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EDITORIAL ANALYSIS

Plea Bargaining: The Reform Three New Laws Missed

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INTERVIEW ANGLE

"Does prosecutorial bargaining undermine the adversarial criminal-law tradition India inherited -- or does pendency itself undermine it more?"

EDITORIAL SUMMARY:

The Indian Express argues that plea bargaining, introduced in Indian criminal procedure in 2005, is used to resolve under 1 per cent of cases – compared with 90 to 95 per cent in the United States. The Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita and Bharatiya Sakshya Adhiniyam (the three new criminal codes that came into force in July 2024) preserved the framework without addressing its core dysfunction. With over 8 million cases pending across courts according to the National Judicial Data Grid, the op-ed argues that a working plea-bargaining regime – judicial oversight, prosecutorial training, mediation cells, lifted collateral disqualifications – is the single most cost-effective pendency reform available.

THE PENDENCY MOUNTAIN

India's case pendency is no longer a backlog; it is a structural condition. As of early 2026, the National Judicial Data Grid records over 8 million cases pending across the country's three tiers of courts – the bulk in subordinate courts, where most criminal trials originate. The eCourts Mission Mode Project, now in its third phase with an outlay of Rs 7,210 crore in force since 2023, has digitised the front-end of justice delivery: e-filing, virtual courts, digital case management. What it has not done is reduce the volume of cases that the system must process.

The arithmetic is unforgiving. India's judge-to-population ratio is roughly 21 per million, against the 50 per million recommended by the Law Commission's 120th Report. Filling every vacant judicial post tomorrow would still leave the pipeline overwhelmed. The only mathematical route to clearing the docket is to reduce the number of cases that go to trial – and that is exactly what plea bargaining does in jurisdictions where it works.

WHAT THE NUMBERS SHOW

In the United States, the Bureau of Justice Statistics records that more than 90 per cent of federal criminal cases and over 95 per cent of state cases are resolved by guilty plea, typically following a negotiated bargain. The figure is the result of decades of jurisprudence – beginning with Brady v. United States (1970), which upheld plea bargaining as constitutional, and Santobello v. New York (1971), which required prosecutors to honour the terms of agreements. In Germany, the Strafbefehl (penal order) system disposes of a substantial share of minor offences without trial. Italy's patteggiamento procedure has formalised bargaining into the criminal code.

India introduced the mechanism through Chapter XXIA of the Code of Criminal Procedure in 2005, on the recommendation of the Justice Malimath Committee Report (2003). Twenty years on, plea bargaining resolves under 1 per cent of eligible cases. The Bharatiya Nagarik Suraksha Sanhita, 2023 has preserved the framework verbatim in Chapter XXIII (Sections 289 to 300), with neither structural reform nor procedural innovation.

WHERE THE INDIAN FRAMEWORK BREAKS

The Indian framework breaks at the prosecutorial layer. In American jurisdictions, the prosecutor is an active driver – assessing the strength of evidence, the caseload, and the prospect of conviction, and offering a sentence discount in exchange for a plea. The prosecutor has discretion, training, and the institutional incentive of caseload clearance. In India, plea bargaining must be initiated by the accused, the public prosecutor has no statutory authority to offer a sentence discount, and there is no caseload-management framework that rewards disposal.

The result is that even where bargaining is statutorily available, the accused has neither a counterparty with whom to negotiate nor a credible discount to negotiate for. Add the conviction stigma, the broad list of excluded offences (anything attracting more than seven years, anything against women or children, anything affecting socio-economic conditions), the conflict with compounding provisions under Section 359 of the Bharatiya Nyaya Sanhita, and the disqualifications attached even to bargained convictions, and the framework becomes structurally unattractive to defendants.

A REFORM PATHWAY

A pendency-reduction reform agenda has four pillars.

First, judicial oversight as discipline, not gatekeeping. The proposing judge should certify that the bargain is voluntary, that the evidence supports the charge, and that the sentence discount is proportionate – but should not re-litigate the underlying facts.

Second, prosecutorial training. The National Law Universities, the State Judicial Academies, and the Indian Institute of Public Administration must build a structured curriculum on negotiation, sentencing discount calibration, and victim-impact assessment.

Third, mediation cells at district court level, where eligible cases can be screened pre-trial. The Section 89 of the Code of Civil Procedure model and the Lok Adalat infrastructure under the Legal Services Authorities Act, 1987 provide proven templates.

Fourth, statutory removal of collateral disqualifications attached to bargained convictions, allowing acquittal-as-outcome where restitution is paid and victim consent obtained. Justice Krishna Iyer and Justice P.N. Bhagwati, in a long line of judgments beginning with Hussainara Khatoon (1979), held that speedy trial is implicit in Article 21. Pendency, beyond a point, is itself a constitutional violation.

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Key arguments:

- Plea bargaining (CrPC Chapter XXIA, introduced by the Criminal Law Amendment Act, 2005) resolves under 1 per cent of Indian cases versus 90-95 per cent in the United States.
- The three new criminal codes (BNS, BNSS, BSA), in force since July 2024, preserved the framework without addressing its structural flaws.
- The NJDG records over 8 million pending cases; eCourts Phase III (Rs 7,210 crore, in force since 2023) digitises but does not reduce volume.
- Reform pillars – judicial oversight, prosecutorial training, mediation cells under Section 89 CPC / LSA Act 1987 Lok Adalat model, statutory removal of collateral disqualifications.
- Article 21 speedy trial (Hussainara Khatoon, 1979) makes pendency itself a constitutional concern.

Counterarguments:

- A prosecutor-driven bargaining culture, transplanted into Indian conditions, risks coerced pleas by under-resourced defendants.
- The adversarial tradition demands proof beyond reasonable doubt; bargaining substitutes negotiation for proof.
- Victim rights and societal interest in trial-based truth-finding can be compromised by mass disposal incentives.

Keywords: plea bargaining, CrPC Chapter XXIA (2005), BNSS Chapter XXIII Sections 289-300, BNS Section 359 compounding, Justice Malimath Committee (2003), 142nd/154th/177th Law Commission Reports, Brady v. United States (1970), Santobello v. New York (1971), Strafbefehl, patteggiamento, Section 89 CPC, Legal

Services Authorities Act 1987 Lok Adalats, NJDG 8 million pendency, Article 21 Hussainara Khatoon (1979), eCourts Phase III (since 2023).

> *The Indian Express's view is that India did not need a fourth criminal code; it needed Parliament to take the third one seriously enough to fix what twenty years of data already showed was broken. Plea bargaining will not, by itself, dissolve the 8-million-case pendency. But it is the only reform on the menu that scales linearly with prosecutorial capacity and judicial willingness – both of which are easier to expand than the bench itself. The cost of inaction is borne in undertrial prisons, in delayed acquittals, and in the slow erosion of public faith in criminal adjudication. That cost is no longer affordable.*

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