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THE PARADIGM SHIFT IN JUDICIAL DISCRETION: A CRITICAL ANALYSIS OF THE SENTENCING POWERS OF COURTS UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA (BNSS), 2023

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ABSTRACT

The transition from the century-old Code of Criminal Procedure (CrPC), 1973, to the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, marks a monumental overhaul in India's criminal justice system. A primary focal point of this legislative metamorphosis is the restructuring of the sentencing powers of courts. This paper critically examines the statutory, procedural, and philosophical shifts introduced under Chapter III (Sections 21 to 25) of the BNSS, 2023. By evaluating the institutional changes—such as the elimination of the cadre of Assistant Sessions Judges, the dramatic fivefold escalation of monetary fine caps for Judicial Magistrates, and the historic statutory introduction of 'Community Service' as an alternative punitive measure—this study dissects the modern boundaries of trial court discretion. Furthermore, the paper confronts the operational challenges, potential human rights implications, and the structural ambiguities regarding enforcement frameworks. Through a comparative jurisprudential lens, this article evaluates whether these modifications truly foster restorative justice or merely amplify judicial variability in the absence of codified sentencing guidelines in India.

I. INTRODUCTION AND HISTORICAL EVOLUTION

The architecture of punitive justice in India has long been tethered to colonial-era philosophies designed primarily for deterrence, state control, and structural retribution. For exactly five decades, the Code of Criminal Procedure, 1973 (CrPC), dictated the structural, procedural, and operational boundaries within which trial courts exercised their sentencing mandates. While the substantive aspect of crimes was historically governed by the Indian Penal Code (IPC), 1860, the machinery for translating structural guilt into dynamic penal consequences lay entirely within the procedural matrix of the CrPC. This dual-system model meant that the execution of justice was strictly bound by rules written in an era focused on maintaining colonial dominance

rather than fostering social reform. Consequently, the sentencing phase was frequently reduced to an algorithmic application of terms of incarceration, with little room for rehabilitative or restorative measures that addressed the root causes of criminal behavior.

However, criminal jurisprudence is not static; it must evolve in tandem with changing societal ethics, human rights standards, international legal movements, and domestic organizational capabilities. The enactment of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, which effectively repealed and replaced the CrPC, represents a profound ideological and systemic shift. The explicit legislative intent behind this complete procedural overhaul moves sharply away from colonial retributive containment toward an enlightened, modern system that balances public safety, judicial efficacy, victim rights, and the rehabilitation of offenders. By prioritizing swift justice, digital transparency, and institutional accountability, the BNSS seeks to transform the criminal justice apparatus into an instrument of genuine civic welfare.

In any robust criminal justice framework, the sentencing phase is the ultimate expression of sovereign state authority. It requires trial judges to navigate a complex matrix of statutory boundaries, societal expectations, the emotional and financial trauma of victims, and the potential for reforming the individual convict. Under the legacy system of the CrPC, this balancing act was constrained by low monetary limitations that failed to account for decades of economic inflation, an absolute reliance on incarceration, and an outdated hierarchy of trial court cadres. The BNSS fundamentally reorganizes this entire architecture. By reimagining the structural distribution of power among judicial officers, significantly scaling up financial liabilities to match modern economic realities, and introducing alternative sentences, the new code redefines how judicial discretion is executed. This paper provides a highly comprehensive, multi-layered critical analysis of these statutory realignments, tracking the evolution of sentencing powers from the CrPC to the BNSS and evaluating their implications for criminal law practice in India.

II. THE RESTRUCTURED HIERARCHY OF CRIMINAL COURTS

The organizational hierarchy of criminal courts determines how legal authority is distributed across different levels of the judiciary, directly impacting the speed and quality of case resolution. Under Chapter III of the BNSS, 2023, the legislature took the deliberate step of streamlining this court hierarchy to minimize administrative delays, reduce repetitive appellate routes, and optimize available judicial resources at the district level.

Section 21 of the BNSS, 2023, preserves the apex trial authority of the High Courts and

Sessions Courts, matching the foundational powers previously set under Section 28 of the CrPC. Section 21(1) explicitly affirms that a High Court may pass any sentence authorized by law. Its jurisdiction is bounded only by constitutional provisions and substantive statutory maximums. Similarly, under Section 21(2), a Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law. However, the vital, time-tested legal safeguard remains intact: any sentence of death passed by a Sessions Judge or Additional Sessions Judge must be formally confirmed by the High Court under the procedural framework of Chapter XXXII of the BNSS before it can be legally executed. This maintains the essential dual-check mechanism required to ensure absolute accuracy in capital punishment cases.

The most sweeping and significant organizational structural change introduced in Section 21 of the BNSS is the complete omission of the cadre of Assistant Sessions Judges, which was previously governed under Section 28(3) of the CrPC. Under the legacy system, Assistant Sessions Judges could impose sentences of imprisonment for terms up to ten years and unlimited fines. In institutional practice, however, this intermediate judicial layer often caused significant administrative bottlenecks, jurisdictional confusion, and unnecessary layers of appeal within the District Judiciary. By eliminating this specific tier, the BNSS simplifies the trial court layout. Cases that previously fell under the unique competence of an Assistant Sessions Judge are now distributed effectively between Chief Judicial Magistrates (for offenses up to seven years) and Sessions or Additional Sessions Judges (for more severe offenses). This restructuring significantly speeds up the trial process, lowers the backlog of pending cases, and reduces the trial management burden on district court setups.

III. MAGISTERIAL SENTENCING POWERS: MONETARY ESCALATION

While superior courts handle severe crimes, the vast majority of criminal cases in India are processed within the Magisterial tiers. Section 22 of the BNSS, 2023 (which directly corresponds to Section 29 of the CrPC, 1973), completely updates the sentencing capabilities of Judicial Magistrates. This section responds directly to long-standing criticisms from legal scholars regarding the severe impact of economic inflation on criminal fines, which had rendered previous statutory limits ineffective.

Under Section 22(1) of the BNSS, the sentencing power of the Chief Judicial Magistrate (CJM) matches its historical predecessor. A CJM may pass any sentence authorized by law, except for

a sentence of death, imprisonment for life, or imprisonment for a term exceeding seven years. Crucially, the BNSS maintains that there is no upper monetary limit on the fine a CJM can impose, allowing them to scale financial penalties based on the economic scale and nature of the offense.

Section 22(2) of the BNSS introduces a major shift in the financial powers of the Judicial Magistrate First Class (JMFC). While the JMFC retains the power to sentence offenders to imprisonment for a term not exceeding three years, their fine-imposing capability has been radically expanded. Under Section 29(2) of the CrPC, 1973, a JMFC's fine-imposing power was capped at a strict ₹10,000 limit. Over decades of economic growth, this nominal amount became trivial, failing to serve as a meaningful deterrent for property offenses, fraud, or white-collar crimes. Recognizing that inflation had made this cap obsolete, the legislature increased the limit under the BNSS to not exceeding fifty thousand rupees (₹50,000). This fivefold increase allows magistrates to impose substantial financial penalties, giving them a real alternative to short-term incarceration.

Similarly, Section 22(3) updates the authority of the Judicial Magistrate Second Class (JMSC). While their imprisonment power remains capped at a maximum of one year, their fine limit has been raised from the old cap of ₹5,000 up to not exceeding ten thousand rupees (₹10,000). Furthermore, the BNSS completely unifies judicial designations across urban and rural landscapes by phasing out separate cadres for 'Metropolitan Magistrates.' These urban courts are now fully integrated into the standardized framework of Judicial Magistrates of the First or Second class, creating a more uniform administrative system across all states.

IV. STATUTORY COMPARATIVE MATRIX: CRPC VS. BNSS

Judicial Tier	CrPC, 1973 Section	BNSS, 2023 Section	Max Imprisonment	Max Fine Competency
High Court	Section 28(1)	Section 21(1)	Any lawful sentence	Unlimited
Sessions Judge	Section 28(2)	Section 21(2)	Any lawful sentence (Death needs HC confirm)	Unlimited
Asst Sessions Judge	Section 28(3)	Omitted	Up to 10 Years (Legacy)	Unlimited (Legacy)

Chief Judicial Magistrate	Section 29(1)	Section 22(1)	Up to 7 Years	Unlimited
Judicial Magistrate 1 st Class	Section 29(2)	Section 22(2)	Up to 3 Years	Up to ₹50,000
Judicial Magistrate 2 nd Class	Section 29(3)	Section 22(3)	Up to 1 Year	Up to ₹10,000

V. THE RESTORATIVE JUSTICE PARADIGM: COMMUNITY SERVICE

The most innovative update within the sentencing framework of the BNSS, 2023, is the formal statutory introduction of Community Service as an independent punitive and reformatory tool. Mentioned across several provisions—including petty thefts under Section 303 of the Bharatiya Nyaya Sanhita (BNS), 2024, misconduct by a drunken person in public spaces, and general public nuisances—Community Service represents India's first formal step toward a restorative criminal justice framework.

Section 23 of the BNSS provides the procedural foundation for this alternative penalty. The explanation appended to the section formally defines it: 'For the purposes of this section, community service means work which the Court may order a convict to perform which is of benefit to the community and for which he shall not be entitled to any remuneration.' This definition contains three key legal criteria: it must be ordered by a competent court upon a formal finding of guilt, the nature of the work must directly benefit the public or community infrastructure, and the work must be entirely uncompensated, preserving its status as a criminal penalty.

From a jurisprudential perspective, the integration of community service addresses several long-standing issues with short-term imprisonment. First, it directly mitigates the critical problem of prison overcrowding. Indian prisons operate well above their designed capacities, largely driven by pretrial detainees and individuals serving short sentences for minor offenses. Community service provides a safe, alternative management tool for low-risk offenders. Second, it prevents 'institutional contamination,' where first-time or minor offenders are exposed to hardened criminals in prison, which often increases the risk of reoffending. Third, it provides an economic benefit to the state; rather than spending public funds to house, feed, and guard an individual for a minor offense, the state benefits from their unpaid labor directed toward maintaining public parks, assisting in government hospitals, or supporting municipal cleanup drives.

VI. OPERATIONAL AND INSTITUTIONAL IMPLICATIONS OF COMMUNITY SERVICE

While the introduction of community service is conceptually sound, its practical execution faces significant structural challenges within the Indian legal system. For community service to work as intended, trial courts cannot simply issue an order and assume it will be completed. There must be an organized system to assign, manage, and verify the work.

In many developed jurisdictions, community service is closely supervised by dedicated probation departments. In India, the existing framework under the Probation of Offenders Act, 1958, is underfunded and understaffed. Expecting existing probation officers to handle a high volume of community service orders without additional resources risks systemic failure. There is a critical need for clear guidelines to define what counts as acceptable community work. Without a standardized registry of government hospitals, municipal corporations, and registered NGOs, individual magistrates may issue inconsistent or impractical orders.

Furthermore, without clear statutory guidelines, leaving the nature and duration of community service entirely to individual judicial discretion creates a risk of inconsistent sentencing. For instance, one magistrate might sentence an individual convicted of petty theft to 50 hours of maintenance work at a local public hospital, while another magistrate, handling an identical offense, might order the convict to perform cleaning duties at a specific government official's residence or a religious institution. This lack of standardization could lead to challenges under Article 14 of the Constitution of India, which protects against arbitrary state action. To protect the dignity of the offender and ensure fairness, the judiciary must establish clear boundaries defining what constitutes appropriate, non-degrading community work.

VII. STATUTORY LIMITATIONS AND PROCEDURAL SAFEGUARDS ON DEFAULT TERMS

When courts impose financial fines or community service orders, they must also establish clear consequences if the convict fails to comply. Section 24 of the BNSS, 2023 (corresponding to Section 30 of the CrPC, 1973), details the rules governing default sentences, ensuring that punishments remain enforceable.

Section 24(1) preserves an important check on magisterial power when dealing with a default on a fine. It states that a Magistrate's Court may award a term of imprisonment in default of payment of a fine, subject to two strict statutory boundaries. First, the default term cannot

exceed the maximum period of imprisonment the magistrate is explicitly authorized to impose under Section 22. Second, where the fine forms a part of the substantive sentence, the default period shall not exceed one-fourth of the maximum term of imprisonment which the magistrate is competent to inflict for that specific offense. For example, if a Judicial Magistrate First Class tries an offense where the statutory maximum punishment is 4 years, their maximum sentencing power for that crime is capped at 3 years under Section 22(2). If they impose a fine alongside a prison sentence, the maximum default imprisonment they can order if the fine goes unpaid is one-fourth of 3 years (i.e., 9 months). Section 24(2) clarifies that default imprisonment can be ordered in addition to a substantive sentence of imprisonment for the maximum term allowable under the law, ensuring that an offender cannot avoid a financial penalty by simply counting default time as part of their main prison sentence.

VIII. CONSECUTIVE VS. CONCURRENT SENTENCING IN MULTIPLE OFFENSES

When an individual is convicted of two or more distinct offenses at a single trial, the court must decide how those sentences will be served. Section 25 of the BNSS, 2023 (retaining the core mechanics of Section 31 of the CrPC, 1973), outlines the rules for consecutive and concurrent sentencing.

Section 25(1) establishes the baseline rule: unless the court explicitly directs that the punishments shall run concurrently (simultaneously), the sentences must run consecutively, meaning one begins after the other ends. This decision requires careful judicial thought. Concurrent sentences are typically reserved for offenses that form part of the same transaction, while consecutive sentences are used for separate criminal acts. To prevent unreasonably long cumulative sentences that amount to de facto life imprisonment for minor offenses, Section 25(2) establishes clear legal limits. First, under no circumstances can a person be sentenced to a cumulative consecutive term exceeding fourteen years. Second, the total aggregate sentence cannot exceed twice the amount of punishment which the individual trial court is competent to inflict for a single offense. If a Judicial Magistrate First Class (whose maximum sentencing limit is 3 years) convicts an individual of three separate offenses in a single trial, they can order the sentences to run consecutively, but the total cumulative sentence cannot exceed twice their single-offense limit (i.e., 6 years). This safeguard ensures that aggregate magisterial punishments remain proportionate to the level of the trial court.

IX. CRITICAL CONCERNS AND LACK OF CODIFIED GUIDELINES

While the BNSS, 2023, updates monetary fine structures and introduces alternative sentences, it does not address a long-standing gap in Indian criminal jurisprudence: the lack of a Codified Statutory Sentencing Policy. Unlike jurisdictions like the United States (with its Federal Sentencing Guidelines) or the United Kingdom (via the Sentencing Council guidelines), India relies heavily on wide judicial discretion. Statutes define minimum and maximum punishments, but leave the exact sentence to the judge. In landmark rulings like *State of Punjab v. Prem Sagar* (2008) and *Soman v. State of Kerala* (2013), the Supreme Court of India noted that the absence of a structured sentencing policy leads to highly inconsistent outcomes. The updates in the BNSS do not resolve this issue. For instance, raising a JMFC's fine limit from ₹10,000 to ₹50,000 without guiding principles may lead to highly variable fines for identical offenses, depending on individual judicial perspectives.

The fivefold increase in financial fines highlights another systemic challenge. If a magistrate imposes a ₹50,000 fine on an economically marginalized individual, that fine may be impossible to pay, resulting in default imprisonment under Section 24. For a wealthy individual, the same fine is negligible. Without guidelines requiring courts to assess an offender's financial capacity before setting a fine, increased monetary caps risk disproportionately penalizing poor offenders, turning financial penalties back into prison sentences.

X. POLICY RECOMMENDATIONS AND CONCLUSION

The changes introduced under Chapter III of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, represent a significant reorganization of the sentencing powers of Indian trial courts. The elimination of Assistant Sessions Judges simplifies the judicial hierarchy, while the updated monetary fine limits adjust the system to modern economic realities. Most importantly, the introduction of community service under Section 23 establishes a foundation for restorative justice.

To ensure these reforms achieve their potential, a high-level sentencing commission should be established by the Supreme Court and the Ministry of Law and Justice to draft clear guidelines for trial courts. Additionally, state governments must establish registries of approved public institutions and NGOs for community service placements, supported by specialized probation offices to verify compliance. Finally, trial courts should be provided with assessment tools to scale financial penalties based on both the severity of the offense and the financial resources

of the offender, ensuring fines remain fair and effective. Ultimately, the true impact of these legislative changes will depend on how effectively the judiciary balances its updated powers with fairness, consistency, and a commitment to institutional reform.

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