



# A CRITICAL ANALYSIS OF PUNISHMENT SCHEME IN THE BHARATIYA NYAYA SANHITA, 2023

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## Abstract

The *Bharatiya Nyaya Sanhita* (hereinafter BNS), 2023, provides comprehensive scheme of punishment with several significant changes in quantum and manner of execution of punishment. After the repeal of Indian Penal Code, 1860 (hereinafter IPC) debate was started on the efficacy of deterrent theory in the new criminal law. Some argument was made that, the new law on crime i.e. BNS is not create deter among criminals. However, there are concerns about the potential for excessive sentencing and the impact on the prison population. The BNS has introduced community service and restitution as alternative punishments for certain offenses. This can help rehabilitate offenders, restore harm to victims, and reduce the burden on the prison system. However, the effectiveness of these alternative punishments may depend on their implementation and enforcement. The BNS emphasizes rehabilitation as a key goal of the criminal justice system. This includes providing opportunities for offenders to reform and reintegrate into society. While rehabilitation can be a positive approach, it may require significant investment in resources and programs. The BNS punishment scheme represents a significant departure from previous laws. While some changes are undoubtedly positive, others raise concerns about their effectiveness and potential consequences. In this article the author try to analysis of various key modifications, their potential implications, and a critical evaluation of effectiveness of various changes in punishment scheme.

**Keywords:** Punishment, Community Service, Quantum of Punishment, Enhancement of Punishment, Criminal Justice System

## Introduction

The quantum and form of punishment is based on the various theories of punishments<sup>2</sup>. The punishment to the criminal are normally given to teach the lesson of their wrong by sending them behind bar. The notion of punishment is of two fold one is to curtail the liberty of person and teach them a lesson for their wrongs and secondly, to make reformation in their behaviors and activities. Many criminal are victim of situation and emotional

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<sup>2</sup> There are four major theories of punishments viz. Deterrent theory, Retributive theory, Preventive theory and Reformatory theory. These theories focus to impact of accused of punishment.

trauma at the given time. Considering the nature of crime the criminal are liable for the punishments. The Indian criminal law is influenced and based on the principle of various *Dharma*<sup>3</sup>. The old concept of punishment provided under various *Dharma* and tradition are dealt under the criminal laws. The idea of punishment is based on various theories i.e. Deterrent theory, Retributive theory, Preventive theory and Reformatory theory. Every theory has its relevance and importance<sup>4</sup>. The criminal are liable as per their act. These theories give an idea about the quantum of punishment which required for the given offence. The court always rely on these theories and award the punishment to the criminals.

Before the codification of criminal laws the judicial system was always refer and award the punishment prescribed under religious laws. Every religion has its unique mode and methods of punishments<sup>5</sup>. The nature and quantum of punishment is very religion to religion. There was no specific guideline or prescribed punishment for specific offence. With the development of codification the uniform punishment was prescribed under IPC<sup>6</sup> India was followed the same till it's repealed. At various juncture debate was made about the nature and forms of punishment but it was not change substantially. Additionally, in the *Hindu* and *Muslim* and *Tribal* period the punishment was influenced and based on some cultural norms. The nature of punishment was influenced and based on the social practices in the community. The nature of punishment is based on the nature of offence committed by the person. If the offence is against to the culture, heritage, customary practices then the person was responsible. Under the tribal justice system the indigenous community rule the society as per the customary laws and has unique method of punishment for the criminals.

After the codification of IPC the uniform punishment was prescribed the accused held liable for the any punishment based on the intention, knowledge, act, preparation, injury etc. in some offences mandatory or minimum punishment was not prescribed under IPC the judges has discretionary power to award any sentence as per the nature of offence. The most important change which introduced in BNS is community service in IPC there is no provision of community service as form of punishment to the accused. First time in the BNS for 6 categories of offences the community services is prescribed as substantive sentence.

<sup>3</sup> In India the Hindu, Muslim, Christian, Parsi, Jew are major religion. The laws were made at different time as per the notion, teaching and preaching in the particular religions. Generally, the king act according to the principles of his religion and rule the society by offering various code of conduct in forms of laws to the society.

<sup>4</sup> As Deterrent theory of punishment says 'man would be deterred from committing a crime if the punishment applied was swift, certain, and severe' the Retributive theory of punishment is based on the famous saying that a 'Tit for Tat', 'Eye for Eye' or 'Teeth for Teeth'. Preventive theory of punishment aims to prevent crime rather than take revenge. Reformatory theory of punishment implies to reform criminals, thereby transforming them into law-abiding citizens.

<sup>5</sup> The Hindu religion is based on the principles of Vedas, Upanishads, Purana and Geet. Whereas the philosophy of Muslim law is based on Quran and Hadis.

<sup>6</sup> Section 53 of IPC, 3. Punishments.—

The punishments to which offenders are liable under the provisions of this Code are—

(First)— Death;

(Secondly.) — Imprisonment for life;

(Fourthly)— Imprisonment, which is of two descriptions, namely:—

(1)Rigorous, that is, with hard labour;

(2)Simple;

(Fifthly)— Forfeiture of property;

(Sixthly)— Fine.

## Paradigm shift from Retributive to Restorative justice

Under the BNS the major change is introduced from retributive to restorative justice. Under the IPC the punishment scheme and forms are outdated at the same time the quantum of punishment prescribed under IPC was not adequate to adhere to the new and emerging challenges in the country. In retributive justice system the main concern and focus of the court and criminal justice system is based on the punished the accused as per the nature of crime committed by him/her. Under this theory the crime is consider against the state and violation of law which need to create deter in the mind of criminal by inflecting hardened punishment to the criminals. The accused accountability is always determined on the basis of quantum of punishment prescribed for the wrongful act of person. On the other hand in the restorative justice system the main concern and focus of the court is to make rehabilitation of the accused. The view of crime is based on the act and effect on the community. The court always see the individual and social dimension to determine the guilt of the accused. Considering the nature of crime the criminal may send back to the society to facilitate to the society. This form of punishment create sense of responsibility among the accused and repair the bad activities committed by them. Considering the importance of restorative justice the scheme of punishment provided under the BNS is way forwards to rehabilitate the accused instead to send him in jail.

### Major Changes in Quantum of Punishments under BNS

The major aim of the IPC was to punished the accused whereas the major philosophy of BNS is to punished, reformed and rehabilitate. The scheme of punishment under the BNS work on three fold. As the philosophy says mere sending the person behind bar will not serve the purpose of the criminal law and criminal justice system rather rehabilitation and restoration of offenders is necessary for the smooth function of the society. Looking towards the major changes in the scheme of the punishment one can find it importance. The changes are explain as follows

#### Community services<sup>7</sup>

Under the BNS community services is provided as alternative to other form of imprisonment. The community services is given in very less serious or petty offences. To award community service is discretionary power of judges or court. The power of community services is limited to judicial magistrate First and Second Class only. In following offence community serices is provide as alternative part of sentence.

Section	Offence
Section 202	Public servant unlawfully engaging in trade.
Section 209	Non-appearance in response to a proclamation under section 84 of <i>Bharatiya Nagarik Suraksha Sunhita 2023</i> .
Section 226	Attempt to commit suicide to compel or restraint exercise of lawful power.
Proviso below section 303 (2):	In cases of theft where the value of the stolen property is less than five thousand rupees, and a person is convicted for the first time, shall upon return of the value

<sup>7</sup> Section 4 of BNS

	of property or restoration of the stolen property, shall be punished with community service.
Section 355	Misconduct in public by a drunken person.
Section 356	Defamation

### Major Changes in Punishments BNS vs IPC

At 16 places major changes in quantum of punishment is introduced in BNS. As per the provisions of IPC less quantum of punishment was prescribed. Considering the nature of offence and its impact of the society the legislature enhance the quantum of punishment in terms of imprisonment and fine. More attention was paid towards the protection of women and children's. In sexual offence the quantum of punishment is increased compared to old criminal law i.e. IPC. The major changes are as follows

BNS SECTION	OFFENCE	BNS	IPC
57	Abetting commission of offence by public or more than 10 persons	7 years with fine	3 years or fine or both
64(1)	Punishment for Rape	Minimum 10 years	Minimum 7 years
99	Buying child for purposes of prostitution	7-14 years and fine	May extend to 10 years and fine
105	Punishment for culpable homicide not amounting to murder	Life Imprisonment or 5-10 years and fine [If act done with the intention of causing death, or of causing such bodily injury as is likely to cause death]	Life Imprisonment or may extend upto 10 years and fine [If act done with the intention of causing death, or of causing such bodily injury as is likely to cause death]
		May extend to 10 years with fine [act is done with the knowledge that it is likely to cause death, but without any intention to	May extend to 10 years or fine or both [act is done with the knowledge that it is likely to cause death, but without any intention to cause

		cause death, or to cause such bodily injury as is likely to cause death.]	death, or to cause such bodily injury as is likely to cause death.]
106(1)	Causing death by negligence	May extend to 5 years and fine [In case of registered medical practitioner, it shall remain 2 years and fine]	May extend to 2 years or fine or both
121(1)	Voluntary causing hurt or grievous hurt to deter a public servant from his duty	May extend to 5 years or fine or both	May extend to 3 years or fine or both
122(2)	Voluntary causing hurt or grievous hurt on provocation	May extend to 5 years or fine (maximum ₹10,000) or both	May extend to 4 years or fine (maximum ₹2,000) or both
127(3)	Wrongful confinement for 3 days or more	May extend to 3 years or fine (maximum ₹10,000) or both	May extend to 2 years or fine or both
144(1)	Exploitation of a trafficked person	5-10 years and fine	5-7 years and fine
191(3)	Rioting armed with deadly weapon	5 years or fine or both	3 years or fine or both
276	Adulteration of drugs	1 year or fine (maximum ₹5000) or both	6 months fine (maximum ₹1000) or both
316(2)	Criminal breach of trust	5 years or fine or both	3 years or fine or both
318(2)	Cheating	3 years or fine or both	1 year or fine or both
318(3)	Cheating with the knowledge to cause wrongful loss	5 years or fine or both	3 years or fine or both
323	Dishonest or fraudulent removal or concealment of property	3 years or fine or both	2 years or fine or both
324(2)	Mischief	6 months or fine or both	3 months or fine or both



### Mandatory Minimum Punishment under BNS

Under the IPC in major offences mandatory punishment was not specifically provided. Considering the nature of crime and its impact on the society legislature provided mandatory minimum quantum of punishment to the accused these are summarized below.

Sections	Offences
95	Hiring, employing or engaging a child to commit an offence.
99	Buying Child for Purposes of Prostitution, etc.
105	Punishment for Culpable Homicide Not Amounting to Murder [if act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death
111(2)(b)	Organised Crime.
111(3)	Abetting, attempting etc. of an Organised Crime.
111(4)	Being a member of Organised Crime.
111(5)	Harbouring a member of Organised Crime.
111(6)	Possessing property derived from Organised Crime.
111(7)	Possession of property on behalf of member of Organised Crime.
112(2)	Petty Organised Crime.
113(2)(b)	Terrorist Act.
113(3)	Abetting, attempting etc. of Terrorist Act.
113(4)	Organising a camp for Terrorist Act.
113(6)	Harbouring any person who has committed any terrorist Act.
117(3)	Voluntarily Causing Grievous Hurt resulting in permanent vegetative state
118(2)	Voluntarily Causing Hurt or Grievous Hurt by Dangerous Weapons or Means
121(2)	Voluntarily Causing Hurt or Grievous Hurt to Deter Public Servant from his Duty
139(1)	Kidnapping or Maiming a Child for Purposes of Begging.
139(2)	Kidnapping or Maiming a Child for Purposes of Begging.
204	Personating A Public Servant
303(2)	Theft.
310(3)	Dacoity.
314	Dishonest Misappropriation of Property
320	Dishonest or Fraudulent Removal or Concealment of Property to Prevent Distribution Among Creditors

## Punishment Increased

In some offence the quantum of punishment is increased. Considering the nature of offence and its severity the quantum of punishment is increased. The list is as follows

S.N	Sections BNS	New Punishment	Section IPC	Old Punishment
1	8 (5-C)	1 Year	67 (c)	6 Months
2	57	7 years + Fine	117	3 years with fine or both
3	99	Not less than 7 Years Extend to 14 years	373	May extend to 10 years
4	104	Death or Life imprisonment for remainder of person's natural life	303	Death
5	105	Extend to 10 years + fine	304	Extend to 10 years or fine or both
6	106 (1)	Extend to 5 years + fine	304 A	Extend to 2 years or with fine or both
7	109 (2)	Death or Life imprisonment for remainder of person's natural life	307 (2)	Death
8	121 (1)	Extend to 5 years	332	Extend to 3 years
9	122 (2)	Extend to 5 years	335	Extend to 4 years
10	125 (b)	Extend to 3 years	338	Extend to 2 years
11	127 (3)	Extend to 3 years	343	Extend to 2 years
12	127 (4)	Extend to 5 years	344	Extend to 3 years
13	127 (6)	Extend to 3 years	346	Extend to 2 years
14	144 (1)	10 years	370 A (1)	7 years
15	144 (2)	7 years	370 A (2)	5 years
16	166	2 years	138	6 months
17	191 (3)	5 years	148 (3)	3 years
18	217	1 year	182	6 months
19	190 (a)	6 months	221 (a)	1 month
20	190 (b)	1 year	221 (b)	6 months
21	241	3 years	204	2 years
22	243	3 years	206	2 years
23	248 (a)	5 years	211 (a)	2 years
24	248 (b)	10 years	211 (b)	7 years
25	276	1 year	274	6 months
26	279	6 months	277	3 months
27	316 (2)	5 years	406	3 years
28	318 (2)	3 years	417	1 year
29	318 (3)	5 years	418	3 years
30	322	3 years	423	2 years
31	323	3 years	424	2 years

32	324 (2)	6 months	426	3 months
33	325	5 years	428	2 years

### Fine Increased

In many offence the amount of fine is increased under BNS. The amount of fine provided in IPC has no value considering the economic development. The amount which was prescribed in 1860 the value of that amount is increased in 2024. Considering the value of money in following offences the amount of fine is increased from fivefold to tenfold. The list is as follows

S.N.	Sections BNS	Fine in INR	Section IPC	Fine in INR
1	8 (5-a)	5000	67 (a)	50
2	8 (5-b)	10000	67 (b)	100
3	115 (2)	10000	323	1000
4	118 (1)	Extend to 20000	324	With fine
5	122 (1)	5000	334	500
6	122 (2)	10000	335	2000
7	125	2500	336	250
8	125 (a)	5000	337	500
9	125 (b)	10000	338	1000
10	126 (2)	5000	341	500
11	127(2)	5000	342	1000
12	127 (3)	Extend to 10000	343	With fine
13	127 (4)	Not less than 10000	345	Also liable for fine
14	127 (5)	Shall liable to fine	345	
15	126 (6)	Shall liable to fine	346	
16	131	1000	352	500
17	135	5000	357	1000
18	136	1000	358	200
19	165	3000	137	500
20	168	2000	140	500
21	176	10000	171H	500
22	177	5000	171I	500
23	182(1)	300	489 E (1)	100
24	182 (2)	600	489 E (2)	200
25	194 (2)	1000	160	100
26	195 (1)	Not less than 25000	152	With fine
27	205	5000	171	200
28	206 (a)	5000	172 (a)	500
29	206 (b)	10000	172 (b)	1000
30	207 (a)	5000	173 (a)	500
31	207 (b)	10000	173 (b)	1000
32	208 (a)	5000	174 (a)	500
33	208 (b)	10000	174 (b)	1000
34	210 (a)	5000	175 (a)	500
35	210 (b)	10000	175 (b)	1000
36	211 (a)	5000	176 (a)	500



37	211 (b)	10000	176 (b)	1000
38	212 (a)	5000	177	1000
39	213	5000	178	1000
40	214	5000	179	1000
41	215	3000	180	500
42	217	10000	182	1000
43	218	10000	183	1000
44	219	5000	184	500
45	221	2500	186	500
46	222 (a)	2500	187 (a)	200
47	222 (b)	5000	187 (b)	500
48	223 (a)	2500	188 (a)	200
49	223 (b)	5000	188 (b)	1000
50	229 (1)	Extend to 10000	193 (1)	Liable to fine
51	229 (2)	Extend to 50000	193 (2)	Liable to fine
52	230 (1)	Extend to 50000	194 (1)	Liable to fine
53	239	Extend to 5000	237	Liable to fine
54	241	Extend to 5000	239	Liable to fine
55	243	Extend to 5000	241	Liable to fine
56	248	Extend to two lakh	211	Liable to fine
57	267	5000	228	1000
58	274	5000	272	1000
59	275	5000	273	1000
60	276	5000	274	1000
61	277	5000	275	1000
62	278	5000	276	1000
63	279	5000	277	500
64	280	1000	278	500
65	282	10000	280	1000
66	283	Not less than 10000	281	Liable to fine
67	284	5000	282	1000
68	285	5000	283	200
69	286	5000	284	1000
70	287	2000	285	1000
71	288	5000	286	1000
72	289	5000	287	1000
73	290	5000	288	1000
74	291	5000	289	1000
75	292	1000	290	200
76	293	Extend to 5000	291	Liable to fine
77	294 (2)	5000	292 (2)	2000
78	294 (2)	10000 Second time	292 (2)	5000 Second time
79	296	Extend to 1000	294	Liable to fine
80	297 (2)	5000	294 A	1000
81	329 (3)	5000	447	500
82	329 (4)	5000	448	1000
83	355	1000	510	10

## Conclusion

The punishment is only way to control the bad behavior of the accused. The criminal law provides different kinds of punishment to control over the accused and to maintain social security and order for common people. The most important thing is the quantum and nature of punishment should be change as per the social order change. Considering the drafting of IPC it was old and outdated in terms of quantum of imprisonment and amount of fine. After the long waiting the new reformative law BNS is introduced which provides comprehensive scheme of punishment. The nature and quantum of punishment provided under the BNS is reformative and progressive in nature. The BNS may get success to achieve and create substantial deterrence in the mind of wrongdoer and reformation on the other hand.

