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EDITORIAL ANALYSIS

Plea Bargaining: A Reform the New Criminal Laws Missed

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INTERVIEW ANGLE

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

EDITORIAL SUMMARY:

The Hindu argues that India's plea bargaining framework remains a dead letter – resolving under 1 per cent of cases compared with more than 90 per cent in the United States – because the Bharatiya Nagarik Suraksha Sanhita (BNSS) has reproduced, almost verbatim, the same structural flaws that crippled the framework introduced under the Code of Criminal Procedure in 2005. The retained conviction stigma, the unresolved conflict with compounding provisions under the Bharatiya Nyaya Sanhita, and the absence of prosecutorial training have left the reform stillborn. The editorial proposes mediation cells, mandatory prosecutorial training, reduced legal disqualifications and the option of acquittal-as-outcome to make bargaining a meaningful tool of criminal-justice administration.

A REFORM THAT HAS NOT TRAVELLED

Plea bargaining was introduced in Indian law through Chapter XXIA of the Code of Criminal Procedure by the Criminal Law (Amendment) Act, 2005, enacted in response to the recommendations of the Justice Malimath Committee Report on Reforms of the Criminal Justice System (2003) and earlier echoes in the 142nd, 154th and 177th Law Commission Reports. Twenty years on, data from the National Judicial Data Grid (NJDG) and successive Crime in India volumes show that plea bargaining resolves well under 1 per cent of eligible cases. In the United States, the comparable figure is upwards of 90 per cent. The asymmetry is the most telling reform-failure statistic in Indian criminal-procedure law.

The Bharatiya Nagarik Suraksha Sanhita, 2023, in force from July 2024, retains plea bargaining in Chapter XXIII (Sections 289 to 300) with only cosmetic changes. The opportunity for substantive reform was missed.

WHY THE FRAMEWORK FAILS

Five reasons explain the dead letter.

First, the BNSS retains the requirement that the outcome of plea bargaining is a conviction – albeit with a reduced sentence. A conviction, even one entered on a bargain, triggers a cascade of collateral consequences: disqualification from public employment under service rules, loss of professional licences, immigration bars and social stigma. An accused who could otherwise contest the trial has every incentive to do so when the bargain itself produces a conviction record.

Second, the BNSS framework conflicts with the expanded compounding provisions under Section 359 of the Bharatiya Nyaya Sanhita, 2023, which permits private compromise in a wide range of offences. An accused offered both options will rationally choose compounding, which leaves no conviction trace.

Third, plea bargaining is initiated by the accused, not the prosecution. The absence of prosecutorial initiative means there is no institutional driver. Public prosecutors in India have no caseload-management incentives, no training in negotiation, and no clear sentencing-discount authority. A US-style "prosecutor offers, defendant accepts" model is simply not operational here.

Fourth, the categories of excluded offences are broad. Offences against women and children, offences attracting more than seven years, and offences affecting the socio-economic conditions of the country are all excluded under the BNSS. The result is that bargaining is available only in marginal cases where it makes the smallest difference.

Fifth, the constitutional architecture is uneven. The Supreme Court has held in Hussainara Khatoon v. State of Bihar (1979) that speedy trial is implicit in Article 21. Yet the plea-bargaining mechanism, which most directly accelerates disposal, is not constitutionalised; courts treat it as a procedural option rather than as an Article 21 imperative.

THE UNDERTRIAL COST

The cost of the framework's failure is borne by undertrial prisoners. NCRB's Prison Statistics India consistently records that over 75 per cent of India's prison population is undertrials. Many of these are accused of offences for which the maximum sentence is less than the time they have already spent in custody. A functional plea-bargaining system, with acquittal-as-outcome and judicial oversight, could empty a significant fraction of these cells without compromising public safety.

A REFORM AGENDA

A meaningful overhaul requires four interventions. Establish mediation cells at the district court level, staffed by trained mediators, where eligible cases can be channelled before trial. Make negotiation training mandatory in the curriculum of the National Law Universities and the State Judicial Academies for prosecutors. Reduce the collateral disqualifications attached to bargained convictions through statutory amendment. Introduce an acquittal-as-outcome option where the bargain involves restitution and victim consent, drawing on the US plea-and-divert and the German Strafbefehl models.

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Key arguments:

- Plea bargaining was introduced in 2005 (CrPC Chapter XXIA via Criminal Law Amendment Act 2005) on Justice Malimath Committee (2003) and Law Commission (142nd, 154th, 177th) recommendations.
- The BNSS Chapter XXIII (Sections 289-300) reproduces the same structural flaws – conviction stigma, narrow eligibility, no prosecutorial initiative.
- The framework conflicts with compounding under Section 359 of the Bharatiya Nyaya Sanhita.
- US Brady v. United States (1970) legitimised plea bargaining in American law and 90-plus per cent of US cases are resolved this way.
- Article 21 speedy trial (Hussainara Khatoon 1979) is undermined by the dead-letter status of bargaining; NCRB Prison Statistics India records 75-plus per cent undertrials.

Counterarguments:

- Plea bargaining can produce coerced or innocent-guilty pleas, particularly when defendants lack quality legal aid.
- The adversarial criminal-law tradition prizes proof beyond reasonable doubt; bargaining substitutes negotiation for proof.
- A statutory expansion may shift power to under-resourced prosecutors and weaken victim rights.

Keywords: plea bargaining, CrPC Chapter XXIA, Criminal Law Amendment Act 2005, BNSS Chapter XXIII Sections 289-300, BNS Section 359 compounding, Justice Malimath Committee 2003, Law Commission Reports 142/154/177, Brady v. United States (1970), Article 21 Hussainara Khatoon (1979), NCRB Prison Statistics India.

> *The Hindu's view is that the three new criminal codes promised a generational break from colonial procedure but, on plea bargaining, settled for cosmetic continuity. A reform that resolves less than 1 per cent of eligible cases is not a reform; it is a clause. India's overcrowded courts, undertrial-heavy prisons and Article 21 jurisprudence all point in the same direction – towards a plea-bargaining regime with prosecutorial initiative, reduced collateral consequences and judicial oversight. The BNSS missed the chance to write that regime into law. Parliament can still write it back in.*

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