

NEXT IAS

**DAILY EDITORIAL
ANALYSIS**

TOPIC

**REFORMING PLEA BARGAINING IN
INDIA: A CRIMINAL JUSTICE REFORM**

www.nextias.com

REFORMING PLEA BARGAINING IN INDIA: A CRIMINAL JUSTICE REFORM

Context

- Recently, the Union Home Ministry decided to convene a multi-stakeholder conference to examine reforms required in **India's poorly functioning plea bargaining system**.

About Plea Bargaining in India

- It is a **pre-trial negotiated settlement** in which the **accused voluntarily agrees** to plead guilty in exchange for reduced punishment, lesser charges, or faster disposal of the case.
- It aims to reduce judicial backlog, ensure speedy trial, lower litigation costs, reduce undertrial detention, and improve efficiency in criminal justice administration.
- It **applies** to offences punishable with **imprisonment up to seven years**, not affecting socio-economic conditions, and **not committed against women or children** below 14 years.
- It is voluntary in nature. Mutual satisfaction of parties is necessary, and court supervision is mandatory.

Types of Plea Bargaining

- Charge Bargaining:** The accused pleads guilty to a lesser charge.
- Sentence Bargaining:** The accused pleads guilty in exchange for reduced punishment.
 - India primarily follows sentence bargaining.

Legal Framework

- Constitutional Basis:** The Supreme Court has repeatedly emphasised speedy justice as part of fair procedure. Plea bargaining is linked with:
 - Article 21:** Right to life and speedy trial
 - Article 39A:** Equal justice and free legal aid
- Statutory Framework:** Plea bargaining was formally introduced into the CrPC through the **Criminal Law (Amendment) Act, 2005**.
 - Sections 265A to 265L of **CrPC** dealt with procedure for plea bargaining, role of court, compensation to victim, and sentencing norms.
- Position under BNSS, 2023:** The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 retains plea bargaining provisions under Section 294.
 - However, concerns remain because plea bargaining still results in formal conviction, social stigma continues, and incentives for accused remain weak.

Malimath Committee on Reforms of Criminal Justice System (2003)

- It recommended the introduction of plea bargaining in India to reduce judicial delays and improve efficiency.

Why Plea Bargaining Matters?

- Plea bargaining is widely used across advanced criminal justice systems to decongest courts.
 - Percentage of cases resolved through plea bargaining are 90–95% in the United States, 85–90% in Canada, 80–90% in Australia, and **less than 1% in India**.
- NCRB Data Reflects Failure:** According to NCRB data (2023), **1.65 crore** criminal cases tried, **35,889** cases resolved through plea bargaining, making **0.216%** disposal rate through plea bargaining in India.
 - It reveals the near-total underutilisation of the mechanism.

Reasons for the Failure of Plea Bargaining in India

- Stigma of Conviction:** A successful plea bargain results in a **formal conviction** and reduced sentence rather than acquittal.
 - However, criminal record remains, social stigma persists, employment disqualifications may arise, and future legal disadvantages continue.
 - It discourages accused persons from opting for plea bargaining.

- **Competition from Compounding of Offences:** Compounding allows parties to settle certain minor offences privately, leading to formal settlement, avoidance of trial, and acquittal of accused.

Compounding vs Plea Bargaining	
Compounding of Offences (Section 359, BNSS): Compounding allows parties to settle certain offences privately, leading to acquittal.	
Plea Bargaining	Compounding
Conviction remains	Acquittal granted
Reduced sentence	No punishment
Criminal stigma persists	Clean record

- **Lack of Prosecutorial Interest:** The success of plea bargaining depends heavily on prosecutors.
 - ◆ However, **problems** persist like poor training, lack of negotiation skills, focus on conviction rates rather than efficient justice, and institutional indifference.
 - ◆ India lacks a specialised prosecutorial culture for negotiated settlements unlike countries such as Canada.
- **Absence of Institutional Mechanisms:** India does not have dedicated plea-bargaining cells, trained facilitators, monitoring systems, and accountability frameworks.
 - ◆ It has led to inconsistent and ineffective implementation.
- **Constitutional and Ethical Concerns:** While plea bargaining offers efficiency, concerns remain regarding possibility of coercion, unequal bargaining power, risk of innocent persons pleading guilty, and impact on fair trial rights under Article 21.
 - ◆ Therefore, safeguards and judicial scrutiny are indispensable.

Why is Reform Necessary?

- **Addressing Judicial Pendency:** India’s judiciary is operating beyond capacity with **58.8 million pending cases**.
 - ◆ **Key concerns** include massive backlog, delay in justice delivery, high undertrial population, and rising litigation costs.
 - ◆ Plea bargaining can reduce the burden on trial courts significantly.
- **Protecting Undertrial Prisoners:** A large percentage of India’s prison population consists of undertrials. Effective plea bargaining can reduce unnecessary incarceration, speed up disposal, and improve prison management.
- **Enhancing Access to Justice:** For economically weaker litigants, prolonged litigation is costly and exhausting. Negotiated settlements can ensure faster closure, reduced legal expenses, and better victim compensation.

Suggested Reforms

- **Remove the Stigma Attached to Plea Bargaining:** The punishment under plea bargaining should be made largely stigma-free.
 - ◆ **Measures** include removing employment disqualifications arising from negotiated pleas, restrict disclosure of minor plea convictions, and treat certain plea outcomes as non-custodial settlements.
- **Introduce Acquittal-Based Outcomes:** One major reform could be permitting acquittal as one possible negotiated outcome in suitable cases. It would increase acceptance, reduce fear among accused persons, and bring parity with compounding provisions.
- **Create Plea Bargaining Mediation Cells:** Each district court should establish a dedicated plea-bargaining facilitation centre, legal aid representatives, victim liaison officers, and trained mediators.
 - ◆ Such institutional support can improve transparency and trust.

- **Strengthen Prosecutorial Capacity:** Canada's system focuses on fair negotiated outcomes, efficient case disposal, and ethical prosecutorial conduct.
 - ◆ India should similarly train prosecutors in negotiation, shift focus from conviction statistics, and develop standard operating procedures.
- **Judicial Oversight Must Continue:** Even after parties agree on a plea, courts need to verify voluntariness, examine factual basis, prevent coercion, and ensure proportional punishment.
 - ◆ Judicial supervision is essential to protect due process.
- **Develop Data-Based Accountability:** A High Court-directed digital dashboard can track number of plea bargains, offence categories, time-to-resolution, and district-wise performance.
 - ◆ Regular monitoring can improve implementation and transparency.

Conclusion & Way Forward

- Plea bargaining has immense potential to transform India's criminal justice administration, but its current framework suffers from structural weaknesses, institutional indifference, and lack of incentives.
- India requires a balanced plea bargaining framework that combines speedy justice, fairness, victim participation, judicial oversight, and institutional accountability.
- Reforming it is not merely an administrative necessity but a constitutional imperative linked to the right to speedy justice.

Source: IE

Daily Mains Practice Question

[Q] Examine the challenges associated with plea bargaining in India. Suggest reforms required to make it an effective instrument of criminal justice administration.

