ujiyari

UPSC & STATE PCS CURRENT AFFAIRS · UJIYARI.COM

EDITORIAL ANALYSIS

Plea Bargaining: The Reform India's New Criminal Laws Missed

INDIAN EXPRESS

10 May 2026 · POLITY · SOCIAL ISSUES · GS2

CURATED & WRITTEN BY

Bharat Choudhary

UPSC Educator & Content Creator

linkedin.com/in/epicbharat

Plea Bargaining: The Reform India's New Criminal Laws Missed

The Indian Express 10 May 2026 GS2

IE The Indian Express | 3 tags

INTERVIEW ANGLE

"Is plea bargaining a justice mechanism or a guilty-plea factory -- and which is India's prison crisis demanding?"

EDITORIAL SUMMARY:

The Indian Express argues that the new criminal-law trilogy – BNS, BNSS and BSA – missed the single reform that could have decongested India's prisons fastest: a genuine, well-designed plea-bargaining regime. The editorial calls for expanded scope, judicial training, and prosecutorial incentives that make negotiated dispositions a normal rather than exceptional resolution.

THE REFORM THAT WAS NOT MADE

When the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS) and Bharatiya Sakshya Adhiniyam (BSA) came into force on July 1, 2024, they were presented as the most comprehensive overhaul of Indian criminal procedure since 1898. They added new offences (organised crime, terrorism), digitised evidence rules, and tightened timelines. What they did not do was reform plea bargaining – a 2005 amendment to the Code of Criminal Procedure that has, two decades on, made almost no dent in India's case load.

BNSS Chapter XXIII (Sections 289-300) reproduces the 2005 CrPC framework almost verbatim. The scope remains restricted – only for offences punishable with up to seven years' imprisonment, excluding those affecting socio-economic conditions, women and children below 14. Disposal data tells the story: National Crime Records Bureau figures show plea bargaining accounts for less than 1 per cent of case dispositions.

THE PRISON ARITHMETIC

The Prison Statistics India 2022 report, released in late 2023, counted 5.73 lakh prisoners against authorised capacity of 4.36 lakh – an occupancy rate of 131 per cent. Of these, 4.34 lakh were undertrials, that is, roughly 75.8 per cent of the total prison population. The Justice Malimath Committee (2003), the Law Commission's 142nd, 154th and 177th reports, and successive Supreme Court interventions including *Hussainara Khatoon* (1979) have all said the same thing: a justice system that detains the unconvicted at scale is failing both the citizen and the State.

Plea bargaining will not solve undertrial detention alone – bail reform, legal aid and case-management reform matter more for non-violent first-time accused. But for a substantial slice of cases in the seven-year band, a credible plea regime would clear backlog faster than any procedural tweak.

THE COMPARATIVE PICTURE

In the United States, roughly 97 per cent of federal convictions and a similar share of state convictions are obtained through plea agreements. The figure is widely criticised for coercing innocent defendants to plead guilty under the threat of trial penalties. India's challenge is the inverse: too few cases settle, too few accused exit pre-trial limbo. The lesson is calibration, not emulation – borrow the throughput, design out the coercion.

England and Wales operate a structured "early guilty plea" regime under the Criminal Justice Act 2003 with sentence reductions of up to one-third for early pleas. Continental European jurisdictions (Italy's *patteggiamento*, Germany's *Verstandigung*) embed negotiated dispositions within judicial supervision.

WHAT A REAL REFORM WOULD LOOK LIKE

1. **Expand statutory scope**: extend plea bargaining to offences punishable up to ten years, with carve-outs only for offences against women, children and grave socio-economic crimes.
2. **Tiered sentence discounts**: codify graduated reductions for early guilty pleas (one-third within 30 days, one-fourth within 90 days, one-sixth thereafter), as in England and Wales.
3. **Mandatory legal aid at the plea stage**: NALSA-funded counsel must be present and competent at every plea hearing.
4. **Judicial training**: train trial-court judges to scrutinise voluntariness and factual basis, mitigating the US-style coercion risk.
5. **Victim consent and compensation**: retain the existing victim-participation requirement, anchored in restorative-justice principles.

UPSC MAINS ANALYSIS

GS Paper 2 – Structure, organisation and functioning of the executive and judiciary

Key arguments:

- BNS/BNSS/BSA preserved 2005-era plea bargaining without reform; scope remains narrow and uptake under 1 per cent.
- 75.8 per cent of prisoners are undertrials; structural delay produces de facto punishment without conviction.
- A calibrated plea regime, drawing on England-Wales sentence-discount tiers and judicial supervision, can cut backlogs without American-style coercion.

Counterarguments:

- Expanded plea bargaining risks pressuring innocent accused – especially those without competent counsel – into guilty pleas.
- Negotiated disposition trades public accountability of trial for institutional convenience; serious offences should be tried, not bargained.

Keywords: BNSS Chapter XXIII (Sections 289-300), plea bargaining 2005, Justice Malimath Committee 2003, *Hussainara Khatoon* (1979), Prison Statistics India 2022, undertrial population, *patteggiamento*, Criminal Justice Act 2003, NALSA.

> *The Indian Express's argument is procedural realism. India's criminal justice system has too many cases and too few trial days. A modern plea-bargaining regime, properly supervised and supported by legal aid, is the closest thing to a low-cost capacity multiplier available. The BNS reforms missed it. The next round should not.*

RELATED DAILY ARTICLES

11 May Current Affairs Today -- May 11, 2026

11 May One Case One Data and Su-Sahayak: CJI Launches AI-Era...

11 May Supreme Court Directives on Expeditious Bail Disposal...

11 May **VB-GRAMG Act 2025: The New Rural Employment Guarantee...**

← NEWER EDITORIAL
Forging the India-South Korea Defence Innovation Bridge

OLDER EDITORIAL →
From Panchayats to Parliament: The Women's Representation...

CURATED & WRITTEN BY

Bharat Choudhary

UPSC Educator & Content Creator

linkedin.com/in/epicbharat

📖 Read Full Article on Ujiyari →

https://ujiyari.com/editorials/2026/05/ie-plea-bargaining-criminal-laws-reform-miss/