

A Study on the Criminal Justice System in India: Need for Reforms with Special Reference to the Policy of Punishment and Sentencing

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Abstract: *The criminal justice system of India, though rooted in a constitutional promise of fair and equal treatment, continues to struggle with an outdated and inconsistent approach to punishment and sentencing. Unlike several common law jurisdictions that operate under structured sentencing guidelines, Indian courts exercise wide, largely unstructured discretion in awarding sentences, resulting in significant disparity for similarly placed offenders convicted of similar offences. This paper undertakes a doctrinal examination of the policy of punishment and sentencing in India, tracing its historical and philosophical foundations, evaluating the recommendations of the Malimath Committee (2003) and the Committee on Draft National Policy on Criminal Justice headed by Prof. N.R. Madhava Menon (2007), and assessing the sentencing-related changes introduced by the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023, and the Bharatiya Sakshya Adhiniyam, 2023, which replaced the colonial-era Indian Penal Code, the Code of Criminal Procedure, and the Indian Evidence Act with effect from 1 July 2024. The study finds that while the new criminal law framework introduces limited reformist measures — most notably the statutory recognition of community service as a mode of punishment — it simultaneously expands mandatory minimum sentences, thereby narrowing judicial discretion in the opposite direction rather than structuring it. The paper argues that India still lacks a comprehensive, statutorily backed sentencing policy and concludes with recommendations for the enactment of sentencing guidelines, establishment of a permanent Sentencing Commission, judicial sentencing training, and greater use of non-custodial and restorative alternatives to address prison overcrowding and undertrial detention.*

Keywords: Criminal Justice System, Sentencing Policy, Punishment, Judicial Discretion, Bharatiya Nyaya Sanhita, Sentencing Guidelines, Prison Reform, Restorative Justice

I. INTRODUCTION

A criminal justice system is judged not merely by how effectively it identifies and convicts offenders, but by how fairly, proportionately, and consistently it punishes them. In India, the substantive and procedural architecture of criminal law was, until recently, governed by three colonial-era enactments — the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872. These statutes, drafted primarily to serve the administrative convenience of colonial rule, were repealed and replaced with effect from 1 July 2024 by the Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Bharatiya Sakshya Adhiniyam, 2023 (BSA), following the President's assent to the BNS on 25 December 2023.

Despite this legislative overhaul, the core problem that has long troubled Indian criminal jurisprudence remains largely unaddressed: the absence of a coherent, principled, and statutorily codified sentencing policy. Indian trial courts possess enormous discretion in awarding punishment within the wide ranges prescribed under the penal statute for each

offence — a discretion that is exercised without binding guidelines, without a requirement to record structured sentencing reasons, and without meaningful appellate correction for disparity across similarly situated cases. The result is a system in which two offenders convicted of materially similar offences, before different courts, routinely receive markedly different sentences. This paper examines the doctrinal and policy dimensions of this problem and situates recent reforms — including expanded mandatory minimum sentences and the introduction of community service as a sentencing option — within the larger, unfinished project of building a rational sentencing policy for India.

II. OBJECTIVES OF THE STUDY

- To examine the historical and philosophical foundations of punishment in Indian criminal law.
- To critically analyse the absence of structured sentencing guidelines and its consequences for judicial consistency.
- To evaluate the recommendations of the Malimath Committee and the Madhava Menon Committee on sentencing reform.
- To assess the sentencing-related provisions of the Bharatiya Nyaya Sanhita, 2023, including mandatory minimum punishments and community service.
- To propose concrete recommendations for a codified sentencing policy suited to the Indian context.

III. RESEARCH METHODOLOGY

This study adopts a doctrinal and analytical research methodology. It relies on primary legal sources — the Constitution of India, the Bharatiya Nyaya Sanhita, 2023, the erstwhile Indian Penal Code, 1860, reports of the Law Commission of India, and the reports of the Committee on Reforms of the Criminal Justice System (2003) and the Committee on Draft National Policy on Criminal Justice (2007) — together with secondary sources, including academic commentary, law journal articles, and government press communications on the 2023 criminal law reforms. The study is qualitative and descriptive-analytical in character, rather than empirical.

IV. THE CRIMINAL JUSTICE SYSTEM IN INDIA: AN OVERVIEW

4.1 Constitutional and Statutory Framework

Articles 20 and 21 of the Constitution of India form the constitutional bedrock of criminal justice, guaranteeing protection against ex post facto laws, double jeopardy, self-incrimination, and — through judicial interpretation of the expression 'procedure established by law' — the requirement that any procedure depriving a person of life or personal liberty be fair, just, and reasonable. Successive constitutional benches have read into Article 21 the requirement of proportionate and non-arbitrary punishment, though India has not, unlike the United States Eighth Amendment jurisprudence, developed an extensive constitutional doctrine specifically regulating sentence proportionality.

Substantively, the erstwhile Indian Penal Code, 1860 defined offences and prescribed the range of permissible punishments, while procedurally the Code of Criminal Procedure, 1973 governed investigation, trial, and the process of sentencing, and the Indian Evidence Act, 1872 governed proof. Sentencing itself is dealt with only sparingly — Section 235(2) and Section 248(2) of the erstwhile CrPC (retained, with renumbering, in the BNSS) required courts to hear the accused specifically on the question of sentence after conviction, but neither statute prescribed how that discretion was to be structured or exercised.

4.2 The 2023 Recodification: BNS, BNSS and BSA

The Ministry of Home Affairs undertook a comprehensive review of the three colonial-era statutes with the stated aim of providing accessible, affordable, and citizen-centric criminal justice, culminating in the enactment of the BNS, BNSS, and BSA, which came into force on 1 July 2024, replacing the IPC, CrPC, and Evidence Act respectively.

Parliamentary and academic commentary on the recodification has been divided. Some scholars characterise it as a substantial modernisation exercise — pointing, for instance, to the consolidation of offences against women and

children into a single chapter, enhanced punishment for offences such as gang rape of a minor, and the introduction of new offences addressing sexual intercourse obtained through false promises of marriage or employment. Others argue that the reform is largely cosmetic: comparative analyses suggest that a substantial majority of IPC provisions have been retained with only renumbering and minor drafting changes, and that the underlying sentencing architecture and offence definitions remain, in substance, continuous with the colonial code they replace.

V. THEORIES AND PHILOSOPHY OF PUNISHMENT

Classical penology identifies four principal theories that have, at different points, shaped Indian sentencing practice:

- **Deterrent theory** — punishment is calibrated to dissuade the offender and society at large from future offending; this rationale historically dominated colonial-era criminal law and continues to influence the prescription of severe punishment for offences considered to threaten public order or state security.
- **Retributive theory** — punishment as a proportionate, morally deserved response to the wrong committed, independent of any preventive or reformative purpose.
- **Preventive theory** — punishment, particularly incapacitation through imprisonment, aimed at disabling the offender from repeating the offence.
- **Reformative theory** — punishment reconceived as an opportunity for the rehabilitation and reintegration of the offender, reflected in Indian judicial pronouncements recognising that the aim of criminal law is not vengeance but correction, and increasingly embedded in statute through provisions such as probation and, most recently, community service.

Indian sentencing law has never adopted any one of these theories to the exclusion of the others; instead, courts have been left to balance them ad hoc in each case, guided only by broad statutory maxima and minima and a handful of judicially evolved factors — the gravity of the offence, the manner of its commission, the offender's antecedents, age, and possibility of reformation, and the impact on the victim and society. The persistence of this theoretical eclecticism, in the absence of any binding framework for weighing these factors, is itself a principal source of sentencing disparity.

VI. SENTENCING POLICY IN INDIA: CRITICAL ISSUES

6.1 Absence of Structured Sentencing Guidelines

Unlike the United States Federal Sentencing Guidelines or the sentencing guidelines issued by the Sentencing Council of England and Wales, India has no statutory sentencing guideline framework. Trial courts choose a sentence from within a wide statutory band — often spanning from a minimum term, or no minimum at all, up to a lengthy maximum, or life imprisonment, or death — with no requirement to consult a structured worksheet, aggravating-and-mitigating-factor matrix, or comparative sentencing database. Appellate scrutiny of sentence, as opposed to conviction, remains comparatively underdeveloped, allowing wide disparities to persist uncorrected.

6.2 Judicial Discretion and Sentencing Disparity

The consequence of unstructured discretion is well documented in Indian legal scholarship and by law reform bodies: offenders convicted of comparable offences, with comparable culpability, frequently receive markedly different sentences depending on the forum, the personal sentencing philosophy of the presiding judge, and the quality of legal representation available to the accused — a problem that disproportionately disadvantages poor and marginalised offenders who cannot afford robust mitigation arguments at the sentencing stage.

6.3 Mandatory Minimum Sentences under the BNS

A notable — and, in the view of several commentators, contradictory — feature of the Bharatiya Nyaya Sanhita is its expansion of mandatory minimum punishments to a wider category of offences than were subject to such minimums under the IPC. Where a mandatory minimum applies, judicial discretion operates only within the narrow band above that floor, and courts lose the ability to impose a lesser sentence even where the individual circumstances of the offence or offender might otherwise warrant it. This represents a form of legislative, rather than judicial, structuring of

discretion — but one that constrains leniency rather than curbing arbitrariness, and does nothing to address disparity in sentences above the mandatory floor.

6.4 Community Service as a New Mode of Punishment

For the first time in India's national criminal code, Section 4 of the BNS statutorily recognises community service as a distinct form of punishment, available for a small, specified set of relatively minor and non-violent offences. This is a genuine, if narrow, reformist step: it signals legislative recognition that incarceration is neither the only nor always the most proportionate response to low-culpability offending, and it aligns Indian sentencing policy with a global trend toward non-custodial and restorative alternatives. However, the provision leaves considerable ambiguity as to the type, supervision, duration, and enforcement of community service, and its practical efficacy will depend heavily on rules and administrative infrastructure yet to be developed at the state level.

6.5 The Death Penalty Debate

India retains capital punishment, awardable in the 'rarest of rare' cases under the doctrine evolved by the Supreme Court, and the BNS continues to prescribe death as a competent sentence for certain aggravated offences, including gang rape of a minor. The Law Commission of India, in its 262nd Report, recommended moving toward the abolition of the death penalty for all offences except terrorism-related crimes and offences against the security of the state — a recommendation that has not been legislatively acted upon. The retention and, in some instances, expansion of capital punishment in the new code sits uneasily with a reformatory sentencing philosophy and remains among the most contested aspects of Indian punishment policy.

6.6 Prison Overcrowding and Undertrial Detention

India's prisons remain chronically overcrowded, with undertrial prisoners — persons awaiting trial or conclusion of trial, not yet convicted — consistently constituting a substantial majority of the total prison population according to National Crime Records Bureau prison statistics. This is as much a bail and case-management failure as a sentencing failure, but it is directly relevant to sentencing policy: an overreliance on custodial remand and imprisonment as the default response to offending, in the absence of graduated, non-custodial sentencing options, perpetuates overcrowding, strains correctional infrastructure, and disproportionately punishes economically disadvantaged accused persons who cannot secure bail.

VII. COMMITTEES AND COMMISSIONS ON SENTENCING REFORM

7.1 The Malimath Committee (2003)

The Committee on Reforms of the Criminal Justice System, chaired by Justice V.S. Malimath, submitted its report in 2003 and made wide-ranging recommendations touching investigation, trial, victim compensation, and sentencing, including a call for a more victim-centric approach to criminal justice and a rethinking of the standard of proof and procedural balance between prosecution and defence. While influential in shaping subsequent debate, many of its recommendations, including those bearing on sentencing structure, were not translated into binding statutory guidelines.

7.2 The Committee on Draft National Policy on Criminal Justice (Madhava Menon Committee, 2007)

The Committee headed by Professor N.R. Madhava Menon went furthest among Indian law reform bodies in recommending a dedicated statutory sentencing policy, proposing the enactment of a separate sentencing statute that would guide judicial discretion through defined principles and factors, reduce arbitrary variation in punishment for comparable offences, and bring Indian practice closer to the structured-discretion models used in other common law jurisdictions. This recommendation, more than fifteen years on, remains unimplemented; no standalone sentencing guideline legislation has been enacted in India.

7.3 Law Commission of India Reports

The Law Commission of India has, across several reports spanning decades — including its 47th Report (1972) on the trial and punishment of socio-economic offences and its 262nd Report (2015) on the death penalty — repeatedly flagged the absence of a rational, codified sentencing framework and recommended, at various points, the introduction

of statutory sentencing guidelines and reconsideration of capital punishment's scope. The persistence of these recommendations across successive reports, without legislative implementation, is itself indicative of the low political priority historically accorded to sentencing reform relative to procedural and investigative reform.

VIII. CRITICAL APPRAISAL OF THE 2023 REFORMS

Assessed against the recommendations of the Malimath and Madhava Menon Committees, the BNS represents, at best, a partial and internally inconsistent response. It advances reformatory sentencing policy narrowly, through the statutory introduction of community service, while simultaneously expanding mandatory minimum sentences — a change that constrains judicial discretion without structuring or rationalising it, and that does not address the core deficit identified by reform bodies for over two decades: the absence of a comprehensive sentencing guideline framework applicable across the range of offences, supported by structured aggravating-and-mitigating-factor analysis, a sentencing database, and appellate mechanisms capable of correcting disparity. In this sense, the 2023 recodification is better understood as a renumbering and selective modernisation of the colonial penal code than as the comprehensive sentencing reform long recommended by India's own law reform bodies.

IX. COMPARATIVE PERSPECTIVE

Jurisdictions such as the United States (through the Federal Sentencing Guidelines administered by the U.S. Sentencing Commission) and England and Wales (through definitive guidelines issued by the Sentencing Council) have institutionalised structured sentencing through permanent expert bodies that issue offence-specific guidelines, publish sentencing data, and review guidelines periodically in light of judicial and empirical feedback. While such models carry their own criticisms — including concerns about excessive rigidity and the transfer of effective sentencing power from judges to guideline-drafters — they nonetheless demonstrate a workable institutional template that India's own law reform bodies have repeatedly urged domestic policymakers to adapt, rather than replicate wholesale, to Indian conditions.

X. RECOMMENDATIONS

- Enact a standalone sentencing policy statute, as recommended by the Madhava Menon Committee, prescribing structured factors, aggravating-and-mitigating-circumstance frameworks, and offence-wise sentencing ranges to guide — without wholly displacing — judicial discretion.
- Establish a permanent Sentencing Commission or equivalent statutory body tasked with issuing, monitoring, and periodically revising sentencing guidelines, and with maintaining a national sentencing database to detect and correct disparity.
- Expand and operationalise non-custodial sentencing options — community service, probation, and restorative justice mechanisms — with clear rules on supervision, duration, and enforcement, beyond the narrow set of offences currently covered under Section 4 of the BNS.
- Mandate structured sentencing hearings and reasoned sentencing orders in all but the most minor cases, building on the existing but sparsely enforced requirement to hear the accused on sentence.
- Introduce judicial training in sentencing principles as a component of continuing judicial education, to reduce variation arising from differing individual sentencing philosophies.
- Reconsider the continued expansion of mandatory minimum sentences, which constrain leniency without addressing disparity, in favour of guided rather than rigid discretion.
- Accelerate bail and case-management reform in tandem with sentencing reform, to address undertrial overcrowding, which is a systemic failure adjacent to, but distinct from, sentencing policy proper.

XI. CONCLUSION

The recodification of India's criminal statutes through the Bharatiya Nyaya Sanhita, the Bharatiya Nagarik Suraksha Sanhita, and the Bharatiya Sakshya Adhinyam marks a significant legislative moment, but it is not, on the specific

question of punishment and sentencing, the comprehensive reform that successive committees and the Law Commission of India have called for since at least 2003. The introduction of community service is a welcome, if modest, step toward reformative sentencing; the simultaneous expansion of mandatory minimum sentences pulls sentencing policy in a more rigid, retributive direction. India's criminal justice system continues to operate without the one instrument that could most directly address sentencing disparity, disproportionate punishment, and prison overcrowding: a codified, structured sentencing policy of the kind envisaged by the Madhava Menon Committee nearly two decades ago. Until such a framework is enacted, sentencing in India will remain what it has long been — wide judicial discretion, exercised without a map.

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