

PLEA BARGAINING AND ELIGIBILITY UNDER BNSS 2023: A CRITICAL ANALYSIS

by

Vidhya K

Second Year LL.B., Government Law College, Salem
(Tamil Nadu, India)

ABSTRACT

The introduction of the **Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023**, marks a paradigm shift in Indian criminal jurisprudence, systematically replacing the Code of Criminal Procedure (CrPC), 1973. While plea bargaining was first formally introduced into Indian law via Act 2 of 2006 under Chapter XXI-A of the CrPC, its operational success remained severely constrained by procedural ambiguities and cultural resistance within the trial machinery. This paper evaluates the revamped framework of plea bargaining introduced under **Chapter XXIII (Sections 289 to 300) of the BNSS, 2023**. It critically analyzes the newly introduced strict statutory timelines—specifically the **mandatory 30-day window** for filing applications after the framing of charges—and evaluates the strict boundaries governing applicant eligibility. By examining statutory boundaries, exclusions based on the nature of offenses, constitutional intersections with Article 20(3) and Article 21, and evolving judicial approaches, this study assesses whether the BNSS framework will successfully accelerate judicial efficiency or inadvertently compromise the foundational rights of an accused.

1. INTRODUCTION

Plea bargaining represents a pre-trial negotiation between the prosecution and the defense, where the accused agrees to plead guilty in exchange for a lesser sentence, a reduction in the severity of charges, or both. Historically viewed with deep suspicion by the Indian judiciary as an alien concept contrary to public policy, the overwhelming backlog of criminal cases eventually forced its legislative adoption in 2006. Despite its inclusion, the mechanism under the CrPC, 1973, suffered from underutilization, largely due to a lack of institutional incentives, unawareness among litigants, and the absence of strict procedural deadlines.

With the enactment of the **Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023**, the legislature has sought to breathe new life into this tool. The BNSS reorganizes the provisions under Chapter XXIII, keeping the core substance of the mechanism intact but introducing structural alterations designed to incentivize early settlement. The most significant shift is the replacement of open-ended timelines with rigid windows, forcing both the defense and prosecution to evaluate options right at the inception of the trial process.

2. OBJECTIVES AND RESEARCH METHODOLOGY

This research paper is structured around the following core objectives:

- To analyze the statutory evolution of plea bargaining from Chapter XXI-A of the CrPC, 1973, to Chapter XXIII of the BNSS, 2023.
- To critically evaluate the structural changes under the BNSS, with specific focus on the mandatory **30-day timeline** under Section 290(1).
- To delineate the criteria governing the eligibility of an accused and classify absolute exclusions under the new law.
- To evaluate the constitutional validity of the framework against protections safeguarding individuals from self-incrimination and arbitrary procedures.

Research Methodology: This study utilizes a strictly doctrinal and analytical research methodology. The primary sources of data comprise the statutory text of the Bharatiya Nagarik Suraksha Sanhita, 2023, the Code of Criminal Procedure, 1973, and the Constitution of India. Secondary sources include seminal judgments of the Supreme Court of India, parliamentary standing committee reports, academic commentaries, and peer-reviewed legal journals focusing on procedural reforms.

3. MEANING AND SCOPE OF THE STUDY

Plea bargaining within the Indian context operates under a structured, court-supervised model, which differs vastly from the informal prosecutor-dominated system seen in the United States. It encompasses two primary forms: charge bargaining (dropping or reducing specific counts) and sentence bargaining (pleading for a lighter punishment within statutory limits). Indian law primarily emphasizes sentence bargaining, ensuring that judicial oversight guards against coercive settlements.

The scope of this study is specifically confined to exploring how the procedural innovations of the BNSS change the strategic landscape for defense counsels and prosecutors. It focuses deeply on the newly introduced temporal limits. By cutting off the right to apply for a plea bargain after a specific point in the trial, the legislature has redefined plea bargaining from a lingering option into an urgent, strategic choice that must be resolved immediately after charges are framed.

4. STATUTORY FRAMEWORK UNDER BNSS, 2023

The statutory core of plea bargaining is located within **Sections 289 to 300 of the BNSS, 2023**. While the substance mirrors the old provisions, the internal mechanics have been drastically sharpened.

The 30-Day Mandatory Window: Under Section 290(1) of the BNSS, an accused may file an application for plea bargaining in the court where the offense is pending trial. Crucially, the section introduces a strict proviso: *"Provided that the accused may file an application for plea bargaining within a period of thirty days from the date of framing of charge."*

This timeline represents a profound departure from the CrPC, where an application could theoretically be moved at any stage before the delivery of judgment.

Process for Mutually Satisfactory Disposition (MSD): Once an application is validly filed, the court examines the accused in camera under Section 290(4) to ensure the application is voluntary. If satisfied, the court provides time for the prosecution, the victim, and the accused to work out a Mutually Satisfactory Disposition (MSD) under Section 291. The BNSS adds a vital efficiency anchor here under Section 291(1), directing the parties to complete this process within **sixty days** from the date of filing the application.

5. ELIGIBILITY MATRIX AND EXCLUSIONS

Not every individual facing trial is legally permitted to access the benefits of plea bargaining. The law sets clear, non-negotiable boundaries based on the gravity of the offense, the vulnerability of the victim, and the criminal history of the applicant.

Eligibility Criteria	Eligible Categories	Absolute Exclusions / Ineligible
Quantum of Punishment	Offenses punishable with imprisonment below 7 years.	Offenses punishable by death, life imprisonment, or imprisonment exceeding 7 years.
Nature of Victim	General offenses against property, documents, or minor societal infractions.	Offenses committed against women or children under the age of 14 years.
Socio-Economic Impact	Standard penal offenses under the Bharatiya Nyaya Sanhita (BNS).	Offenses that affect the socio-economic condition of the nation.
Character of Accused	First-time offenders seeking institutional rehabilitation.	Habitual offenders previously convicted of the same offense by any court.

6. CONSTITUTIONAL LIMITS ON THE STUDY

The introduction of plea bargaining has frequently invited scrutiny regarding its compliance with the Constitution of India, particularly **Article 20(3)** (protection against self-incrimination) and **Article 21** (the right to life and a fair, just, and reasonable procedure).

The Right Against Self-Incrimination: Article 20(3): Critics argue that encouraging an accused to acknowledge guilt compromises the protection that states 'No person accused of any offence shall be compelled to be a witness against himself.' However, constitutional courts have sustained plea bargaining by emphasizing the element of absolute voluntariness. Under Section 290(4), the in camera judicial examination works as a constitutional buffer.

The Right to a Fair Trial: Article 21: Article 21 demands that criminal procedures must be fair. The statutory cap on sentence reductions under Section 292 ensures that judges retain ultimate sentencing power. By guaranteeing a mandatory minimum distribution, the BNSS prevents arbitrary, unchecked judicial discretion while keeping procedural fairness intact.

7. JUDICIAL APPROACH AND RELEVANT CASE LAW

The evolution of plea bargaining in India is heavily shaped by judicial interpretation. Early decisions reveal a profound institutional resistance, which gradually gave way to pragmatic acceptance.

Historical Resistance: In *State of Uttar Pradesh v. Chandrika (2000)*, the Supreme Court took a rigid stance, holding that it is settled law that on the basis of a plea bargain, a court cannot dispose of criminal cases. Similarly, in *Murlidhar Meghraj Loya v. State of Maharashtra (1976)*, the apex court cautioned against introduction of informal commercial negotiations into the solemn domain of criminal justice.

The Pragmatic Shift: Following the 2006 legislative intervention, the judicial approach shifted. In *State of Gujarat v. Natwar Harchandji Thakor (2005)*, the Court acknowledged the changing dynamics of the legal system, noting that when done voluntarily, plea bargaining serves a vital public purpose by clearing minor disputes out of the system.

Under the new BNSS regime, the judiciary is expected to strictly enforce the **30-day bar**. Early interpretations indicate that since the language used by Parliament is clear and unambiguous, courts will not have the discretion to condone delays.

8. CRITICAL ANALYSIS AND IMPORTANT OBSERVATIONS

While the structural speed introduced by Chapter XXIII of the BNSS, 2023, is commendable, a critical evaluation reveals several structural hurdles:

- **The Informality Vulnerability:** An unrepresented or illiterate accused might view the mandatory 30-day deadline as an ultimatum, leading to ill-informed admissions.
- **The Victim's Veto Power:** Under Section 291, the victim must actively agree to the MSD. If a victim adopts an uncompromising stance, the negotiation process collapses.
- **The Judicial Bottleneck:** In overburdened trial courts, scheduling in camera reviews and issuing formal orders may ironically add to pre-trial delays.

9. CONCLUSION

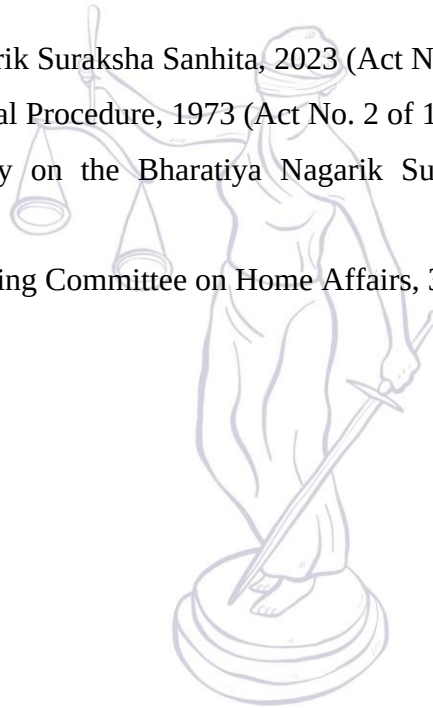
The re-codification of plea bargaining under **Chapter XXIII of the BNSS, 2023**, represents a bold legislative effort to convert a passive legal alternative into an active management tool. By imposing a strict 30-day deadline from the framing of charges, the BNSS successfully prevents the tool from being misused as a delaying tactic. Ultimately, the success of the BNSS framework will depend entirely on striking a perfect balance between institutional speed and constitutional fairness.

FOOTNOTES

1. See Law Commission of India, 142nd Report (1991) and 154th Report (1996).
2. Offenses under major socio-economic laws are structurally excluded.
3. State of Uttar Pradesh v. Chandrika, AIR 2000 SC 164.
4. Murlidhar Meghraj Loya v. State of Maharashtra, (1976) 3 SCC 684.
5. State of Gujarat v. Natwar Harchandji Thakor, (2005) 1 GLR 709.

REFERENCES

1. The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No. 46 of 2023).
2. The Code of Criminal Procedure, 1973 (Act No. 2 of 1974).
3. Sarkar, Commentary on the Bharatiya Nagarik Suraksha Sanhita, 2023, LexisNexis (2024).
4. Parliamentary Standing Committee on Home Affairs, 361st Report (2023).



Indian Journal of Contemporary
Legal and Social Issues