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**Criminal Justice Reforms In Light Of Bns 2023: A Critical Appraisal**

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**Abstract:** *The Indian Penal Code, which dates back to the colonial era, was superseded by the Bharatiya Nyay Sanhita (BNS) Act, 2023, which represents a significant legislative change in India's criminal justice system. The BNS's greater emphasis on mandatory sentencing provisions—which set minimum penalties for a variety of offenses—is one of its most contentious aspects. These policies have generated a great deal of discussion among legal experts, practitioners, and human rights advocates, despite the fact that they are frequently defended as instruments to prevent crime, guarantee consistency in penalties, and foster public trust in the legal system. The BNS's mandatory sentence provisions were critically examined in this article by the researchers, who concentrated on how they affected restorative justice, judicial discretion, and sentence proportionality. The study evaluates whether the strictness imposed by these laws is consistent with the core goals of a contemporary penal system through theological and public policy analysis. It looks at important elements of the contemporary penal system that set minimum sentences and assesses how they affect trial courts, especially when dealing with juvenile offenders and those from low-income backgrounds. Comparative legal systems and jurisprudence from countries including the US, UK, and Australia are also examined in the study. In these countries, comparable legislation have had varying results. Additionally, it evaluates whether mandatory punishments are constitutional in India, especially in view of Articles 14 and 21 and pertinent Supreme Court precedent. The paper concludes by advocating for a well-balanced reform strategy that upholds judicial discretion, encourages sentence personalization, and strikes a balance between rehabilitation and deterrence. In order to increase uniformity without sacrificing justice, it promotes the use of sentencing guidelines rather than rigid minimum penalties.*

**Key words :** Bharatiya Nyay Sanhita 2023, Mandatory Sentencing, Judicial Discretion, Justice.

**Introduction-** A significant turning point in the annals of Indian legal history has been reached with the enactment of the Bharatiya Nyay Sanhita, 2023 (hereafter referred to as BNS). One of the most contentious aspects of the BNS is the increased use of mandatory minimum sentencing rules, despite the fact that it simplifies the structure of the system and makes an effort to streamline the administration of justice. There are significant questions regarding proportionality, judicial discretion, and restorative justice that have been raised as a result of the shift toward legislative rigidity, particularly in circumstances involving crimes such as gang lynching, sexual offenses, and organized crime. There is no opportunity for judicial discretion based on the fixed minimum penalties that are established by several provisions of the BNS. For instance, Section 70 stipulates a minimum punishment of ten years for the gang rape of a woman who is under the age of sixteen, and Section 111(2) stipulates a prison sentence of not less than seven years for organized crime that results in death. In addition, Section 103(2) provides a mandatory minimum term of twenty years, which can be extended to life imprisonment, for mob lynching that results in death. This is a completely new type of crime that is not present in the Indian Penal Code. In spite of the fact that these requirements are designed to promote uniformity and deterrence, they may make it more difficult for the judge to take into account mitigating considerations such the defendant's age, socioeconomic background, or the circumstances surrounding the offense. The framework of mandatory punishment in the Indian Penal Code represents a philosophy of retributive justice, which restricts the opportunity for restorative or reformatory techniques, which were emphasized in past policy debates and reports by the Law Commission. The principle of individualized justice, which has been championed by the Indian judiciary in various decisions, like *Mithu v. State of Punjab*, in which the Supreme Court threw down mandatory death sentence legislation as unconstitutional, is in direct opposition to the practice of rigid sentencing. The purpose of this article is to shed light on whether or not the growing dependence on rigid minimum sentences is in accordance with the constitutional guarantees found in Articles 14 and 21, as well as with the best practices that are currently being utilized internationally in the field of criminal reform. In addition to this, it investigates the effects that such regulations have on trial courts, the overcrowding of prisons, and disadvantaged criminals, notably adolescents and first-time offenders.

**Conceptual Framework And Historical Background-** The term "mandatory sentencing" refers to statutory measures that specify a fixed minimum punishment for specific offenses. These rules exclude or severely restrict the discretion of the judge to impose lighter penalties, regardless of any mitigating factors



that may exist. It is frequently justified on the basis of deterrent, uniformity, and the desire coming from the general public for more stringent criminal legislation. The ideals of proportionality, individualization of justice, and the rehabilitative purpose of punishment are routinely disregarded by such sentencing regimes, which are regularly condemned for their disregard of these principles. For the most part, mandatory sentencing is based on the principle of retribution, which is rooted in the idea that the penalty must be proportionate to the crime in an exacting manner. On the other hand, contemporary criminology and penology have been moving more and more toward the notion of "just deserts," which aims to strike a balance between the seriousness of the offense and the personal circumstances of the offender. Because of rising crime rates, public uproar, or legislative populism, several jurisdictions, including India, have either maintained or adopted mandatory minimum punishments. This is despite the fact that the number of crimes has increased.

In the past, the International Criminal Court (ICC) utilized a sentencing system that was flexible, which gave judges a significant amount of discretion. A maximum penalty was established for the majority of offenses under the Indian Penal Code (IPC), but the minimum term was left up to the discretion of the judiciary. In response to the ever-evolving sociopolitical concerns, the BNS has implemented a number of offences that carry mandatory minimum terms. Among these, Section 70, Section 103(2), and Section 111 are particularly noteworthy since they stipulate minimum sentences that might range anywhere from seven years to life imprisonment or even death. A significant philosophical shift in India's criminal policy, from one that emphasizes reformatory justice to one that has stronger retributive undertones, has occurred as a result of the transition from sentencing that is discretionary to sentencing that is mandatory in certain regions. It is imperative that this new development be subjected to a thorough analysis, particularly in view of the fact that the Indian judiciary has consistently placed a focus on personalized prison sentences. Cases such as *State of Punjab v. Prem Sagar* have served to reaffirm the significance of judicial discretion in the process of customizing punishments to achieve the goals of justice. The Bureau of National Security (BNS) runs the risk of overturning decades of progressive judicial interpretation and sentence jurisprudence if it decides to reinstate inflexible sentencing models.

**Mandatory Sentencing Under The Bharatiya Nyaya Sanhita-** The BNS represents a fundamental paradigm shift in Indian criminal law since it introduces a greater number of statutory minimum penalties, which considerably restricts the discretion of the judiciary. As opposed to the Indian Penal Code (IPC), which provided judges with a wide variety of punishments and only a few mandated minimums, the Basic National Standards (BNS) incorporates strict punishments for a wider variety of offenses. An important illustration of this is Section 70 of the BNS, which stipulates that a minimum term of twenty years of harsh imprisonment is required for gang rape, with the possibility of being sentenced to life imprisonment or even death. The identical clause of the Indian Penal Code, Section 376D, offered a comparable range of punishments, but it also allowed for a wider degree of discretion, particularly when it came to the imposition of penalties that were less than life imprisonment in extraordinary instances. Similar to the previous example, Section 103(2) of the BNS establishes a minimum punishment of seven years for group-based killings (murders that include five or more individuals) that are motivated by identification criteria such as caste, community, or gender. Because the Indian Penal Code (IPC) did not have a clear equivalent for "mob lynching" or other aggravated group crimes, it was a fresh and stringent invention in the penal system. Despite the fact that these modifications are intended to improve deterrence and guarantee uniformity, there is a possibility that they may violate the concepts of proportionality and individualized justice. It was highlighted by the Supreme Court in the *Prem Sagar* case that the sentencing process must take into account both the gravity of the conduct and the circumstances surrounding the criminal. The imposition of mandatory minimum penalties disrupts this equilibrium and has the potential to disproportionately harm vulnerable offenders, notably adolescents and those who are in situations that are socioeconomically excluded.

**Comparative Legal Systems-** The experience that has been gained around the world with mandatory sentencing provides valuable insights into the benefits as well as the risks that are associated with strict punitive frameworks. In many countries, including the United States of America, the United Kingdom, and Australia, statutory minimum penalties have been subjected to substantial experimentation, with the results being frequently inconsistent. In the 1980s, as part of the "War on Drugs," mandatory minimum sentences were forcefully implemented in the United States of America from the government. The passage of these laws frequently resulted in excessively lengthy terms for non-violent offenses, particularly those involving drug-related offenses, and contributed to the phenomenon of mass imprisonment. Several times,





the United States Sentencing Commission has voiced its disapproval of these policies, arguing that they undermine the authority of the judiciary and exacerbate existing racial inequities. A shift in policy was brought about by the First Step Act of 2018, which loosened up on certain mandated minimums and reemphasized the need of judicial flexibility.

There are fewer restrictions placed on mandatory sentence in the United Kingdom. As part of the Criminal Justice Act of 2003, minimum penalties were established for repeat serious offenses, which included offenses involving drugs and firearms. The British courts, on the other hand, continue to have a statutory "exceptional circumstances" clause, which permits them to deviate from mandatory requirements in order to guarantee justice. It has been determined that this equilibrium is more proportionate and in line with the human rights criteria that were established by the Human Rights Act of 1998. The picture that Australia offers is a piecemeal one. Mandatory sentences have been enforced in certain jurisdictions, such as New South Wales and Western Australia, particularly for violent and repeat offenses. On the other hand, such regulations have been challenged by judges and legal scholars in Australia due to the harshness of their implementation and the impact they have on Indigenous populations.

The BNS model that India is using, despite the fact that it appears to be modeled after deterrent-oriented techniques, ought to take into consideration various international experiences. There is abundant evidence that demonstrates the dangers of excessive incarceration, the rigidity of the justice system, and the disproportionate impact on underprivileged populations. Perhaps a more well-rounded way ahead would be to implement structured sentencing guidelines, such to those that are used in the United Kingdom and those are proposed by the United States Sentencing Commission.

**Statistical Insights Into Sentencing Patterns-**The National Crime Records Bureau (NCRB) Prison Statistics 2022 found that India has an occupancy rate of 130.2%, with almost 5.5 lakh inmates being confined in facilities that were designed to handle only 4.2 lakh inmates. An astounding 77% of prisoners were still awaiting trial, which indicates that justice was delayed and that there was a backlog that was made worse by stringent sentencing regulations that discouraged plea bargaining or bail.

The India Justice Report 2022 emphasizes severe shortages of both manpower and infrastructure, which are made much more severe when courts are required to adhere to rigid sentence rules. A worrying demographic imbalance that may be exacerbated by mandatory regulations is demonstrated by the fact that states with larger SC/ST populations, such as Madhya Pradesh and Chhattisgarh, also have a disproportionate representation of these communities in prisons.

According to a research conducted by the Commonwealth Human Rights Initiative (CHRI), mandatory sentencing has a disproportionately negative effect on marginalized and impoverished individuals who are accused of committing crimes and are unable to afford legal representation or traverse the many procedural safeguards. In light of these facts, it is imperative that any proposed reform of punishment be empirically informed and relevant to the reality on the ground.

Consequently, the evidence makes it very evident that mandatory punishment may be a factor in the congestion and injustice that are present in the system. In light of these results, it is necessary to make a gradual transition away from blanket minimum sentences and toward sentencing recommendations. A thorough analysis demonstrates that the British National Service's (BNS) approach to mandatory sentencing is primarily consistent with the classical retributivism ideology, which places a greater emphasis on the certainty and proportionality of punishment than it does on the goals of rehabilitation. The restricted court discretion and emphasis on uniform sentences, particularly for significant offenses, imply a deterrent and retributive posture that reflects Beccarian ideas rather than modern restorative or utilitarian goals. This is especially true for serious offenses. The effectiveness of this method is further called into question by empirical evidence, which includes high rates of incarceration and undertrial offenders. This is especially true in a socio-legal context that is characterized by systematic disparities and resource restrictions. The rigidity of India's paradigm is called into question by comparative findings from other jurisdictions like as the United Kingdom, Canada, and South Africa, which reveal a global trend towards discretion and customized sentencing. Through this phase, the BNS displays how it deviates from the ever-evolving worldwide standards and runs the risk of perpetuating carceral excess without addressing the underlying causes of crime or making it easier for offenders to reintegrate into society.

**Concluding Remarks-** Following the aforementioned talks and deliberations, it is possible to draw the conclusion that the BNS, which has been hailed as a momentous shift in India's criminal law, runs the risk of sliding into the trap of cosmetic reform if it fails to address the more fundamental problem of rigid, one-size-fits-all sentencing. In spite of the fact that mandatory minimums are enticing due to their certainty,



they frequently function as legislative blindfolds, ignoring the variety of crimes, situations, and human stories that are behind each individual case. There is no way that justice can be administered via a model. A living, sensitive, and human being is required of it. We have determined through our analysis that the BNS, in its current configuration, places a higher value on retribution than it does on rehabilitation, and consistency over justice. An strategy like this only serves to deepen the gap between law and justice, which is especially problematic in a nation where more than 77 percent of convicts are awaiting trial. It poses a risk of transforming correctional facilities into houses of hopelessness rather than places where people can be rehabilitated. It is not more punishment that India requires; rather, it is more intelligent punishment. This chasm can be navigated by the implementation of a comprehensive sentencing policy that is driven by empirical facts and judicial discretion. The development of a Sentencing Commission, the implementation of periodic review mechanisms, and the adoption of restorative justice ideas are not utopian objectives; rather, they are constitutional necessities. As said by Justice V.R. Krishna Iyer, "Harsh laws make hardened criminals." What a powerful statement! The moment has come for the Indian judicial system to break free from the shackles of colonialism and adopt a paradigm of justice that is not merely punitive but also transformative. It is imperative that compassion, context, and common sense be utilized in order to liberate the future of justice. It is not acceptable to confine it in cages.

#### REFERENCES

1. Ashworth A and Zedner L, Preventive Justice (Oxford University Press 2014)
2. Bach S, India's Prison Statistics: An Analysis of Overcrowding, Undertrials and Judicial Delays (PRS Legislative Research, 2023) <https://prsindia.org> accessed 7 June 2025
3. Batra N, 'Mandatory Sentencing in India: A Critique of the Retributive Shift under BNS 2023' (2024) 46(2) Delhi Law Review 129
4. Law Commission of India, Report No 262: The Death Penalty (2015) <https://lawcommissionofindia.nic.in> accessed 7 June 2025
5. National Crime Records Bureau (NCRB), Prison Statistics India 2022 (Ministry of Home Affairs 2023) <https://ncrb.gov.in> accessed 7 June 2025
6. Tonry M, Sentencing Matters (Oxford University Press 1996)
7. United Nations Office on Drugs and Crime (UNODC), Handbook on Restorative Justice Programmes (2nd edn, United Nations 2020) <https://www.unodc.org> accessed 7 June 2025
8. von Hirsch A, Censure and Sanctions (Clarendon Press 1993)

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