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# PLEA BARGAINING IN CRPC AND BHARTIYA NAGRIKA SURAKSHA SANHITA: A COMPARATIVE STUDY


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## CHAPTER 1 – INTRODUCTION TO PLEA BARGAINING

### 1.1 Introduction

Plea bargaining is now recognised as an important alternative dispute resolution mechanism[1] within the criminal justice system, aimed at resolving cases more quickly without going through a full trial. In simple terms, it is a pre trial negotiation where the accused agrees to plead guilty to a lesser charge or to specific charges in return for certain concessions, usually a more lenient sentence. Instead of a prolonged adversarial contest, the matter is settled through mutual agreement, while still operating within the framework of criminal law.

The idea of plea bargaining developed in common law jurisdictions[2], especially in the United States, where it has been used for over a century and a half and has become the primary method of disposing of criminal cases. In contrast, India adopted this mechanism much later. It was formally introduced through the Criminal Law Amendment Act, 2005, which inserted Chapter XXI A, covering Sections 265A to 265L, into the Code of Criminal Procedure, 1973[3]. Before this statutory recognition, Indian courts were hesitant and often rejected plea bargaining, viewing it as inconsistent with public justice and fearing that it could lead to misuse or corruption.

The shift towards accepting plea bargaining in India was largely driven by practical concerns. Recommendations[4] made by the 154th Law Commission Report and the Malimath Committee highlighted the

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[1] N. Sharma, *Concept of Plea Bargaining under Bharatiya Nagarik Suraksha Sanhita, 2023: An Overview*, 15(3) Quest J. Educ. Arts L. & Multidisciplinary 39 (2025).

[2] B.M. Yadav, *Concept of Plea Bargaining under the Criminal Justice System of India*, 13(3) Int'l J. Eng'g Dev. & Res. 233 (2025).

[3] Code of Criminal Procedure, 1973, §§ 265A–265L (India), https://www.indiacode.nic.in/handle/123456789/15247 (last visited May 20, 2026).

[4] B.R. Gandhi & Savita S., *A Comprehensive Comparison of the 1973 Code of Criminal Procedure and the Bharatiya Nagarik Suraksha Sanhita 2023*, 6(4) Indian J.L. & Legal Res. (2024).

growing problem of massive case backlogs, long delays in trials, and the increasing number of under trial prisoners. Drawing from the doctrine of *nolo contendere*, meaning "I do not wish to contest," the Indian model was carefully adapted to suit its own socio economic conditions. As a result, it remains more limited in scope, applying mainly to offences punishable with imprisonment of up to seven years and excluding serious offences, particularly those affecting the socio economic condition of the country or involving crimes against women and children

## CHAPTER 2: TYPES OF PLEA BARGAINING

Plea bargaining is not a single uniform concept[5]. It takes different forms depending on what aspect of the prosecution's case is negotiated. In India, the framework under the Code of Criminal Procedure, 1973[6] and the Bharatiya Nagarik Suraksha Sanhita, 2023[7] mainly recognises sentence bargaining, while other forms exist only in a limited or indirect manner.

### 2.1 Sentence Bargaining

Sentence bargaining is the most common form and the only one clearly recognised in Indian law. Here, the accused agrees to plead guilty to the original charge without any change in the nature of the offence.

In return, the benefit lies in the quantum of punishment. The court applies statutory guidelines and imposes a reduced sentence. This is governed by Section 265E of the CrPC[8] and Section 293 of the BNSS. The structure provides certainty, as the reduction follows a fixed formula rather than pure discretion[9].

### 2.2 Charge Bargaining

Charge bargaining involves pleading guilty to a lesser offence in place of a more serious charge. It is widely used in jurisdictions like the United States, especially in cases involving multiple charges.

In India, this form is not expressly recognised. The plea is generally made for the offence pending for trial, and the final judgment is based on that offence. However, in practice, a limited form may exist where some charges are not pursued during settlement. Even then, the focus remains on sentencing rather than altering the charge itself.[10]

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[5] Sharma, *supra* note 1, at 39.
[6] Code of Criminal Procedure § 265A (India), *supra* note 3
[7] Bharatiya Nagarik Suraksha Sanhita, 2023, §§ 290–293 (India), https://www.mha.gov.in/en/commoncontent/new-criminal-laws (last visited May 18, 2026).
[8] Code of Criminal Procedure § 265E (India), *supra* note 3.
[9] Gandhi & Savita, *supra* note 4.
[10] Sharma, *supra* note 1, at 41.

### 2.3 Fact Bargaining

Fact bargaining[11] involves an agreement on certain facts of the case, where the prosecution may withhold some evidence in exchange for a favourable outcome for the accused.

This form is highly restricted in India. Courts are cautious because it can affect the truth-finding function of the judicial process. The framework under the BNSS requires judicial supervision, which makes it difficult to conceal material facts. As a result, fact bargaining is generally discouraged.

### 2.4 Other Forms in Comparative Context

Some additional forms of plea bargaining exist in other jurisdictions but are not recognised in India.

Count bargaining[12] allows the accused to plead guilty to some charges while others are dropped. This is a variation of charge bargaining and is not formally adopted in Indian law.

The Alford plea[13] permits an accused to plead guilty while maintaining innocence, based on the strength of the prosecution's evidence. This is not compatible with Indian law, where a guilty plea must involve clear admission of guilt.

Similarly, the plea of *nolo contender*[14] allows a defendant to accept punishment without admitting guilt. This concept is also absent in Indian criminal procedure, which recognises only a clear plea of guilt or a claim to trial.

## CHAPTER 3: PLEA BARGAINING UNDER THE CODE OF CRIMINAL PROCEDURE, 1973

### 3.1 Historical Context and Introduction

Plea bargaining was formally introduced[15] into Indian criminal procedure through the Criminal Law (Amendment) Act, 2005[16], which inserted Chapter XXI-A into the Code of Criminal Procedure, 1973, and came into force on 5 July 2006. This marked a shift from the strict adversarial system, where the prosecution must prove guilt beyond reasonable doubt, to a more pragmatic approach aimed at speedy disposal of cases[17].

[11] *Id.*
[12] *Id.*
[13] Sharma, *supra* note 1, at 42.
[14] Yadav, *supra* note 2, at 234.
[15] Yadav, *supra* note 2, at 234.
[16] Criminal Law (Amendment) Act, 2005 (India), https://www.indiacode.nic.in/bitstream/123456789/6799/1/criminallawamendmendact%2C2005.pdf (last visited May 22, 2026).
[17] Sharma, *supra* note 1, at 40.

The reform[18] was based on long-standing recommendations. The 154th Law Commission Report[19] highlighted two major concerns, the growing backlog of criminal cases and the prolonged detention of under-trial prisoners, many of whom remained in custody for minor offences longer than the possible sentence. The Malimath Committee Report further supported the idea, drawing from comparative practices such as the United States, where plea bargaining plays a central role in criminal adjudication.

Before 2005, Indian courts were largely opposed to this concept. In *Kasambhai v. State of Gujarat*[20], the Supreme Court held that plea-based convictions could be coercive and contrary to fair trial principles. The statutory framework therefore represents a clear departure from earlier judicial resistance.

### 3.2 Statutory Framework (Chapter XXI-A)[21]

#### Section 265A – Applicability

Section 265A defines the scope of plea bargaining. It applies to cases where a police report has been filed or a Magistrate has taken cognizance of an offence. The provision is limited to offences punishable with imprisonment of up to seven years.

Certain categories are excluded. These include offences punishable with death, life imprisonment, or imprisonment exceeding seven years, offences affecting the socio-economic condition of the country, and offences against women or children below fourteen years. A 2006 notification further clarified socio-economic offences by listing statutes such as the Prevention of Corruption Act, the NDPS Act, and the SC/ST Act.

#### Section 265B – Application and Procedure

The process begins when the accused files an application before the court where the case is pending for trial. The application must include a brief description of the case and an affidavit stating that it is voluntary, that the accused understands the punishment, and that there is no prior conviction for the same offence.

The court then examines the accused in-camera to ensure absence of coercion or inducement. If the court is not satisfied about voluntariness, it rejects the application and proceeds with the regular trial. This safeguard is central to maintaining fairness in the process.

#### Sections 265C and 265D – Mutually Satisfactory Disposition

[18] Gandhi & Savita, *supra* note 4.
[19] Law Commission of India, 154th Report on the Code of Criminal Procedure, 1973 (Vol. I) (1996), https://lawcommissionofindia.nic.in/reports/154th_Report.pdf (last visited May 19, 2026).
[20] Kasambhai v. State of Gujarat, (1980) 3 SCC 120 (India).
[21] Gandhi & Savita, *supra* note 4.

Once the application is accepted, the court issues notice to the prosecutor or complainant and the victim. The parties are then given time to arrive at a mutually satisfactory disposition. In police cases, the investigating officer may also participate.

The court supervises the process to ensure fairness. The terms generally include compensation to the victim and other related costs. If an agreement is reached, it is recorded and signed by all parties. If not, the case continues through the normal trial process.

**Section 265E – Disposal of the Case**

After a successful settlement, the court delivers judgment and determines the quantum of punishment. The statute provides a structured sentencing framework. Where a minimum sentence exists, the court may impose half of that minimum. Where no minimum is prescribed, the court may impose one-fourth of the maximum punishment.

The court may also grant probation or release after admonition under applicable laws. This reflects a rehabilitative approach, particularly for less serious offences.

**Section 265G – Finality and No Appeal**

Judgments under plea bargaining are final, and no appeal lies against them. This ensures speedy closure and avoids prolonged litigation.

However, constitutional remedies remain available. Parties may approach higher courts under Article 136 or Articles 226 and 227 in cases of jurisdictional error or violation of fundamental rights. This balances finality with judicial oversight.

**3.3 Judicial Interpretation and Ambiguities**

Courts have clarified certain aspects of the framework. In *Gaurav Aggarwal v. State (NCT of Delhi)*[22], it was observed that plea bargaining should ideally occur before the framing of charges, so that it remains a pre-trial mechanism rather than a last-minute strategy.

On sentencing, courts have stressed structured application of Section 265E. In *Guerrero Lugo Elvia Grissel v. State of Maharashtra*[23], it was held that punishment should not be reduced arbitrarily, and must reflect the seriousness of the offence despite the negotiated settlement.

Some ambiguity still exists regarding the stage of application and the scope of charges, particularly where additional charges are framed during proceedings.

[22]Gaurav Aggarwal v. State (NCT of Delhi), CRL.M.C. 4055/2016 (Delhi H.C.) (India).
[23]Guerrero Lugo Elvia Grissel v. State of Maharashtra, 2012 Cri. L.J. 1136 (India).

### 3.4 Underutilisation and Practical Challenges

Despite its objectives, plea bargaining remains underutilised in India. This is significant given the large pendency of criminal cases, which continues to burden the judicial system.

Several reasons explain this limited use. There is low awareness among accused persons and legal practitioners. Judicial hesitation also persists, with concerns about fairness and misuse. Social stigma attached to admitting guilt discourages many accused persons. In addition, the prosecutorial approach often remains adversarial, as seen in early cases like *Sakha-ram Bandekar*[24], where the CBI opposed the plea process.

As a result, while the framework exists in law, its practical impact has been relatively modest.[25]

## CHAPTER 4: PLEA BARGAINING UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

### 4.1 Introduction and Objectives

The Bharatiya Nagarik Suraksha Sanhita, 2023 replaces the Code of Criminal Procedure, 1973 and marks a significant shift in India's criminal procedure. It is part of a broader reform framework aimed at making the system more efficient, contemporary and responsive to victims. The focus is on speedy justice, procedural clarity and improved access.[26]

The law addresses long-standing concerns such as case backlog, low conviction rates and delay in disposal.[27] It introduces time-bound procedures and allows the use of electronic modes for investigation, trial and recording of evidence. At the same time, it adopts a more victim-centric approach by ensuring that victims are informed about the progress of investigation and are given access to key documents. This reflects a gradual movement towards restorative justice within the criminal process[28].

### 4.2 Statutory Framework (Sections 290–293)

[24] Times of India, *RBI Clerk Sent to 3 Yrs in Jail*, Times of India (Oct. 29, 2007), https://timesofindia.indiatimes.com/city/mumbai/RBI-clerk-sent-to-3-yrs-in-jail/articleshow/2461828.cms (last visited May 21, 2026).
[25] Gandhi & Savita, *supra* note 4.
[26] *Id.*
[27] PRS Legislative Research, The Bharatiya Nagarik Suraksha Sanhita, 2023 (2023).
[28] Taxmann, Comparative Study of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) and Code of Criminal Procedure, 1973 (CrPC) (2024).

The BNSS[29] retains plea bargaining but modifies it to improve efficiency and fairness. The provisions are contained in Sections 290 to 293.[30][31]

**Section 290 – Application for Plea Bargaining**

Section 290 lays down the procedure for initiating plea bargaining. The most important change is the introduction of a strict timeline. The accused must file the application within thirty days from the date of framing of charge. This removes earlier uncertainty and prevents delay tactics, ensuring that plea bargaining is used at an early stage.

At the same time, this requirement may create practical difficulty where the accused lacks proper legal advice at the initial stage. Apart from the time limit, existing safeguards continue. The application must be supported by an affidavit confirming voluntariness and absence of prior conviction. The court must examine the accused in-camera to rule out coercion. If satisfied, notice is issued to the prosecutor, investigating officer and victim, and time is given to arrive at a mutually satisfactory disposition.

**Sections 291 and 292 – Disposition Process**

Section 291 governs the negotiation stage. The court calls upon the Public Prosecutor, investigating officer, accused and victim to participate in working out a mutually satisfactory disposition. The role of the court is supervisory, ensuring fairness and voluntariness without directly negotiating.

Section 292 deals with the outcome. If an agreement is reached, a formal report is prepared and signed by all parties. If no agreement is reached, the court proceeds with the trial from the same stage. This ensures that the attempt at plea bargaining does not prejudice either side.

**Section 293 – Disposal and Sentencing**

Section 293 introduces an important reform in sentencing. While the general structure remains similar, the BNSS provides enhanced leniency for first-time offenders.

Where a minimum punishment is prescribed, the sentence may be reduced to one-half for regular cases, but for first-time offenders it may be reduced to one-fourth. Where no minimum is prescribed, the sentence may be reduced to one-fourth in general cases and to one-sixth for first-time offenders. This creates a clear incentive for early settlement and promotes a reformative approach.

[29]Bharatiya Nagarik Suraksha Sanhita § 290 (India), *supra* note 7.
[30] Yadav, *supra* note 2, at 235
[31] D. Magon, *Plea Bargaining under BNSS (Bharatiya Nagarik Suraksha Sanhita)*, JudiX (Feb. 17, 2024), https://www.judix.in (last visited May 17, 2026).

The court continues to award compensation to the victim and may grant probation or release after admonition under applicable laws. The emphasis is not only on punishment but also on rehabilitation.

### 4.2.5 Interplay with Other Provisions

The plea bargaining framework under the BNSS operates alongside other reformative provisions. A key example is Section 479, which provides for the release of first-time undertrial prisoners on personal bond after they have completed one-third of the maximum sentence.

Together, these provisions reflect a consistent legislative approach. They prioritise first-time offenders, reduce pressure on prisons and courts, and encourage reintegration rather than prolonged incarceration. This indicates a shift towards a more balanced system that combines efficiency with fairness and rehabilitation.[32]

## CHAPTER 5: COMPARATIVE ANALYSIS OF PLEA BARGAINING UNDER CRPC AND BNSS

This chapter examines how the Bharatiya Nagarik Suraksha Sanhita, 2023 builds upon the framework of the Code of Criminal Procedure, 1973. Rather than replacing the system entirely, the BNSS refines the plea bargaining mechanism by removing procedural ambiguity and aligning it with goals of efficiency, reformation and victim protection.[33]

### 5.1 Key Comparative Features

The basic structure of plea bargaining remains largely similar under both laws. Applicability continues to be limited to offences punishable with imprisonment up to seven years, with exclusions for socio-economic offences and offences against women or children. This shows continuity in legislative policy.[34]

The most notable change lies in the stage of filing. Under the CrPC, the phrase “pending for trial”[35] created uncertainty and allowed delayed applications. The BNSS resolves this by introducing a strict thirty day limit from the date of framing of charge. This brings clarity and ensures that plea bargaining is used at an early stage rather than as a delaying tactic.

Another important procedural reform is the sixty day cap for negotiation. The CrPC did not prescribe any timeline, which often led to delays. The BNSS ensures that if parties cannot reach a mutually satisfactory disposition within this period, the case returns to trial without unnecessary delay.

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[32] Yadav, *supra* note 2, at 236.
[33] Harshita, *Plea Bargaining under Bharatiya Nagarik Suraksha Sanhita, 2023*, Legal Bites (Dec. 26, 2024), https://www.legalbites.in (last visited May 23, 2026).
[34] Yadav, *supra* note 2, at 236.
[35] Code of Criminal Procedure § 265A (India), *supra* note 3.

In terms of safeguards, the requirement of in-camera examination to ensure voluntariness remains unchanged. This continues to protect the accused from coercion and preserves the fairness of the process.

### 5.2 Sentencing and Reformative Approach

The most significant shift under the BNSS is in sentencing policy. The CrPC followed a uniform approach, where the accused could receive one-half of the minimum punishment or one-fourth of the maximum punishment. The BNSS introduces a distinction for first-time offenders.

For such offenders, the sentence may be reduced further to one-fourth of the minimum or one-sixth of the maximum punishment. This creates a strong incentive for early settlement and reflects a clear move towards a reformative and rehabilitative model.

This approach also addresses the problem of undertrial detention and prison overcrowding. By encouraging first-time offenders to opt for plea bargaining, the law provides a quicker route to resolution and release. The reform is consistent with other provisions, such as Section 479 of the BNSS, which allows release of undertrial prisoners after completion of one-third of the maximum sentence[36].

### 5.3 Victim Participation and Fairness

The BNSS retains the requirement of victim participation in the plea bargaining process. A mutually satisfactory disposition must involve the consent of the victim, and compensation remains a central element of the agreement.

This aligns with the broader victim-centric approach of the BNSS. Provisions requiring that victims be informed about the progress of investigation strengthen their role in the process. As a result, plea bargaining is not merely an agreement between the state and the accused but a process that also recognises the interests of the victim.[37]

### 5.4 Final Observations

The shift from the CrPC to the BNSS reflects a gradual evolution rather than a complete departure. The core structure of plea bargaining is retained, but key weaknesses have been addressed through clearer timelines and a more nuanced sentencing framework.

Overall, the BNSS strengthens plea bargaining by making it more predictable, efficient and reform-oriented. By combining procedural certainty with a focus on rehabilitation and victim rights, it positions plea bargaining as a more effective tool within the modern criminal justice system.[38]

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[36] Yadav, *supra* note 2, at 236.
[37] Bharatiya Nagarik Suraksha Sanhita § 290 (India), *supra* note 7.
[38] Yadav, *supra* note 2, at 237.

## CHAPTER 6: JUDICIAL PRECEDENTS ON PLEA BARGAINING

The law relating to plea bargaining in India has largely developed through judicial interpretation. Even before it was formally introduced into the Code of Criminal Procedure, 1973 and later refined under the Bharatiya Nagarik Suraksha Sanhita, 2023, courts were already examining its validity, fairness and usefulness in criminal trials. Over the years, the judicial approach gradually shifted from strong resistance to cautious acceptance and eventually to active support. Courts have therefore played an important role in shaping the present framework of plea bargaining in India.

### 6.1 Evolution of Judicial Approach

The Supreme Court first acknowledged the practical value of plea bargaining in *Murlidhar Meghraj Loya v. State of Maharashtra*[39]. Although the Court did not formally approve the practice, it recognised that negotiated settlements could help reduce the growing burden of pending criminal cases.

However, a stricter approach followed in *Kasambhai v. State of Gujarat*[40] and *State of UP v. Chandrika*[41]. In these cases, the Court viewed plea bargaining as contrary to public policy and inconsistent with the principles of a fair trial. There was concern that an accused person could be pressured into pleading guilty and that the process might weaken the integrity of criminal justice.

The judicial attitude began to change in *State of Gujarat v. Natwar Harchandji Thakor*[42], where the Court recognised plea bargaining as a practical response to delay and excessive pendency in courts. This judgment marked an important turning point and later supported the statutory recognition of plea bargaining in criminal procedure law.

### 6.2 Implementation and Judicial Guidance

After the 2006 amendment[43] introduced plea bargaining into the CrPC, courts began focusing on how the mechanism should work in practice. In *Sakha-ram Bandekar*, one of the earliest cases under the new framework, prosecutorial resistance showed that the legal system was still adjusting to the idea of negotiated justice.

In the *Indian Music Industry* case[44], plea bargaining was used successfully to secure substantial compensation. The case demonstrated that the process could also support restorative justice, especially in economic offences.

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[39] Murlidhar Meghraj Loya v. State of Maharashtra, (1976) 3 SCC 684 (India).
[40] Yadav, *supra* note 2, at 233.
[41] State of U.P. v. Chandrika, AIR 2000 SC 164 (India).
[42] State of Gujarat v. Natwar Harchandji Thakor, (2005) Cri. L.J. 2957 (India).
[43] Criminal Law (Amendment) Act, 2005 (India), *supra* note 16.
[44] Business Standard, *Music Industry Wins India's Biggest Plea Bargaining Case: IMI*, Bus. Standard (Oct. 29, 2009), https://www.business-standard.com/article/companies/music-industry-wins-india-s-biggest-plea-bargaining-case-imi-109102900051_1.html (last visited May 24, 2026).

Similarly, in *Guerrero Lugo Elvia Grissel v. State of Maharashtra*[45], the Court stressed that sentencing under plea bargaining should follow a structured and consistent approach. It warned against excessive judicial discretion and highlighted the need for predictability to ensure fairness and avoid arbitrary outcomes.

### 6.3 Stage of Application and Procedural Clarity

Another important issue under the CrPC was the stage at which plea bargaining could be initiated. In *Gaurav Aggarwal v. State*[46], the Delhi High Court observed that the process should ideally begin before the framing of charges so that the fairness of the trial process remains unaffected.

The BNSS has now addressed this uncertainty through Section 290, which requires an application for plea bargaining to be filed within thirty days from the date of framing of charge. This provision brings greater clarity to the process and encourages early settlement of criminal disputes.

### 6.4 Recent Developments and Reformative Approach

Recent judgments[47][48] have continued to shape criminal procedure and strengthen the broader reformative approach of the justice system. In *V. Senthil Balaji v. State*[49], the Supreme Court overruled *Anupam Kulkarni*[50] and held that police custody may be granted at any stage during the investigation period, in line with Section 187 of the BNSS.

In *Hyder Ali v. State of Karnataka*[51], the Court clarified that offences punishable with ten years of imprisonment fall within the higher detention limit, resolving confusion in the interpretation of the law.

The reform-oriented approach of the judiciary became more visible in *In Re: Policy Strategy for Grant of Bail*[52], where the Supreme Court recognised plea bargaining as an important tool for reducing prison overcrowding and improving the efficiency of the criminal justice system. The Court encouraged greater awareness and wider use of the mechanism.

Likewise, in *Rajendra Gajanan Soni v. State of Maharashtra*[53], the High Court supported the use of plea bargaining in minor offences where the accused was willing to plead guilty. In *State of Maharashtra v. Sujit*

[45] Guerrero Lugo Elvia Grissel v. State of Maharashtra, *supra* note 23.
[46] Gaurav Aggarwal v. State (NCT of Delhi), *supra* note 22.
[47] H. More, *Plea Bargaining (Sections 289 to 300 BNSS)*, The Legal Quotient (Sept. 5, 2025), https://thelegalquotient.com (last visited May 20, 2026).
[48] WritingLaw, *Chapter XXIA, Section 265A to 265L of CrPC – Plea Bargaining*, WritingLaw, https://www.writinglaw.com (last visited May 19, 2026).
[49] V. Senthil Balaji v. State, Criminal Appeal Nos. 2284–2285 of 2023 (India).
[50] Anupam Kulkarni v. State of Maharashtra, (1992) 3 SCC 141 (India).
[51] Hyder Ali v. State of Karnataka, SLP (Crl) No. 18063 of 2024 (India).
[52] In Re: Policy Strategy for Grant of Bail, SMWP (Criminal) No. 4/2021 (India).
[53] Neha Charak & Savita Nayyar, *Plea Bargaining in India: An Underutilized Tool for Justice Reform*, 5(1) Int'l J. Crim., Common & Statutory L. 33 (2025), https://www.criminallawjournal.org/archives/2025.v5.i1.A.117 (last visited May 22, 2026).

*D. Borkar*[54], the Court pointed out that plea bargaining continues to remain underutilised despite its statutory recognition, showing the gap between law and practice.

Taken together, these decisions show a clear shift in judicial thinking. Courts that once rejected plea bargaining with suspicion now recognise it as a practical tool for reducing delay and ensuring speedy justice, as long as safeguards relating to voluntariness, fairness and judicial supervision are properly maintained. The BNSS reflects many of these judicial developments by introducing clearer timelines and a more structured procedural framework for plea bargaining.

## Chapter 7: Challenges and the Road Ahead for Plea Bargaining under BNSS

The Bharatiya Nagarik Suraksha Sanhita, 2023[55] attempts to strengthen plea bargaining by introducing clarity and a reformative sentencing approach. It seeks to make the mechanism more effective and widely used. However, its success depends on how well practical challenges are addressed during implementation.[56][57]

### 7.1 Potential Challenges

One major concern is the thirty day deadline under Section 290. While it promotes efficiency, it may also be too rigid. Many accused persons may not receive proper legal advice at the early stage of trial, which can prevent them from making an informed decision within this limited period. It also does not fully consider how evidence or prosecutorial strategy may change as the trial progresses.

Another issue arises in identifying a “first-time offender” under Section 293. The benefit of reduced sentencing depends on proving that the accused has no prior conviction. In practice, verifying this across different jurisdictions is difficult due to the absence of a fully reliable and accessible national database. This creates a risk of both error and inconsistency.

Lack of awareness continues to be a serious barrier. Many undertrial prisoners and even legal practitioners are unfamiliar with the procedure and benefits of plea bargaining. The adversarial mindset still dominates, which discourages negotiated settlements and limits the use of this mechanism.

Victim participation also presents challenges. Although the law requires a mutually satisfactory disposition, there is a risk that victims may not be meaningfully involved or may feel pressured to agree to a settlement. Ensuring that their consent is informed and voluntary remains an important responsibility of the court.

[54] State of Maharashtra v. Sujit D. Borkar, Criminal Appeal No. 252 of 2015 (India).
[55] Bharatiya Nagarik Suraksha Sanhita, 2023, §§ 290–293 (India), *supra* note 7.
[56] Yadav, *supra* note 2, at 237.
[57] *Ibid.*

### 7.2 The Way Forward

To make the framework effective, focused training and sensitisation are essential. Judges, prosecutors and defence lawyers must clearly understand their roles, especially the importance of voluntariness and the new sentencing structure. Awareness programmes for undertrial prisoners and the general public can also improve access to this remedy.

Technology can play a key role in implementation. Digital filing, video conferencing and electronic records can help meet strict timelines and make the process more accessible. A centralised database of criminal records, developed with the support of institutions like the National Crime Records Bureau, would also help courts verify claims of first-time offenders more accurately.

Regular data collection is equally important. Tracking how often plea bargaining is used, in which types of cases and with what outcomes can help identify gaps in implementation. This allows for informed policy decisions and gradual improvement of the system.

Finally, clearer guidelines on voluntariness are needed. Courts can adopt structured methods during in-camera examination to ensure that the accused fully understands the consequences of the plea. This is particularly important for vulnerable individuals, as it protects their right to a fair trial and maintains the legitimacy of the process.

## CHAPTER 8 - FINDING, RESULT AND CONCLUSION

### 8.1 Findings and Results

The study finds that the BNSS retains the basic structure of plea bargaining but introduces important reforms. The thirty day filing limit and sixty day negotiation period bring procedural clarity and reduce delay. The introduction of reduced sentencing for first-time offenders reflects a shift towards a reformative model.

At the same time, challenges remain. Lack of awareness, difficulty in verifying prior convictions and continued adversarial approach may limit effectiveness. Judicial support has increased over time, but practical implementation still requires institutional change and greater acceptance.

### 8.2 Conclusion

Plea bargaining in India has evolved from judicial rejection to cautious acceptance and finally statutory recognition. Under the CrPC, it provided an alternative to lengthy trials but remained underused due to procedural gaps and institutional hesitation.

The BNSS strengthens this framework by introducing clear timelines and a reform-oriented sentencing policy. It attempts to make plea bargaining more predictable and accessible, while also emphasising victim participation and compensation.

However, the effectiveness of these reforms depends on actual implementation. Greater awareness, proper training and strict adherence to voluntariness are essential. If applied effectively, plea bargaining can contribute to a more efficient, balanced and humane criminal justice system.