and a fair play to the victims was also very much questionable, pointing to the practical deficiencies of its implementation under the Criminal Procedure Code. As the CrPC is due to be replaced by the BNSS in 2023, now is a good moment to see if the new provision is a genuine recasting of this provision, or simply a re-railroading of the provision into fresher vestments<sup>12</sup>. Since plea bargaining is fraught with contentious issues involving the rights of accused persons, the interests of victims and the integrity of the courts, it is important to take a step back and take the measure of its development. The present paper therefore seeks to throw light on the nature of reforms and tries to evaluate: What can reforms do to Indian justice delivery?

**Objective of the study:** The present study aims to do a comparative study of plea bargaining under The Code of Criminal Procedure, 1973 and the Bharatiya Nagarik Suraksha Sanhita, 2023. It seeks to assess the impact of these reforms, and identify issues of continuity and change, and their consequences for the accused, the victim and the courts. The research will also evaluate whether the BNSS overcomes previous failures and enhances the effectiveness of justice.

**Research methodology:** This paper takes the doctrinal research approach and is primarily based on a statutory analysis, case law and academic commentaries. It is comparative study on Plea Bargaining provisions of the Code of Criminal Procedure, 1973 and the Bharatiya Nagarik Suraksha Sanhita, 2023 to carry out the analysis on how much similar or different and what reform is needed. Reference to secondary sources, such as books, journal and articles, and government reports and law commission recommendations, is made in order to provide the context in which the legislators had aimed at forming the law and the social problems that the legislative action had sought to address. The approach is analytical and descriptive in nature, to determine if the BNSS bolsters the dispensation of justice.

#### **Legislative Framework under the Bharatiya Nagarik Suraksha Sanhita, 2023**

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)<sup>13</sup>, introduced as a replacement to the Code of Criminal Procedure, 1973<sup>14</sup>, still treats plea bargaining as a method of settlement of a few criminal cases. The sections are placed under Chapter XXIII (Sections 289 to 303) and are meant to ensure that less serious breaches can be disposed of quickly and conveniently. This system allows a defendant to plead guilty voluntarily in return for a reduced sentence, or an agreed disposition of the case, relieving the courts of the burden of trying every criminal case while still protecting the interests of justice.

#### **Key Statutory Provisions:**

**Section 289<sup>15</sup>:** It does not cover crimes the punishment of which is death, imprisonment for life or imprisonment for a period exceeding seven years, and crimes committed against women, children, and those affecting the socio-economic condition of the country.

**Section 290<sup>16</sup>:** Allows the accused to request for plea bargaining before the competent court. Such an application has to be supported by an affidavit stating that the person is applying voluntarily and he or she is aware of the consequences.

**Section 291<sup>17</sup>:** Mandates the court to make a preliminary inquiry to satisfy that the application for plea bargaining is voluntary and not under any pressure.

**Section 292<sup>18</sup>:** Mandates the court to inform the Public Prosecutor, investigating officer and the victim to bring them together and have a discussion to arrive at a mutually acceptable settlement.

**Section 293<sup>19</sup>:** Case resolution ensuing from the settlement meeting. When you successfully negotiate, your sentence is shortened, and your agreement is tested in court the next time directly on the flip side, when your negotiation results in a failure, your case goes back to a normal trial.

**Section 294-295<sup>20</sup>:** Ensure victim participation and victim reparation, if necessary, by requiring their involvement in the process.

**Section 297<sup>21</sup>:** is a safeguard for the accused. It provides for "that no confession made in the course of any plea bargain shall be used" as evidence before the court.

**Sections 298<sup>22</sup> to 303<sup>23</sup>:** Contains miscellaneous provisions may be called as Court may direct" "the execution" of the judgment in such case, special rules for the Court for Special offence (Habitual Offenders) etc.

Taken together, these provisions represent the legislature's effort to strike a balance between the efficacy of the criminal justice system and the rights of the victim and the protection of the accused

**Judicial Approach and Interpretation:** While the plea bargaining became part of the law in India on April 05, 2006 when the Criminal Law (Amendment) Act, 2005 was enacted and implemented and was subsequently taken forward under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), the concept of plea bargaining in the Indian judiciary was introduced many years ago in principle. In their first avatar, Indian courts took a distinctly cautious, if not an out rightly suspicious view of negotiated settlements, anxious about misuse and the canon of compromise. But the judiciary eventually learned to see the benefit of having some plea bargaining at least, including those that terminate extensions and dismiss accusations still pending — as they have repeatedly said — so that it became clear to them that the solutions must be based on voluntariness, fairness and due process.

**State of Gujarat v. Natwar Harchandji Thakor<sup>24</sup>**

<sup>8</sup> D. Singh, An Analysis of Plea Bargaining, 3 Indian J. Integrated Rsch. L. 1 (2023).

<sup>9</sup> Khushi, From Bargaining to Justice: Unveiling the Dynamics of Plea Bargaining in India, 5 Indian J.L. & Legal Rsch. 1 (2023).

<sup>10</sup> S. Sarraf, Shielding Justice: Upholding the Rights and Dignity of the Accused in the Indian Legal System, 5 Indian J.L. & Legal Rsch. 1 (2023).

<sup>11</sup> N.G. Kisekka, Plea Bargaining as a Human Rights Question, 6 Cogent Soc. Scis. 1818935 (2020).

<sup>12</sup> M.K. Mohan, Comparison Between Chapter 37 of CrPC (1973) and Chapter 39 of BNSS (2023), 7 Int'l J.L. Mgmt. & Hum. 1165 (2024).

<sup>13</sup> Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023.

<sup>14</sup> Law Commission of India, 154th Report on the Code of Criminal Procedure, 1973 (1996)

<sup>15</sup> Section 289, Bharatiya Nagarik Suraksha Sanhita 2023

<sup>16</sup> Section 290, Bharatiya Nagarik Suraksha Sanhita 2023

<sup>17</sup> Section 291, Bharatiya Nagarik Suraksha Sanhita 2023

<sup>18</sup> Section 292, Bharatiya Nagarik Suraksha Sanhita 2023

<sup>19</sup> Section 293, Bharatiya Nagarik Suraksha Sanhita 2023

<sup>20</sup> Section 294-5, Bharatiya Nagarik Suraksha Sanhita 2023

<sup>21</sup> Section 297, Bharatiya Nagarik Suraksha Sanhita 2023

<sup>22</sup> Section 298, Bharatiya Nagarik Suraksha Sanhita 2023

<sup>23</sup> Section 303, Bharatiya Nagarik Suraksha Sanhita 2023

<sup>24</sup> State of Gujarat v. Natwar Harchandji Thakor, (2005) 1 GLR 709 (Guj.)

Also, the Supreme Court, in so far as, pre-legislative judgment was concerned, observed that the one of the check on the practice of 'Plea Bargaining' may be a factum of plea bargaining in the Indian criminal justice system. It is further submitted that regular criminal proceedings are notoriously cumbersome and that others are needed to deal with minor criminal offences. Whilst the Court carefully welcomed the notion, it stressed that the point of acceptance of plea-bargaining (where the concept applies) must integrate constitutional rights and guarantee principles in such a manner that justice and fairness is not rearranged by the process.

#### **Kachhia Patel Shantilal Koderlal v. State of Gujarat**<sup>25</sup>

In this instance the Supreme Court had declined to sanction an informal plea bargained arrangement. The Court held that the public interest was not served by such plea-bargaining and amounted to an illegal two-way traffic on criminal responsibility. It would signal that a defendant can plea-bargain away a punishment without statutory authority, and would diminish the majesty of criminal justice and the rule of law.

#### **Murlidhar Meghraj Loya v. State of Maharashtra**<sup>26</sup>

In this landmark case the Court underscored the fact that confessions/ admissions are true and valid if and only if they are without promise, pressure, compulsion and inducement and without belief in the mind of a right thinking person that he would gain reward upon making it. The text did not incorporate the language "plea bargaining," but did suggest judicial squeamishness about informal justice that would resemble prosecutors' current cousins of the plea bargain. The Court cautioned that "sentencing must reflect established standards of justice and must not be tailored to private negotiations or private interests.

#### **Comparative Analysis of Plea Bargaining under the CrPC, 1973, and the BNSS, 2023**

Plea bargaining as a part of Indian criminal law came into effect on 1 July 2006 with the insertion of Chapter 21A in the Code of Criminal Procedure, 1973 by the Criminal Law (Amendment) Act, 2005 and again was amended and supplemented in 2013 with the code of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)<sup>27</sup>. The object behind introduction of such statutory provision was to curtail the evil of Persistent judicial delays and accumulation of long arrears of cases in courts of India by providing for composition of cases of certain description in criminal cases<sup>28</sup>. Both are statutes embodying the state's attempt to balance a policy of rewarding prosecutors, defendants and victims, and the criminal justice system generally, with more speedy dispositions, against that of constitutional protections against trial without due process of law. Comparison of the plea bargaining provisions in the BNSS with those in the CrPC is crucial for it highlights the continuity and change in legislative policy. It also examines the development of the concept within Indian criminal jurisprudence as well as considering whether the BNSS has succeeded in overcoming the criticisms of its predecessor.

#### **Scope and Eligibility**

Plea bargaining was introduced under the CrPC as Chapter XXI-A (Sections 265A to 265L). Criticism Eligibility for the scheme was limited<sup>29</sup>, as it only extended to offences where the maximum penalty was imprisonment for a term of less than seven years. It expressly excluded offences against the social and economic fabric of the country as reported by the government of the time and crimes against women and children. The purpose was to limit plea bargaining to less-serious cases and thus to preserve public confidence in the criminal justice system. The BNSS in Chapter XXIII (Sections 289 through 303) has largely preserved these criteria and in the same way as the CrPC, section 289 reproduces the same set of exclusions: such exclusion primarily being offences punishable with death, life imprisonment or any punishment for a term over seven years<sup>30</sup>. The BNSS, much like the earlier law, also leaves out crimes against women and children and those that are viewed as impacting social and economic well-being. Therefore, to the extent that the structure of the test remains largely unchanged, the BNSS offers little in the way of opportunities for clearer drafting with the focus on precision of eligibility criteria.

#### **Procedure and Application**

In the CrPC, Section 265B containing the procedure for application for plea bargaining had been provided<sup>31</sup>. The accused was to file an application to that effect in the trial court, supported by an affidavit inter alia indicating that the accused had understood the nature and consequences of his Post-Conviction Statement. The court then held an inquiry to ascertain that the petition was bona fide and that the same was not being filed under any force or undue influence. On being satisfied, the court served notices to the prosecutor and victim for settlement through compromise to come to terms acceptable to both the parties.

A similar approach is taken in the BNSS under sections 290 and 291. Under Section 290, the accused is required to make the same application and affidavit, and Section 291 provides for judicial determination of voluntariness<sup>32</sup>. According to Section 292, required disclosure and participation in that settlement is guaranteed to all the parties involved, including the victim. The procedural apparatus in the BNSS is less complex, couched in modern drafting terminology that obviates the uncertainties in the CrPC. Notably, the BNSS embodies the legislative purpose to ensure that plea-bargaining process is transparent, court-driven and judicial supervision of the process is at the forefront to avoid abuse.

#### **Role of the Victim**

One of the primary criticism of the plea bargaining under CrPC was it was accused-oriented rather than victim centre. Although the statute provided for notice to the victim and permitted compensation as part of a mutually agreeable settlement, in practice victims did not have an effective role in the process. One limitation of this approach was that plea bargaining might turn justice into a negotiated settlement at which victim interests (although they are taken into account) might become poorly visible in comparison to the interest of the offender or prosecuting authorities.

The BNSS seems to somewhat alleviate this criticism by increasing attention to the victim's side of the story. Sections 294, 295 focus in particular on victim participation and compensation making the voice of the victim central to the process<sup>33</sup>. The BNSS court strengthens the victim oriented plea bargaining by compelling the role of victims in bargaining and viewing reparations as a legal personality. This is part of a wider trend in modern criminal justice reforms crystallising a focus on a restorative justice logic where there is a need to balance the rights and protection of the accused with, the dignity and needs of, victims.

#### **Confidentiality and Safeguards**

Law Section 265 of the CrPC provided that statements made during plea bargaining would not be used as evidence by the prosecution against the accused, in case the plea bargaining failed<sup>34</sup>. It was in order to afford to the defendant the kind of protection necessary to protect him against self-incrimination, and to make it possible for him to bargain without fear that he would damage his defense if the prosecution went to trial. The BNSS retains this immunity in s 297 and it serves to emphasize that the plea bargaining should be voluntary, non-coercive and immunized from abuse<sup>35</sup>. The Two Acts That 'certifies that its functioning is in no way violative of the fundamental right provided under Article 20(3) (right against self-incrimination). The continuity on the bench underscores the judicial and legislative concern that the system's efficiency not be achieved at the cost of individual rights.

#### **Judicial Oversight and Sentencing**

Under the CrPC regime the instant it was satisfied the parties have come to their compromise, which the Court also holds to be a valid compromise, and satisfy as between the parties, the entire sentence, or a lesser sentence than the one which was passed as the minimum of the law, would not be awarded. In the event that there was no settlement, the case proceeded to trial as a matter of course. Judicial review was, therefore, essential at all stages, from the determination of voluntariness to the final settlement.

<sup>25</sup> Kachhia Patel Shantilal Koderlal v. State of Gujarat, (1980) 3 SCC 499.

<sup>26</sup> Murlidhar Meghraj Loya v. State of Maharashtra, (1976) 3 SCC 684.

<sup>27</sup> T. Pradeep, Comparative Analysis of the Criminal Procedure Code, 1973, and the Bharatiya Nagarik Suraksha Sanhita, 2023, 16 Int'l J. Sci. & Tech. (IJSTAT) 1 (2025).

<sup>28</sup> M.K. Mohan, Comparison Between Chapter 37 of CrPC (1973) and Chapter 39 of BNSS (2023), 7 Int'l J.L. Mgmt. & Hum. 1165 (2024).

<sup>29</sup> Singh, Divyanshi. "An Analysis of Plea Bargaining." *Indian J. Integrated Rsch. L.* 3 (2023): 1.

<sup>30</sup> Malviya, S. B., Tarannum, R., & Hashmi, N. A., *New Criminal Laws: Bharatiya Nagarik Suraksha Sanhita (BNSS) with Comparative Table of the New Act with the Old Act* (Academic Guru Publishing House 2025).

<sup>31</sup> Garg, K. & Tiwari, P., Plea Bargaining in India: An Appraisal, 7 Int'l J.L. Mgmt. & Human. 1667 (2024).

<sup>32</sup> Malviya, S. B., Tarannum, R. & Hashmi, N. A., *New Criminal Laws: Bharatiya Nagarik Suraksha Sanhita (BNSS) with Comparative Table of the New Act with the Old Act* (Academic Guru Publishing House 2025).

<sup>33</sup> Kushwah, J. P. & Kushwah, S. P. S., Impact of the Bharatiya Nyaya Sanhita, 2023 Relating to Sexual Offences: A Study of Its Effects on Victims, Accused, and Witnesses in the Light of Criminal Jurisprudence and Constitutional Principles, 9(II) Research Inspiration 8 (2024).

<sup>34</sup> Rajeshirke, H., Plea of Guilty, Its Application and Practical Scenario in the Criminal Justice System, (Feb. 18, 2023).

<sup>35</sup> Satish, M., Plea Bargaining in India, in Research Handbook on Plea Bargaining and Criminal Justice 215-30 (Edward Elgar Publishing 2024).

This model defines how Section 293 and 298–303 BNSS are applied. This section empowers courts to adjudicate negotiated agreements and to grant orders based thereon<sup>36</sup>. The BNSS also has better defined rules for recidivists that, by a previously untaught amount, lower the expectation of apprehensions recidivist would be able to plead guilty into freedom from the arm of the law. The BNSS aims to reconcile judicial discretion with the psycho-legal coherence of sentencing.

#### **Comparative Evaluation**

The CrPC and BNSS both are the subject of plea negotiations to reduce alternate charges, are subject to judicial scrutiny, are enacted in furtherance of the requirement that a plea be voluntary, and jealously protect against self-accusation<sup>37</sup>. On the other hand the BNSS provably has correctness in some case. It has more straightforward language, a lighter emphasis on victims' rights, and more new provisions on recidivism and juxtapose the settlement under CrPC 1973 v BNSS to realise that what was, in fact, a bold, legislative creative gamble has been reduced to reform that has its teeth pulled few tweezers of a hedge between them. It's not that the BNSS stretches the fabric of plea bargaining as much as it does sanction it — only it does so by establishing what it means for a victim to participate, who can play that role, and what sort of judicial oversight should apply. And it says so very, very, very nicely, because it recognises, and indeed aims to make manifest, the importance of the system of the criminal justice system being efficient that, without it, doesn't crush forever, the reasonableness of the criminal justice system, and the rights of the people within the criminal justice system in our county who are accused of crime and are subject to punishment under the constitution. The plea bargaining under the two Acts, the spirit of India in taking its march towards the modern system of administration of criminal justice and at the same time the form of pleabargaining under the two Acts, reflects the grass root level and that is the soul of fair play, voluntariness and just process has been the guiding star to hold the field. It's a step towards more accessible, more participatory justice services.

#### **Evaluating Reforms, Continuities, and Implications in Plea Bargaining**

Analyse the reforms introduced by plea bargaining, under the CrPC and the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)<sup>38</sup>. Slow trials, congested courts and delayed justice have long bedeviled the Indian criminal justice system that offers substantial pain to the accused as well as the offended. Introduction of plea bargaining in CrPC was a step towards curing the procedural wastages of the resources in the criminal justice system of India and provide to the accused an alternative method of settling the offence in relation to which no social discontent was involved except where the maximum punishment not to exceed 7 years. This study considers what, if any, procedural reform (procedural reform here refers to not just change in process, but also who speaks in criminal justice reform), inclusivity of voices in criminal justice reform (the published report is yet to be circulated) and endgame of speedy justice is entailed by the BNSS vis-à-vis the CrPC. By this assessment the study aims to assess the performance effectiveness of such attempts at legal reform at achieving their objectives of eliminating delay and ensuring fair trial process or promoting restorative justice. The CrPC appears to be getting centralised for not blocking of the judiciary's time & and for the purpose of expeditious disposal of the eligible cases<sup>39</sup>, the BNSS is having at all the times the overall uniform fixed time lines, eligibility norms, process safeguards and the proposed seems to usher down uniformity, openness and fair play. In doing so it must also be emphasized whether the BNSS only builds upon the CrPC or in actuality it is a substantial reformation of the criminal justice in the country<sup>40</sup>. The evaluation of the reforms has an additional dimension, and that is the extent to which the reforms have assimilated India to the international best practice regarding plea bargaining, to place the Indian model in comparative legal perspective.

#### **Identification of Continuities and Changes**

The similarities between the treaties—including the limits of each—will be a topic of conversation. These are the standards run through the CrPC to the BNSS such as the broader rule that the fly in the ointment called the plea bargaining has to be kept out in relation to the offences punishable with the imprisonment for a term of seven years or more in respect of the offences of the weaker sections of the people<sup>41</sup>. In exploring these continuities, the article unpicks the deeper value systems and practices that still infuse the Indian criminal justice apparatus, despite retabled legislative reform. The BNSS is a combination of the statutorily imposed sentencing deadlines as well as the old departure principles and who what are the accused. These transformations point to a process of legalization of the law, a deconstruction of the legitimacy of discretion in the courts and an increasing use of plea bargaining. In this article, we will examine this new development and analyze whether if it is anything; it is good at providing some protection to stake holders and creates good law. These two strands alternate, crisscrossing the needle of history through which are then sewn the systemic underpinnings of the rise of plea bargaining and its rebirth in ways that combine to present, in a narrative that is informative and broad-stroke, the convolutions and undulations of plea bargaining — tacking back and forth between past and present, looking at one time from ground level, then from an empurpled distance.

#### **Implications for the Accused**

The current situation with respect to plea empirically matters a great deal to the defendant. The CrPC and BNSS both are to give the law an easy route to conclusion and the opportunity to get less punishment than maximum punishment. The true victors were those first-time and minor offenders Less court appearances means less bills and no more worrying or stressing for months until I could breathe that relief of court date was nearing. The issue is not whether the detriments of greater structure in the BNSS more definite time ranges, more open eligibility criteria, and more formulaic, guideline-like sentences reduction can at least outweigh those benefits; not whether still more structure runs the risk of bringing systematic shame upon the accused's awareness of his constitutional rights and a real understanding of the practical consequences of entering a guilty plea.

In addition some of the excuses presented by the offenders are addressed in the discussion. These are the hazards and opportunity to bully of no counsel and the danger that a compressed time line will trim the wings of plea bargaining for some. An analysis of guarantees in both systems will allow the research to find an answer to the question - do the reforms manage to balance the interest in efficiency, on the one hand, and the interest in fundamental rights of the accused, on the other, as well as to what an extent the plea deal still represents a fully informed and consensual choice of the accused.

#### **Implications for Victims**

Plea bargaining and the role of the victim the victim, accused and society all play a major role in the criminal justice system<sup>42</sup>. Whereas the aim of the CrPC was fast tracking of cases in which the interest of the accused was said to be paramount, with the BNSS there is as much if not more emphasis on the rights and interests of the victims including a new victim compensation system but also on their role in plea bargaining. The essay discusses the potential that these instruments have to advance the values on which restorative justice rests, and to give victims a real position within the criminal justice system. It also explores whether the victim is actually happy, whether this results in an increased focus on social justice, and whether the reforms are enjoying good social confidence in the criminal justice system. As narrative of the origin of plea bargaining in the mode of more general cultural movement away from an obsession with efficiency in the running of the courts, in favor of a more enlightened balance of the rights of defendant and victim go the essay is every bit as sophisticated in these terms.

#### **Implications for the Judiciary**

A second sub-argument involves the impact of plea bargaining reforms on the judiciary. CrPC, With Judges enjoying a lot of discretion in accepting plea bargaining, it was enabling but subjective and prolonged the process<sup>43</sup>. While not the BNSS, all have time restrictions, procedural rules and criteria. The author questions if the above mentioned changes guarantees an efficient judicial power, an effective case managing and even greater expectations of a well-distributed justice, without challenging the independence and accountability of the Judiciary.

<sup>36</sup> Malviya, S. B., Tarannum, R. & Hashmi, N. A., *New Criminal Laws: Bharatiya Nagarik Suraksha Sanhita (BNSS) with Comparative Table of the New Act with the Old Act* (Academic Guru Publishing House 2025).

<sup>37</sup> Mohan, M. K., *Comparison Between Chapter 37 of CrPC (1973) and Chapter 39 of BNSS (2023)*, 7 *Int'l J.L. Mgmt. & Hum.* 1165 (2024).

<sup>38</sup> Purva, A *Study on Criminal Law Formation 2023: Its Need and Efficiency*, 7 *Int'l J.L. Mgmt. & Hum.* 1490 (2024).

<sup>39</sup> Maji, G., *The Critical Analysis on Understanding the Indian Judicial System*, 3 *Indian J.L. & Legal Rsch.* 1 (2021).

<sup>40</sup> Singh, V. K. & Jaswal, P. S., *A Review of Criminal Law Reforms in India: Shaping the Future of Criminal Law in India* (2024).

<sup>41</sup> Thakuriya, S. K. & Faryal, D., *A Consecration in CrPC: Plea Bargaining*, 5 *Int'l J.L. Mgmt. & Hum.* 2408 (2022).

<sup>42</sup> Jones, E. N., *The Ascending Role of Crime Victims in Plea-Bargaining and Beyond*, 117 *W. Va. L. Rev.* 97 (2014).

<sup>43</sup> Thakuriya, S. K. & Faryal, D., *A Consecration in CrPC: Plea Bargaining*, 5 *Int'l J.L. Mgmt. & Hum.* 2408 (2022).

It has addressed the extraneous forces impact on a holistic judiciary and the plea bargaining as a disposal process in order to get rid of the mountainous cases held under arrears and to have an early cheaper model of justice administration<sup>44</sup>. And it is a response to concern about overdependence on peace negotiations that, in practice, could undermine the deterrent of a criminal law that is imperfectly policed. We are therefore studying court responses to plea bargaining reform, continuing to learn more in this body of work on the effects of reform on court performance, adjudication, and the criminal justice system writ large.

A comparative analysis of the Amendments introduced into the CrPC and the BNSS on the topic of plea bargaining along with the year of enactment and to what extend the provisions have been similar and dissimilar and the impact on the various stakeholders. When we turned to that patchwork of constitutionalising and legalising, one might have hoped to gain some understanding of what the effects of procedural innovation in criminal law were on the defendant, the victim and the judge. It launches an interesting conversation at a moment when the esoteric calypso of plea-bargaining is being rendered into this equation in India, swift justice is restorative justice<sup>45</sup>. Finally this will also attempt to bring out the positives and negatives, and what are the challenges, and scope of further reform or improvement on plea bargaining system that can again be beneficent to the ongoing reform and strengthening of the criminal justice system in India and propose the same to the policy makers, legal fraternity and academia engaged.

#### **Inclusion and Exclusion Criteria**

In order to maintain clarity and to focus on the comparative study which have been diverted in the present study of plea bargaining under Code of CrPC, 1973 and the BNSS, so it is very important to set down the inclusion exclusion criteria of the study and to describe the area of study.

##### **Inclusion Criteria**

The enquiry would be one more of the salient features of the statutory provision of the plea bargaining viz., chapter XXI-A, of the CrPC vides its birth and subsequent, modification or substitution made by BNSS. This article incorporates all the statutory language related to the process, eligibility, sentencing requirements, and other judicial obligations in the practice of plea bargaining under these two statutes. This immunity also embraces a scrutiny judgmental edifice of a plea bargaining system of the country charisma, such as the State of Uttar Pradesh v. Chandrika (2000)<sup>46</sup> and the chain of post-stature decisions relative to Chapter XXI-A etc. The research similarly reflects the perspectives of its principal interest groups (e.g., the accused, the victims and the judiciary) by examining the impact of the reform on their rights, obligations, and experiences. For purposes of comparison, you will also find that some references to international practices are offered, particularly from the United States and the United Kingdom, to contextualize Indian reforms in a broader global sense.

##### **Exclusion Criteria**

In order to narrow the attention, the research will not consider other criminal procedures which are not part of plea bargaining such as compounding of offenses, summary trials or alternative dispute resolution methods (mediation), unless they has a direct sharing with the reforms on plea bargaining. It further specifically does not list “offences against the human body as mentioned in the Indian Penal Code” and “where there is evidence that the offender has previously been convicted of an offence punishable with death, imprisonment or transportation for life” which are to be excluded explicitly by the CrPC and BNSS provisions as well (offences punishable with death or life imprisonment, offences affecting the socio-economic condition of the country, and crimes against women and children below the age of fourteen) since none of these categories were ever meant to be included in the plea bargaining provision. Moreover, though international errs on the side of some of the international conventions, their application is only very superficially referred to, without an exhaustive comparison between the law systems of the member states, being used merely as a benchmark of contextual references.

##### **Conclusion:**

While such a comparison between plea bargaining under the Code of Criminal Procedure 1973 and the Bharatiya Nagarik Suraksha Sanhita, 2023 demonstrates how the emerging criminal justice system in India tries to strike a balance between expediency on the one hand and fair trial on the other. The plea bargaining was for the first time in 2005 which sought to address a problem which the Criminal Procedure Code’s monstrous pendency of cases and delay in justice that was being faced by the system in multiple forms But the scope was restricted, the procedure unclear and it did not make any significant impact. Then, the BNSS, 2023 only extends it from this basis and it introduces a time and path bounded judge-mental disbursement of the guilty in the form of a strength eliminative criterion to the upside down balance plaintiff-defendant. The exclusion of the worst crimes, the requirement of voluntariness and the role of the courts are among the possible evidence of this constant commitment to the protection of justice and due process. It's not all bad since those BNSS amendments were one of the major things and the clarity, victim impact and first time offenders incentives are pretty massive. These are actions that represent undeniable strides toward greater transparency, accountability and restorative justice. The BSNS, for the defendants, will provide benefits and assurances; for the victims, d) certainty of rights; for the Judiciary, e) elements for decision making.” At long last, these reforms thrust us into a more-impartial, cost-effective and less wasteful criminal justice system, a system that does not squander constitutional rights and justice.

<sup>44</sup> Kumar, S., Access to Justice and Sexual Violence Against Children in India: An Empirical Study of the Reforms Under the POCSO (Protection of Children from Sexual Offences) Act 2012 (Doctoral dissertation, Birkbeck, Univ. of London 2023).

<sup>45</sup> King, N. J. & Wright, R. F., The Invisible Revolution in Plea Bargaining: Managerial Judging and Judicial Participation in Negotiations, 95 Tex. L. Rev. 325 (2016).

<sup>46</sup> State of Uttar Pradesh v. Chandrika, (2000) AIR 164 (SC).