



REFORMING JUSTICE: A CRITICAL EXAMINATION OF MANDATORY SENTENCING UNDER THE BHARATIYA NYAY SANHITA (BNS) ACT, 2023

¹ Chandi Prasad Khamari, ² Prof (Dr.) Meena ketan Sahu

¹PhD Scholar, ²Professor

¹ P G Department of Law, Sambalpur University

¹ Burla, Sambalpur, Odisha, India

Abstract : The Bharatiya Nyay Sanhita (BNS) Act, 2023 marks a major legislative reform in India's criminal justice system, replacing the colonial-era Indian Penal Code. One of the most controversial features of the BNS is its increased reliance on mandatory sentencing provisions, which prescribe fixed minimum sentences for various offenses. While these measures are often justified as tools to deter crime, ensure uniformity in sanctions, and promote public confidence in the judicial system, they have sparked considerable debate among legal scholars, practitioners, and human rights advocates. In this article the researchers had critically analyze the provisions relating to mandatory sentences under the BNS, focusing on their implications for judicial discretion, proportionality of sentences, and restorative justice. Through doctrinal and public policy analysis, the paper assesses whether the rigidity imposed by these provisions aligns with the fundamental objectives of a modern penal system. It examines key provisions of modern penal system that establish minimum sentences and analyzes their impact on trial courts, particularly in cases involving socioeconomically disadvantaged offenders and juveniles. The study also analyzes comparative legal systems and jurisprudence from jurisdictions such as the United States, the United Kingdom, and Australia, where similar provisions have had mixed outcomes. Furthermore, it assesses the constitutionality of mandatory sentences in the Indian context, particularly in light of Articles 14 and 21, and relevant Supreme Court jurisprudence. Finally, the article argues for a calibrated reform approach that preserves judicial discretion, promotes individualization of sentences, and balances deterrence with rehabilitation. It advocates for the incorporation of sentencing guidelines instead of inflexible minimum sentences to improve consistency without compromising justice.

IndexTerms - Mandatory Sentencing, Bharatiya Nyay Sanhita 2023, Judicial Discretion, Sentencing Reform, Criminal Justice.

INTRODUCTION

The enactment of the Bharatiya Nyay Sanhita, 2023 (herein after referred as BNS) marks a milestone in Indian legal history. While the BNS introduces structural simplification and attempts to streamline the administration of justice, one of its most controversial features is the expanded use of mandatory minimum sentencing provisions. The shift toward legislative rigidity, particularly in crimes such as gang lynching, sexual offenses, and organized crime, raises serious concerns about proportionality, judicial discretion, and restorative justice. Several provisions of the BNS establish fixed minimum sentences with no room for judicial deviation. For example, Section 70¹ prescribes a minimum sentence of ten years for gang rape of a woman under sixteen, and Section 111(2)² establishes a prison sentence of not less than seven years for organized crime resulting in death. Furthermore, Section 103(2)³ imposes a mandatory minimum sentence of twenty years, extendable to life imprisonment, for mob lynching resulting in death, an entirely new category of crime not found in the Indian Penal Code. These provisions, while intended to ensure deterrence and uniformity, could undermine the judge's ability to consider mitigating factors such as age, socioeconomic

¹ It stipulates a minimum sentence of 20 years, extendable to life imprisonment, and in certain cases, the death penalty

² **Section 111** defines and penalizes organised crime. If such an offence results in death, the punishment is **death or life imprisonment**, along with a **minimum fine of ₹10 lakh**.

³ While the term "mob lynching" isn't explicitly used, **Section 103(2)** covers scenarios where a group of five or more individuals commits murder based on discriminatory grounds. Each member is punishable with **death, life imprisonment, or a minimum of 7 years' imprisonment**, plus a fine.

background, or the circumstances of the crime. The Indian Penal Code's mandatory sentencing framework reflects a philosophy of retributive justice, limiting the scope for restorative or reformatory approaches emphasized in previous policy debates and Law Commission reports. Rigid sentencing contradicts the spirit of individualized justice, championed by the Indian judiciary in several decisions, including *Mithu v. State of Punjab*⁴, where the Supreme Court struck down mandatory death penalty provisions as unconstitutional. This article seeks to elucidate whether the increasing reliance on inflexible minimum sentences is in line with the constitutional guarantees of Articles 14 and 21, as well as with international best practices in penal reform. It also explores the impact of such provisions on trial courts, prison overcrowding, and disadvantaged offenders, particularly juveniles and first-time offenders.

CONCEPTUAL FRAMEWORK AND HISTORICAL BACKGROUND

Mandatory sentencing refers to statutory provisions that prescribe a fixed minimum punishment for certain offences, removing or severely restricting the discretion of the judiciary to impose lesser sentences, regardless of mitigating circumstances. It is often justified on grounds of deterrence, uniformity, and public demand for tougher criminal laws.⁵ However, such sentencing regimes are frequently criticized for ignoring the principles of proportionality, individualization of justice, and the rehabilitative function of punishment.⁶ The theoretical underpinning of mandatory sentencing is largely retributive, rooted in the notion that punishment must fit the crime in an exacting manner. However, modern criminology and penology have increasingly moved toward the principle of "just deserts", which seeks balance between the gravity of the offence and the personal circumstances of the offender.⁷ Despite this, many jurisdictions, including India, have retained or introduced mandatory minimum sentences in response to rising crime rates, public outcry, or legislative populism.

Historically, the IPC followed a flexible sentencing structure, empowering judges with considerable discretion. Most offences under the IPC prescribed a maximum sentence but left the minimum to judicial wisdom. In the wake of evolving socio-political challenges, the BNS has introduced several offences with mandatory minimum sentences. Notable among these are Section 70, Section 103(2), and Section 111, which prescribe minimum punishments ranging from seven years to life imprisonment or even death.⁸ The shift from discretionary to mandatory sentencing in these areas represents a significant philosophical change in India's penal policy from reformatory justice to one with stronger retributive undertones.

This development must be critically examined, particularly in light of the Indian judiciary's long-standing emphasis on individualised sentencing. Cases such as *State of Punjab v Prem Sagar*⁹ have reiterated the importance of judicial discretion in tailoring sentences to meet the ends of justice. By reintroducing rigid sentencing models, the BNS potentially risks reversing decades of progressive judicial interpretation and sentencing jurisprudence.

MANDATORY SENTENCING UNDER THE BHARATIYA NYAYA SANHITA

BNS marks a paradigm shift in Indian criminal jurisprudence by introducing more mandatory minimum sentences, significantly limiting judicial discretion. Unlike the IPC, which offered judges a wide range of punishments with few mandatory minimums, the BNS incorporates rigid sanctions for a broader range of offenses. A notable example is Section 70 of the BNS, which prescribes a minimum sentence of 20 years' rigorous imprisonment for gang rape, extendable to life imprisonment or death.¹⁰ In the IPC, the analogous provision Section 376D provided a similar range but allowed for greater discretion, especially in imposing sentences less than life imprisonment in exceptional circumstances.¹¹ Similarly, Section 103(2) of the BNS introduces a minimum sentence of seven years for group based murders (involving five or more people) when the act is motivated by identity factors such as caste, community, or gender.¹² The IPC had no direct parallel for "mob lynching" or other aggravated group crimes, making it a novel and rigorous penal innovation. While these changes seek to increase deterrence and ensure uniformity, they risk violating the principles of proportionality and individualized justice. As the Supreme Court emphasized in *Prem Sagar* case, sentencing must balance the seriousness of the offense with the offender's circumstances. Mandatory minimum sentences upset this balance and can disproportionately affect vulnerable offenders, particularly juveniles and those in socioeconomically marginalized situations.

COMPARATIVE LEGAL SYSTEMS

The global experience with mandatory sentencing offers important insights into both the utility and the dangers of rigid penal structures. Countries such as the United States, the United Kingdom, and Australia have experimented extensively with mandatory minimum sentences, often with mixed outcomes. In the United States, mandatory minimums were introduced aggressively in the 1980s as part of the "War on Drugs."¹³ These laws often led to disproportionately long sentences for non-violent offences, especially drug-related crimes, and contributed to mass incarceration. The U.S. Sentencing Commission has repeatedly criticized these policies

⁴ AIR 1983 SC 473.

⁵ Andrew Ashworth, *Sentencing and Criminal Justice* (6th edn, Cambridge University Press 2015) 78.

⁶ Tapas Kumar Banerjee, *Background to Indian Criminal Law* (R Cambray & Co 2007) 218–219.

⁷ Norval Morris and Michael Tonry, *Between Prison and Probation: Intermediate Punishments in a Rational Sentencing System* (OUP 1990) 35–40.

⁸ Bharatiya Nyaya Sanhita, 2023, ss 70, 103(2), 111.

⁹ (2008) 7 SCC 550

¹⁰ Bharatiya Nyaya Sanhita 2023, s 70.

¹¹ Indian Penal Code 1860, s 376D (prior to repeal)

¹² Bharatiya Nyaya Sanhita 2023, s 103(2).

¹³ Tonry M, *Sentencing Matters* (OUP 1996) 132.

for undermining judicial discretion and aggravating racial disparities.¹⁴ The *First Step Act* of 2018 marked a policy shift, relaxing some mandatory minimums and re-emphasizing judicial flexibility.¹⁵ In the United Kingdom, mandatory sentencing is more limited. The *Criminal Justice Act 2003* introduced minimum sentences for repeat serious offences, including drug and firearm offences.¹⁶ However, British courts retain a statutory “exceptional circumstances” clause, allowing departure from mandatory terms to ensure justice.¹⁷ This balance has been viewed as more proportionate and consistent with human rights standards under the *Human Rights Act 1998*. Australia presents a fragmented picture. Jurisdictions like New South Wales and Western Australia have imposed mandatory terms, especially for violent and repeat offences.¹⁸ However, such policies have been criticized by Australian judges and legal scholars for their harshness and their impact on Indigenous populations.¹⁹ India’s BNS model, while appearing to emulate deterrent-oriented strategies, should take heed of these international experiences. The risks of over-incarceration, judicial rigidity, and disproportionate impact on marginalized groups are well documented. Introducing structured sentencing guidelines as seen in the UK and recommended by the U.S. Sentencing Commission might offer a more balanced path forward.

STATISTICAL INSIGHTS INTO SENTENCING PATTERNS

According to the *National Crime Records Bureau (NCRB) Prison Statistics 2022*, India had an occupancy rate of 130.2%, with over 5.5 lakh inmates housed in facilities built for only 4.2 lakh.²⁰ A staggering 77% of prisoners were undertrial, suggesting delayed justice and a backlog exacerbated by rigid sentencing laws that deter bail or plea-bargaining.²¹ The *India Justice Report 2022* highlights acute infrastructural and personnel shortages, which are worsened when courts are bound by inflexible sentencing mandates.²² States with higher SC/ST populations like Madhya Pradesh and Chhattisgarh also show disproportionate representation of these communities in prisons, indicating a troubling demographic skew that mandatory laws may amplify.²³

A study by the Commonwealth Human Rights Initiative (CHRI) noted that mandatory sentencing has a disparate impact on poor and marginalized accused who cannot afford legal representation or navigate complex procedural safeguards.²⁴ Such findings demand that any sentencing reform be empirically informed and responsive to ground realities. Thus, data clearly suggests that mandatory sentencing may be contributing to systemic congestion and injustice. These outcomes call for a calibrated shift toward sentencing guidelines rather than blanket minimums. A critical evaluation reveals that the BNS’s approach to mandatory sentencing aligns predominantly with classical retributivism, emphasizing certainty and proportionality of punishment over rehabilitative aims. The limited judicial discretion and focus on uniform punishments, particularly for serious offences, suggest a deterrent and retributive posture that echoes Beccarian principles rather than modern restorative or utilitarian ideals. Empirical data, including high incarceration and undertrial rates, further challenge the efficacy of this approach, especially in a socio-legal context marked by systemic inequalities and resource constraints. Comparative insights from jurisdictions like the UK, Canada, and South Africa indicate a global trend towards discretion and individualized sentencing, casting doubt on the rigidity of India’s model. This phase demonstrates how the BNS departs from evolving global standards and risks perpetuating carceral excess without addressing root causes of crime or facilitating offender reintegration.

CONCLUDING OBSERVATIONS

After having the above discussions and deliberation it can be concluded that, BNS heralded as a monumental shift in India’s criminal jurisprudence, risks falling into the trap of cosmetic reform if it fails to address the deeper malaise of rigid, one-size-fits-all sentencing. Mandatory minimums, though appealing for their certainty, often operate as legislative blindfolds ignoring the diversity of crimes, contexts, and human stories behind each case. Justice cannot be dispensed from a template. It must be alive, responsive, and human. Our analysis reveals that the BNS, in its present form, prioritizes retribution over rehabilitation, and uniformity over fairness. Such an approach, especially in a country where over 77% of prisoners are undertrial, widens the gap between law and justice. It threatens to turn prisons into warehouses of despair rather than institutions of correction. What India needs is not more punishment but smarter punishment. A robust sentencing policy, guided by empirical evidence and judicial discretion, can bridge this chasm. The establishment of a Sentencing Commission, periodic review mechanisms, and the incorporation of restorative justice principles are not utopian ideals they are constitutional necessities. In the words of Justice V.R. Krishna Iyer, “Harsh laws make hardened criminals.” The time has come for the Indian legal system to shed its colonial chains and embrace a justice model that is not just punitive, but transformative. The future of justice must not be locked in cages it must be set free by compassion, context, and common sense.

¹⁴ United States Sentencing Commission, *Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System* (2011) 10–15.

¹⁵ First Step Act of 2018, Pub L No 115-391, 132 Stat 5194.

¹⁶ Criminal Justice Act 2003, s 110–111.

¹⁷ Sentencing Council (UK), *Guidelines on Mandatory Sentences and Judicial Discretion* (2018).

¹⁸ Kate Warner, 'Mandatory Sentencing in Australia: Where Have We Been and Where Are We Going?' (2007) 40(1) *Australian and New Zealand Journal of Criminology* 56.

¹⁹ Anthony Gray, *Mandatory Sentencing: A Criminological and Legal Analysis* (Routledge 2019) 93–102.

²⁰ NCRB, *Prison Statistics India 2022* (Ministry of Home Affairs, Government of India 2023) <https://ncrb.gov.in> accessed 6 June 2025.

²¹ *ibid* 46.

²² India Justice Report 2022, *Tata Trusts* <https://www.indiajusticereport.org> accessed 6 June 2025.

²³ *ibid* 78

²⁴ CHRI, *Impact of Mandatory Sentencing in India: A Rights-Based Perspective* (CHRI 2020) 14–15.

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