

The Impact of Bharatiya Nyaya Sanhita (BNS), 2023, on Sentencing Disparities in India

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Abstract

The transition from the colonial imposing Indian Penal Code (IPC), 1860, to the Bharatiya Nyaya Sanhita (BNS), 2023, denotes an extensive change in the Indian criminal law area that wants to reform the whole existing punitive framework and the imposition of their persistent and unequal sentencing. The IPC allowed the courts to exercise "unfettered discretion", which resulted in divergent, "court-cantered" rulings. A thorough examination, this research review takes a close look at how the BNS mends these inconsistencies through three basic ways: the rise of compulsory minimum sentences for extremely serious offenses, the introduction of community service as a punishment for very slight misconduct, and the blending of contemporary crime categories such as organized crime. Though these "hard floors" curb downward inequality, the research argues that the rigidity may, in effect, shift the discretionary power to the prosecutorial phase. The study finally reveals that while the BNS does lay down an important foundation for consistency, real sentencing equality still calls for a separate, data-driven National Sentencing Policy to guide judicial discretion properly.

Keywords: *Bharatiya Nyaya Sanhita (BNS), Sentencing Disparity, Mandatory Minimums, Judicial Discretion, Restorative Justice*

I. Introduction

Sentencing disparity is the term used in the legal system to describe a process whereby sometimes more lenient and at other times harsh punishments are imposed on criminals with the same prior offenses and criminal history. The past Indian legal system was subject to a phase termed "judicial lottery," whereby different judges often came up with different sentences for the same crime, thus acting in their own preferences, socio-religious views, or philosophies of punishment rather than those of the law. The Indian Penal Code (IPC) of 1860 provided a basic structure for punishments but was criticized for the "unfettered discretion" it allowed, which enabled magistrates to choose terms of imprisonment anywhere from one day to the maximum allowed by law. The lack of a middle-ground that was recognized assured the dispersion of the idea which was considered the most basic constitutional one— that of the equality of all before the law.

Positive Implementation

The introduction of the Bharatiya Nyaya Sanhita, or BNS, 2023 is a significant milestone in the legal history of India. The main goal of the BNS was to "decolonize" the criminal justice system and, at the same time, to put the concerns of the victims and the whole society first. The BNS has brought in the concept of punishments that overrule the IPC, which has been in operation for 163 years¹. The BNS's strategy for attaining the aim of balancing unlimited discretion with rigid sentencing incorporates the use of precise legislative measures aimed at diminishing variability. The BNS not only involves a re-numbering of sections but also indicates a re-conceptualization of the state's punitive power. It gives priority to restorative justice for minor offenders and systematized punishment for serious crimes².

One Additional Unit

Nevertheless, the enactment of the BNS brings up an important legal issue: can the mere imposition of legislative limitations effectively address the root cause of inequality? Although the BNS can efficiently implement "hard floors" by means of statutory minimum penalties, and that it further enlarges the range of punitive measures by including community service, this paper holds that it is still a proper solution. The statutory "floors" limit the most drastic downward departures; yet, the large "ceilings" of the majority of sections still permit a considerable amount of subjective discretion³.

¹The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023). [Available at: <https://www.mha.gov.in>]

²The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023). [Available at: <https://www.mha.gov.in>]

³The Indian Penal Code, 1860 (Act 45 of 1860). [Available at: <https://legislative.gov.in>]

The conclusion of this study is that the BNS can't eliminate the disparities in sentences if not accompanied by a new National sentence Policy based on data. Even though it is a new legal framework, it still lacks the said policy. The fact that there are no formal regulations in place to link the newly set legal minimums and the statutory maximums permits "justice by personality" to happen. The BNS is a key factor in the process, but aiming at uniformity in justice requires the establishment of an institutional mechanism that channels judicial discretion into a more predictable and fairer outcome.

II. Historical Context: Sentencing under IPC

In India, for over a century and a half, the Indian Penal Code (IPC), enacted in 1860, has been the basis of criminal responsibility. Nevertheless, its method of sentencing was characterized by a lack of a systematic and clear policy which resulted in what legal scholars often call "judge-centric" justice. Unlike modern legal systems that adopt grid-based or fixed guidelines for punishment, the IPC was the opposite and allowed for maximum discretionary use. Most of the provisions within the IPC went along with a standard plan: prescribing a maximum penalty (e.g., "imprisonment for a term that may extend to seven years") but at the same time, noticeably leaving out any reference to a minimum limit⁴.

One of the principal problems was that it created a situation of "absolute discretion." Hence, it meant that for the same crime one judge could impose a small fine or sentence of "until the court adjourns" while the other could impose the maximum penalty of several years. This difference was not always based on the objective factors of the crime (aggravating circumstances) or the offender (mitigating circumstances) but rather on the subjective "instinct" or ethical philosophy of the judge presiding. Therefore, it was the time of the IPC that was marked by unpredictability when the "length of the Chancellor's foot" was the one that determined the severity of the sentence.

The Indian judiciary has continuously raised its concerns regarding this irregularity. A crucial occasion in this assessment was the *Soman v. State of Kerala* (2013) case⁵. The ruling of the Supreme Court of India acknowledged that the punishment in India is "dominated by a broad discretionary power" and at the same time expressed worry about the absence of laws or rules from the court to guide the judges in deciding on a fair punishment. The judge stated that "the court has far-reaching power in sentencing which leads to a situation of ambiguity." In *State of Punjab v. Prem Sagar* (2008), the Supreme Court pointed out that the absence of a sentencing policy results in "different courts applying different standards," which basically contradicts the principle of proportionality⁶⁷.

The IPC's dependence on extensive ranges caused the law's "reformatory" or "deterrent" aspects to be applied inconsistently. Due to the absence of systematic methodology in assessing the factors such as the age of the offender, the economic condition and the extent of the harm done, the whole process of sentencing was perceived as absolute disorder. In this regard, the Indian Penal Code (IPC) provided a definition of the crime but, ultimately, the decision about how severe the punishment would be was made by the court which had no external control or supervision of any kind. In order to clarify this issue that has lasted for ages, the Bharatiya Nyaya Sanhita (BNS) proposes a punishment system which is stricter and classed according to categories⁸.

III. Structural Changes in BNS

The Bharatiya Nyaya Sanhita (BNS), 2023, as mentioned is not just a simple language revision of its predecessor here but also create a comprehensive framework for judicial decision-making capacity. By moving from a purely retributive approach to one that combines deterrence with restorative justice, the BNS has altered the very nature of Indian criminal law. The present paragraph identifies the three major structural changes which are: the uniformity of penalties through mandatory minimums, the creation of modern criminal categories, and the institutionalization of community service.

Compulsory Minimums: Mitigating Downward Disparity

The divergence between the IPC and the BNS is most significant when it comes to the application of mandatory minimum penalties for the most serious offenses, which is the case with the latter. The IPC did not have a provision for minimum punishment, which led to the courts being able to impose very light sentences on serious offenders, thus provoking public outcry and giving rise to the perception of inconsistency in the administration of justice. The BNS overcomes this problem by setting statutory floors that a judge cannot properly get around.

⁴The Indian Penal Code, 1860 (Act 45 of 1860). [Available at: <https://legislative.gov.in>]

⁵*Soman v. State of Kerala*, (2013) 11 SCC 382. [Available at: <https://main.sci.gov.in>]

⁶The Code of Criminal Procedure, 1973 (Act 2 of 1974). [Available at: <https://legislative.gov.in>]

⁷*State of Punjab v. Prem Sagar*, (2008) 7 SCC 550. [Available at: <https://indiankanoon.org>]

⁸The Maharashtra Control of Organised Crime Act, 1999 (Maharashtra Act No. 30 of 1999).

Mob Lynching and Hate Crimes: one of the major changes brought in by the BNS was that Section 103(2) now considers killings carried out by a group of five or more people as hate crimes inspired by racism, casteism, the belief system or personal basis. A minimum sentence of seven years to life imprisonment or death is indicated. In the past, these offenses were prosecuted as general homicides, where the "group" part did not really cause a noticeable minimum limit until some conspiracy was established⁹.

Crimes Against Women and Children: By placing these offenses in Chapter V, the BNS highlights them. Life imprisonment is now the punishment for the "remainder of that person's natural life" or the death sentence for the gang rape of a woman under 18 years of age (Section 70(2)). The BNS does away with the earlier distinction of age (12 or 16 years) and introduces a uniform minimum of "remainder of natural life," thus extinguishing the possibility of early parole or disparity in sentencing for like offenses¹⁰.

Repeat Offenders: For cases of repeated theft, Section 303(2) dictates a mandatory minimum sentence of one year, which can be increased to five years, thus stopping the judicial panels from allowing the persistent offenders to take advantage of interpreting it in their favor as if they have a "clean slate."

Novel Categories: Organized Crime and Terroristic Activities

The BNS takes in all the offenses that used to be treated separately under different "special laws," and puts them under the main penal code thus presenting a unified approach to penalties.

Organized Crime (Section 111): This section of the law provides a very broad definition of organized crime covering, among others, kidnapping, robbery, land grabbing and even cybercrimes that are executed by a gang. In case the crime results in death, the minimum penalty will be life imprisonment plus execution or altogether ₹10 lakhs fine at the least. For non-fatal cases, the minimum term is five years. The degree of punishment is similar to that of the Maharashtra Control of Organised Crime Act (MCOCA) but it is applied all over India thereby making it difficult for the criminals to select the best place for the case to be tried or for the different parts of the country to have different approaches to the punishment of gangs.

Terrorist Acts (Section 113): "Terrorist Act" is a term that is being defined in the general penal code for the first time and it is in line with the definition found in the Unlawful Activities (Prevention) Act (UAPA). The law imposes death penalty or life imprisonment if the commission of the act results in death and a minimum of five years in all other cases. The incorporation of these provisions as a part of BNS ensures that even if a specific law is applied, the gravity of the act still calls for a strict, non-discretionary minimum penalty.

Community Service: An Instrument for Restorative Justice

The most justice-centered reform, without a doubt is by far the introduction of Community Service as the sixth punishment in the wrongful Section 4(f). The alteration denotes the transition from the "retributive" justice model of jails and prisons to a restorative one for minor offenses¹¹.

Through this initiative, the BNS is primarily focusing on first-time and non-violent offenders. According to Section 303, if a person steals an item worth less than ₹5,000 and later the value is returned, the judge may consider community service instead of prison. This setting spares novice lawbreakers from the "criminalizing" atmosphere of prisons, which is quite often the reason for recidivism, the contrary outcome intended by jails.

The BNS offers the judges a "moderate alternative" by institutionalizing community service. A judge, who had been presented with a minor offender, was positioned between two extremes: either impose an inconsequential fine or send the person to a packed prison. This duality frequently resulted in contradictions, where some judges were overly generous, and others, very strict. Section 4(f) holds the offender accountable while simultaneously repairing the community relations, through a practical, socially beneficial solution.

IV. Analysis of Sentencing Disparities

The passage of the Bharatiya Nyaya Sanhita (BNS) is an attempt to unify the punishment of criminals by law. However, a qualitative and quantitative study shows that although the Sanhita reduces the influence of judges, it may just move the place of inequality. The change from "court's free hand" to "law's strictness" through legal minimums and lifers points out the problem of different sets of hurdles in the pursuit of equal justice.

The Locus Shift: From the Bench to the Prosecutor

The main theoretical justification for mandatory minimum sentences is to reduce "vertical disparity" that basically ensures that different offenses of the same kind do not result in very unequal sentences. Studies in places like the U.S. have shown that these mandatory sentences often have a "displacement effect." The sentence

⁹Bachhan Singh v. State of Punjab, (1980) 2 SCC 684. [Available at: <https://main.sci.gov.in>]

¹⁰Machhi Singh v. State of Punjab, (1983) 3 SCC 470. [Available at: <https://indiankanoon.org>]

¹¹Alister Anthony Pareira v. State of Maharashtra, (2012) 2 SCC 648.

risers not because the judge has evaluated and considered the circumstances surrounding the offender and crime of a lesser nature but because the prosecution, who has no other option, uses that threshold for his/her argument.

In the BNS structure, the decision to prosecute someone under a statute with a mandatory minimum (e.g. Section 111 for Organized Crime) rather than a standard provision (e.g. Section 303 for Theft) is the main factor influencing sentencing. As a result, the law enforcement and prosecution can use the "hard floor" threat to coerce defendants into pleading guilty. In India, where legal assistance is often inadequate for poor defendants, the necessity for Plea Bargaining (Section 290, BNSS) becomes much more pronounced. The BNSS, ironically, allows first-time offenders who plead guilty to receive a sentence of one-fourth to one-half of the statutory minimum (Section 293, BNSS)¹².

This leads to an unjust situation: a rich defendant who can afford to go through a long trial might have to let the jury decide upon the whole minimum, while a poor defendant might be compelled to plead guilty for a lower sentence regardless of his innocence. As a result, the BNT can only correct "judicial" disparity to replace it with "prosecutorial" disparity which the final decision is, more, based on the charge sheet than on the judge's understanding¹³.

The Impact of "Remainder of Natural Life" on Discretion

A repeated use of "imprisonment for the whole period of that person's natural life" is one of the outstanding features of the BNS (e.g., Section 70(2) regarding minor's gang rape). In the past, "Life Imprisonment" in India was typically interpreted as a sentence of 14 to 20 years due to the powers of remission through the executive. By legitimizing "natural life" under the BNS, the legislature has practically quashed the "Executive Safety Valve."

It comes even more to the front a "Cliff Effect" regarding disparity in sentencing. A criminal whose deed is slightly above the threshold of an aggravated offense gets the same "natural life" punishment as a more predatory offender. This extreme uniformity is in contrary to the principle of proportionality. The BNS cuts off the possibility of remission or judicial review of natural life sentences and these consequences a hindrance to the legal system's capability to acknowledge an offender's potential for rehabilitation over time¹⁴.

Furthermore, the BNS inconsistently uses the words "Life Imprisonment" and "Natural Life" in different sections (e.g., Section 101 for murder and Section 103(2) for mob lynching)¹⁵. Such linguistic vagueness creates a new kind of interpretive diversity allowing different High Courts to set different criteria for a "life" term without the "remainder of natural life" phrase. In the end, "natural life" sentences ensure that the worst criminals are still away from the public but at the same time they also make it difficult for the judges to draw a line between different degrees of guilt within that category leading to a "one-size-fits-all" kind of justice which might turn out to be as contentious as the discrepancies it was trying to solve.

V. Comparative Global Jurisprudence

The Bharatiya Nyaya Sanhita (BNS) is a more organized penal regime but still needs to be compared with the two dominant global models for discrepancy in sentencing: the United States Federal Sentencing Guidelines and the UK's Sentencing Council to understand its future well¹⁶.

The US Model: Grid-Based Rigidity

The US Federal Sentencing Guidelines, which the Sentencing Reform Act of 1984 introduced, are the most radical yet not the only method to eliminate disparity based on mathematics with precision. This model works with a "Sentencing Grid" plotting where the vertical axis is the "Offense Level" and the horizontal one is the "Criminal History Category."

The model markedly lessened the disparity between judges, but, at the same time, there were harsh criticisms of it being too rigid and brutal. It virtually turned the whole process of sentencing into an algorithmic one, quite often overlooking the "human element." In *United States v. Booker* (2005), the US Supreme Court had to render these guidelines "advisory" instead of "mandatory" in order to return to some degree of judicial discretion and constitutional fairness¹⁷.

¹²Santa Singh v. State of Punjab, (1976) 4 SCC 190.

¹³Gurmeet Singh v. State of Punjab, (1996) 2 SCC 384.

¹⁴State of Madhya Pradesh v. Munna Choubey, (2005) 2 SCC 710.

¹⁵Bishnu Prasad Sinha v. State of Assam, (2007) 11 SCC 467. (Discussing judicial discretion in sentencing).

¹⁶United States v. Booker, 543 U.S. 220 (2005). [Available at: <https://supreme.justia.com>]

¹⁷Law Commission of India, 262nd Report on the Death Penalty (2015). [Available at: <https://lawcommissionofindia.nic.in>]

The UK Model: Step-by-Step Guidance

On the other hand, the Sentencing Council for England and Wales employs a "step-by-step" guideline model. Instead of an inflexible grid, judges are provided with clear-cut guidelines for certain conduct. The first thing the judge does is to ascertain the offense's "category" (in terms of culpability and harm) and then he or she is given a starting point and a limited range of the starting point. The critical issue is that the judge is compelled to observe these guidelines but nevertheless has the authority to deviate from them if he or she supplies written justification. This model emphasizes consistency rather than uniformity, thereby enabling personalized justice to take place within a predictable framework¹⁸.

Where Does India Lean?

A critical analysis indicates that the BNS 2023 is tilting more toward the US model of legislative rigidity than the UK model of institutionalized guidance. The Indian Parliament has circumvented the establishment of an independent "Sentencing Council" by increasing mandatory minimums, especially in the case of mob lynching and sexual offences¹⁹.

In the UK, the drafting of guidelines is done by a panel of specialists comprising judges, lawyers, and scholars, whereas the BNS "hardcodes" these ranges directly into the statute. This demonstrates a "War on Crime" mentality akin to the US during the 1980s. However, the BNS does not possess the fine detail of the US model leaving vast spaces between the mandatory minimums and the statutory maximums. Thus, India has taken on the rigidity of the US system but lacks the precision of its guidelines, thereby forming a peculiar "hybrid" that limits the lower end of sentencing whilst leaving the upper end as open to discretion as the IPC era.

VI. Policy Recommendations & Future Outlook

India must set up a sophisticated administrative framework for sentencing in order to reconcile the BNS's legal rigidity with the notion of humane justice. The main thing that needs to be done is putting together a Statutory National Sentencing Commission. This independent body which will be made up of professionals from the fields of law, crime and sociology will be the one to set the "definitive guidelines" by categorizing the crimes according to very detailed aggravating and mitigating factors. The formation of such a commission would create the "missing middle" that lies between the BNS's compulsory minimums and wide maximums, thus making sure that the judges' decisions are based on scientific standards rather than personal feeling. Uniform sentencing in the future relies on the intelligent integration of AI and Data Analytics into the e-Courts system. The judiciary may use the National Judicial Data Grid (NJDG) to apply predictive analytics to analyze the sentencing patterns in real-time²⁰.

The mentioned technologies can act as an alarm for the system's biases, pointing out if certain groups are systematically punished harsher than others for the same BNS sections. The implementation of AI-powered "Sentencing Support Systems" can help the jurors by providing the instant access to the case laws and the usual sentencing ranges for the similar case patterns. The future goal should be of a "data-informed" judicial system where technology will not replace the judge but will ensure that Nyaya (justice) is done in a scientific and uniform way throughout every district in the country²¹.

VII. Conclusion

The shift from the Indian Penal Code to the Bharatiya Nyaya Sanhita (BNS), 2023, marks the start of a new era in India's penal system which brings it right up to date and gives it the desired structure. The introduction of mandatory minimums, along with community service being formalized, has practically eliminated the extreme variances which were the hallmark of the colonial era and largely 'up to the judge'. Nevertheless, this review has shown that sending disparity to the past is not just a matter of changing the law text; it requires to be a 'live-wired' process of institutional refinement.

The BNS has laid down the necessary "hard floors" that stop the leniency in terrible crimes and "restorative exits" for minor offenses but leaves the considerable middle ground of the judicial discretion still without guidance. The shifting of disparity from the bench to the prosecutor or from judicial instinct to

¹⁸Law Commission of India, 47th Report on the Trial and Punishment of Social and Economic Offences (1972). [Available at: <https://lawcommissionofindia.nic.in>]

¹⁹Committee on Reforms of Criminal Justice System (Malimath Committee), Report of the Committee on Reforms of Criminal Justice System (Ministry of Home Affairs, 2003).

²⁰Ministry of Home Affairs, Statement of Objects and Reasons: The Bharatiya Nyaya Sanhita Bill (Lok Sabha, 2023). [Available at: <https://sansad.in>]

²¹Committee on Empowerment of Women, Report on Female Prisoners and their Children (Parliament of India, 2023). (Contextualizing sentencing impacts on marginalized groups).

legislative rigidity is still a notable challenge that remains. All in all, the BNS is a very strong base but whether or not it will be successful in obtaining true sentencing parity will depend on future establishment of a formal Sentencing Commission and the application of transparent, data-driven monitoring. At that moment, what was once a "lottery at the bench" in the Indian criminal justice system will be transformed into a system of constitutional justice that is predictable and commensurate with the law.

Table of Cases by Legal Principle

Legal Principle	Citations (ILI Format)	Application in BNS Analysis
Absence of Sentencing Policy	<i>Soman v. State of Kerala</i> , (2013) 11 SCC 382; <i>State of Punjab v. Prem Sagar</i> , (2008) 7 SCC 550.	Used to argue why the BNS "hard floors" were necessary to curb prior "judge-centric" inconsistencies.
Proportionality in Sentencing	<i>Alister Anthony Pareira v. State of Maharashtra</i> , (2012) 2 SCC 648; <i>State of M.P. v. Munna Choubey</i> , (2005) 2 SCC 710.	Used to critique whether "Natural Life" sentences in BNS violate the principle of balancing crime and punishment.
Aggravating & Mitigating Factors	<i>Bachhan Singh v. State of Punjab</i> , (1980) 2 SCC 684; <i>Machhi Singh v. State of Punjab</i> , (1983) 3 SCC 470.	Supports the recommendation for a "National Sentencing Policy" to guide discretion between minimums and maximums.
Rights of the Accused	<i>Santa Singh v. State of Punjab</i> , (1976) 4 SCC 190.	Relevant to the discussion on Section 293 BNSS (Plea Bargaining) and its impact on marginalized groups.
Global Comparative Jurisprudence	<i>United States v. Booker</i> , 543 U.S. 220 (2005).	Provides the basis for the comparative analysis of India's shift toward the US "Mandatory Minimum" model.

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