

**VOLUNTARINESS AND JUDICIAL SUPERVISION IN PLEA
BARGAINING UNDER THE BHARATIYA NAGARIK SURAKSHA
SANHITA (BNSS), 2023**

by

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1. INTRODUCTION AND LEGISLATIVE EVOLUTION

The incorporation of plea bargaining into the Indian criminal justice framework marked a historic departure from traditional, adversarial adjudication. Originally introduced via Chapter XXI-A (Sections 265-A to 265-L) into the Code of Criminal Procedure, 1973 (CrPC) through the Criminal Law (Amendment) Act of 2005, the concept aimed to combat crippling docket congestion, reduce prolonged pre-trial detention, and ensure timely dispute resolution.

With the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which replaced the colonial-era CrPC, the framework governing plea bargaining has been re-enacted under Chapter XXIII (Sections 289 to 300). While the core philosophy—balancing expeditious justice with substantive fairness—remains intact, the BNSS introduces critical procedural refinements, such as strict timelines, to plug loopholes that previously undermined legislative intent.

Unlike its expansive American counterpart, where prosecutors and defense counsel negotiate both charges and sentences in private, India's statutory model is remarkably narrow, cautious, and strictly regulated. Under the BNSS, charge bargaining is entirely prohibited; the prosecution cannot drop graver charges to accommodate a plea. Instead, the Indian model permits exclusively court-supervised sentence bargaining linked to a "mutually satisfactory disposition" that mandates victim compensation.

At the structural core of this statutory scheme lie two non-negotiable pillars:

- **Voluntariness:** Ensuring that the accused consents to the process free from coercion, police intimidation, or systemic duress.

- Judicial Supervision: Retaining absolute institutional oversight within the judiciary to prevent backroom deals, protect victim rights, and shield the vulnerable from exploitation.

2. STATUTORY ARCHITECTURE OF PLEA BARGAINING UNDER THE BNSS

2.1 Scope, Applicability, and Exclusions (Section 289)

Plea bargaining under Section 289 of the BNSS applies to criminal proceedings instituted either on a police report or via a private complaint. However, clear boundaries restrict its application:

- The Seven-Year Ceiling: It is restricted to offences punishable with imprisonment for a maximum term of up to seven years.
- Absolute Bars: Offences punishable with death, life imprisonment, or imprisonment exceeding seven years are strictly excluded.
- Socio-Economic Exclusions: Crimes that affect the socio-economic condition of the country (as notified by the Central Government) and offences against women and children are kept outside the purview of plea bargaining.

2.2 The Procedural Timeline and Application Phase (Section 290)

Under the BNSS, a critical procedural innovation has been introduced to curb delaying tactics:

- The 30-Day Rule: The accused must file an application for plea bargaining within thirty days from the date charges are framed. (The erstwhile CrPC lacked an explicit statutory deadline, often leading to applications being filed mid-trial as a delaying strategy.)
- The Mandatory Affidavit: The application must be accompanied by a sworn affidavit stating that the accused has voluntarily preferred plea bargaining after understanding the nature and extent of the punishment, and confirming that they have not been previously convicted of the same offence by any court.

3. THE PILLAR OF VOLUNTARINESS: SAFEGUARDING AUTONOMY

Voluntariness is the foundational prerequisite of a valid plea bargain. In a criminal justice landscape historically fraught with power asymmetries—where indigent or undertrial prisoners face prolonged incarceration—the risk of coerced confessions masquerading as voluntary pleas is exceptionally high.

3.1 The In-Camera Examination Mechanism

To insulate the accused from external pressures (whether from investigating agencies, overzealous prosecutors, or co-accused), Section 290(4) of the BNSS mandates that upon receiving the application, the trial judge must examine the accused in-camera (privately), in the absence of any other party.

During this confidential interaction, the judge must independently ascertain:

- Whether the accused fully comprehends the legal consequences of giving up their right to a full trial.
- Whether the application stems from an uncoerced, free choice, or whether it has been induced by threats, promises, or oppressive pre-trial detention.

3.2 Consequences of Involuntary Applications

If the judicial examination reveals that the application lacks voluntariness—or that the accused is a repeat offender disqualified under the law—the court rejects the plea-bargaining track immediately. Crucially, the BNSS ensures procedural firewalling: the statements or admissions made by the accused during the plea application phase cannot be used against them in subsequent stages of the trial or in other proceedings (mirroring protective provisions under Section 299). The matter simply reverts to the regular trial stage from the exact point where the application was filed.

4. THE PILLAR OF JUDICIAL SUPERVISION: INSTITUTIONAL OVERSIGHT

Plea bargaining in India is not a private contract executed between the State and the defense behind closed doors. It is a transparent, court-monitored proceeding where the judiciary acts as an active guardian of constitutional standards.

4.1 Crafting the Mutually Satisfactory Disposition (Section 291)

Once the court is satisfied that the application is voluntary, it grants the parties up to sixty days to work out a "mutually satisfactory disposition" (MSD):

- In Police Report Cases: The court issues notices to the Public Prosecutor, the investigating officer, the accused, and the victim to assemble and negotiate terms that include equitable compensation and legal expenses payable to the victim.

- In Complaint Cases: The court facilitates the process directly between the accused and the victim.

4.2 The Role of the Judge: Mediator vs. Adjudicator

A vital dimension of judicial supervision is maintaining the boundaries of judicial propriety. The presiding judge must facilitate the meeting but cannot dictate or coerce the terms of the settlement. The ultimate responsibility of ensuring that the compensation awarded to the victim is fair, realistic, and legally sound rests with the judge.

If no consensus is reached and the parties fail to arrive at an MSD, the court records this outcome and proceeds with the standard trial from the stage it was paused. If an agreement is reached, a formal report is prepared and signed by all participating parties and the presiding officer.

4.3 Disposal, Sentencing Formulas, and Finality (Sections 293–295)

Upon finalizing the report, the court moves to disposal and sentencing under strict statutory parameters:

- Victim Compensation: The court awards compensation as agreed in the disposition.
- The Sentencing Concession:
 - If the offence carries a mandatory minimum sentence, the court may sentence the accused to one-fourth of that minimum; for first-time offenders, it may be reduced to one-sixth.
 - If the offence carries no mandatory minimum, the court may impose a sentence extending to one-fourth of the maximum punishment prescribed; for first-time offenders, it can drop to one-sixth.
- Finality of Judgment: Delivered in open court and signed by the presiding officer, the judgment is final. Under Section 295, no ordinary appeal lies against a plea-bargaining judgment, except via extraordinary constitutional remedies such as a Special Leave Petition (SLP) under Article 136 or writ jurisdictions under Articles 226 and 227 of the Constitution of India.

5. COMPREHENSIVE CASE LAW ANALYSIS

Judicial interpretation

Courts interpret voluntariness through a totality-of-the-circumstances test. Judges are not passive rubber stamps; they must conduct a thorough colloquy on the record to verify that the accused understands the nature of the charges, the direct consequences of the plea, and the rights being waived. Ultimately, active judicial supervision bridges the gap between administrative efficiency and constitutional justice.

5.1 **Kasambhai Abdulrehmanbhai Sheikh v. State of Gujarat (1980) 3 SCC 120**

- Context: Decided long before the statutory enactment of Chapter XXI-A, this case dealt with the practice of courts accepting "pleas of guilt" induced by informal understandings to secure lighter sentences.
- Ruling: The Supreme Court of India strongly deprecated the practice of unrecorded, backroom plea bargaining, holding that encouraging an accused to plead guilty through implicit promises of leniency is against public policy, violates procedural fairness under Article 21, and turns criminal trials into mechanical rituals.
- Significance to BNSS: This ruling laid the moral and constitutional foundation for why statutory oversight, formal in-camera recording, and absolute judicial transparency became mandatory prerequisites under modern criminal codes.

5.2 **State of Gujarat v. Natwarlal Himatlal Thakker (SC 2008)**

- Context: One of the earliest Supreme Court rulings evaluating the operation of plea bargaining provisions after their introduction into the CrPC.
- Ruling: The Apex Court emphasized that plea bargaining is a progressive tool designed to reduce pendency, but it must be administered strictly within the four corners of the statute. Courts cannot bypass mandatory sentencing fractions or ignore the mandatory requirement of compensating victims.
- Significance to BNSS: It reinforced that judicial discretion is heavily fettered by statutory ceilings; convenience can never override legal compliance.

5.3 **Thapparan v. State of Kerala (Kerala High Court, 2020)**

- Context: Addressed procedural lapses where trial courts skipped the mandatory in-camera personal examination of the accused regarding voluntariness.

- Ruling: The High Court held that the in-camera examination under Section 265-B(4) [now Section 290(4) of the BNSS] is not an empty procedural formality or a mechanical tick-box exercise. Failure of the trial judge to personally interact with the accused in-camera to ascertain free will vitiates the entire plea-bargaining process.
- Significance to BNSS: Directly underscores that voluntariness must be actively and consciously tested by the judiciary, protecting the accused from coercive legal pressures.

6. CRITICAL CHALLENGES AND PRACTICAL REALITIES

Despite robust legislative architecture under the BNSS, structural challenges continue to test the efficacy of plea bargaining in India:

- The Psychological Stigma of "Guilt": In Indian society, a criminal conviction carries immense social stigma. Many innocent or marginally involved undertrials prefer protracted trials in pursuit of a clean acquittal rather than accepting a formalized conviction via plea bargaining, even with substantially reduced sentences.
- Deficient Legal Aid Counsel: True voluntariness presupposes competent legal representation. Due to overburdened legal aid systems, defendants often sign pre-printed voluntariness affidavits without fully understanding the long-term consequences of waiving their right to appeal.
- Judicial Hesitancy: Many trial judges, fearful of administrative scrutiny or allegations of leniency toward offenders, hesitate to actively utilize plea bargaining, preferring standard, time-consuming trials.

7. CONCLUSION

Plea bargaining under Chapter XXIII of the Bharatiya Nagarik Suraksha Sanhita, 2023, represents a balanced statutory compromise between retributive penal models and pragmatic restorative justice. By shifting the process away from unregulated executive discretion and placing it firmly under judicial supervision, the legislature has sought to create a secure environment where justice is expedited without sacrificing constitutional safeguards.

However, the efficacy of these provisions ultimately depends on judicial vigilance. For plea bargaining to fulfill its promise of humane, swift, and equitable justice, trial courts must treat voluntariness not as a procedural formality, but as a substantive constitutional shield, ensuring that no citizen trades fundamental protections out of despair, exhaustion, or coercion.

8. REFERENCES AND STATUTORY AUTHORITIES

- Statutes:
 - The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) — Chapter XXIII, Sections 289 to 300.
 - The Code of Criminal Procedure, 1973 (CrPC) — Former Chapter XXI-A (Sections 265A to 265L).
 - The Constitution of India, 1950 — Articles 21, 136, 226, and 227.
- Law Commission of India Reports:
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- Case Law Citations:
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