

## TYPES OF PUNISHMENT UNDER THE BHARATIYA NYAYA SANHITA, 2023: A COMPREHENSIVE LEGAL ANALYSIS

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**BEST CITATION** – MANAS SHUKLA & TANU AGARWAL, ROLE OF TORTS IN CONSUMER PROTECTION AND PRODUCT LIABILITY IN INDIA, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (11) OF 2025, PG. 144-151, APIS – 3920 – 0001 & ISSN – 2583-2344

### ABSTRACT

The *Bharatiya Nyaya Sanhita, 2023* (BNS), enacted to replace the colonial-era *Indian Penal Code, 1860*, marks a transformative shift in India's criminal jurisprudence. This legislative reform reflects a conscious effort to modernize the punitive framework in line with constitutional values, evolving societal needs, and global trends in penology. Chapter II of the BNS (Sections 4 to 13) outlines the various forms of punishments available under the new regime, namely: death penalty, life imprisonment, rigorous and simple imprisonment, forfeiture of property, fine, and the newly introduced provision of community service. The inclusion of community service represents a significant shift towards restorative justice and the rehabilitation of offenders, particularly in cases involving petty or non-violent crimes. The paper critically examines the statutory scheme of punishments, emphasizing their gradation, proportionality, and judicial discretion. It further explores the procedural safeguards against arbitrary sentencing and solitary confinement, and analyzes enhanced punishment provisions for repeat offenders. Through a comparative lens with the *Indian Penal Code, 1860*, the study underscores the substantive and procedural advancements brought by the BNS. This analysis contributes to the broader discourse on criminal justice reform, advocating a balanced penal system that ensures deterrence, reformation, and fairness.

### Keywords

Bharatiya Nyaya Sanhita 2023, types of punishment, criminal law reform, community service, solitary confinement, sentencing policy, proportionality, Indian Penal Code 1860, criminal justice, penal philosophy, enhanced punishment, imprisonment, restorative justice.

### 1. Introduction

Punishment is one of the foundational elements of the criminal justice system, serving as a means to uphold the rule of law, maintain public order, and express societal condemnation of unlawful conduct. The primary objectives behind imposing punishment are fourfold: deterrence, retribution, reformation, and prevention. A well-structured penal system not only ensures justice for victims but also aims to rehabilitate offenders and discourage others from engaging in criminal activities.

With the enactment of the *Bharatiya Nyaya Sanhita, 2023* (BNS), India has undertaken a comprehensive overhaul of its criminal law framework. This legislation replaces the *Indian Penal Code, 1860* (IPC), a colonial-era statute that had long governed substantive criminal law in the country. The BNS seeks to modernize the legal system by introducing clearer provisions, updated terminologies, and reforms that align with contemporary social realities and constitutional principles.

Chapter II of the BNS, which deals specifically with punishments (Sections 4 to 13), outlines the various types of penalties that courts may impose upon conviction of a criminal offence. These range from traditional forms such as imprisonment and death penalty to newer approaches like community service. This evolution in punitive philosophy reflects a shift from a purely retributive system to one that incorporates restorative and reformative elements.

This paper examines the types of punishments recognized under the BNS, explores the underlying objectives of each, and highlights the significance of their implementation in fostering a fair and effective justice delivery system. It also considers how these provisions differ from or build upon those in the former IPC, thereby marking a substantial legal and philosophical transformation in India's criminal law.

## 2. Statutory Types of Punishment under Section 4 of the BNS, 2023

Section 4 of the *Bharatiya Nyaya Sanhita, 2023* enumerates six distinct types of punishments that courts are authorized to impose upon individuals convicted of criminal offences. These punishments reflect a blend of traditional penal measures and progressive reforms aimed at aligning the Indian criminal justice system with contemporary global practices and constitutional values.

### (a) Death Penalty

The death penalty remains the most severe form of punishment under Indian law. It is reserved for the most heinous crimes, where the gravity of the offence shocks the collective conscience of society. The jurisprudential doctrine of the "rarest of rare" governs its imposition, a principle laid down by the Supreme Court in *Bachan Singh v. State of Punjab* (1980)<sup>271</sup>. Under the BNS, capital punishment may be awarded for offences such as **murder** (Section 103), **terrorist acts** (Section

113), and in cases of **repeat convictions for certain grave offences** (Section 13).

### (b) Imprisonment for Life

Life imprisonment entails confinement for the entirety of a convict's natural life unless remitted or commuted. It serves as an alternative to the death sentence in certain serious crimes. Section 6 of the BNS clarifies that, for calculation or commutation purposes, life imprisonment may be treated as equivalent to **twenty years of incarceration**, unless otherwise specified by the statute<sup>272</sup>.

### (c) Imprisonment – Rigorous and Simple

The BNS recognizes two kinds of custodial punishment under this head:

- **Rigorous imprisonment**, which involves compulsory hard labour, and
- **Simple imprisonment**, which is incarceration without hard labour.

Section 7 empowers courts to impose either type exclusively or a combination thereof, depending on the nature and circumstances of the offence. This allows sentencing to be tailored to the gravity of the crime and the background of the offender.

### (d) Forfeiture of Property

This form of punishment allows the state to seize the property of the offender, provided such forfeiture is specifically authorized under the substantive offence provisions. It is typically employed in cases involving **financial crimes, money laundering, terror financing, or offences against the State**. The purpose is both penal and preventive—to deprive criminals of the benefits of their illegal conduct.

### (e) Fine

Fines serve as monetary penalties that may be imposed either as standalone punishments or in conjunction with imprisonment. Section 8 of the BNS lays down guidelines ensuring that fines are **not excessive** and are **proportionate to the**

<sup>271</sup> *Bachan Singh v. State of Punjab*, AIR 1980 SC 898.

<sup>272</sup> *Bharatiya Nyaya Sanhita, 2023*, Section 6.

**offence.** It also provides for **imprisonment in default of payment**, with graded scales based on the amount of fine unpaid. For instance:

- If the fine is up to ₹5,000, the maximum default imprisonment is **2 months**.
- If the fine does not exceed ₹10,000, default imprisonment may extend to **4 months**.
- For fines beyond this threshold, the default imprisonment can extend to **1 year**.

#### (f) Community Service

One of the most significant innovations in the BNS is the formal recognition of **community service** as a form of punishment. This inclusion reflects a shift towards **restorative and reformative justice**, especially for **minor, non-violent, or first-time offenders**. Community service may involve tasks that benefit society, such as environmental clean-up, assisting public health initiatives, or working with NGOs. The aim is to correct behavior without resorting to incarceration and to instill a sense of civic responsibility<sup>273</sup>.

### 3. Additional Provisions under Chapter II (Sections 5–13)

While Section 4 of the *Bharatiya Nyaya Sanhita, 2023* outlines the primary types of punishment, Sections 5 to 13 elaborate on **procedural and substantive principles** that guide how punishments are imposed, limited, or modified. These provisions ensure the fair and consistent application of criminal penalties, in line with constitutional mandates and established jurisprudence.

#### Section 5: Commutation of Sentences

This section authorizes the **appropriate government to commute a punishment** into a lesser form **without the consent of the offender**. This power is exercised under the framework of Section 474 of the *Bharatiya Nagarik Suraksha*

*Sanhita, 2023*, which deals with the broader procedural law for criminal cases<sup>274</sup>.

The "appropriate government" is determined based on the nature of the offence:

- For offences under the Union List or involving capital punishment, the **Central Government** holds the authority.
- For offences under the State List, the **respective State Government** may exercise the power<sup>275</sup>.

#### Section 6: Fraction of Terms

This provision clarifies that **life imprisonment**, unless otherwise stated, shall be treated as equivalent to **20 years of imprisonment** for the purposes of legal calculations—such as for applying provisions on remission, parole, or concurrent sentencing. This ensures uniformity in determining cumulative or successive punishments.

#### Section 7: Types of Imprisonment

Section 7 provides courts with the **discretion to determine the nature of imprisonment**, whether **rigorous, simple**, or a **combination of both**. The court may tailor the sentence based on the gravity of the offence, the intent of the offender, and surrounding circumstances. This flexibility enhances the fairness and individualization of sentencing.

#### Section 8: Fine and Default of Payment

This section governs the imposition of **finest** and the consequences of **non-payment**:

- Courts are authorized to **fix a term of imprisonment in default of payment** of the fine.
- The law also **prescribes upper limits** for such default imprisonment to prevent excessive or disproportionate penalties:
  - For fines **up to ₹5,000** – **maximum 2 months** default imprisonment

<sup>273</sup> *Ibid.*, Section 4(f); Community service is a progressive addition reflecting global sentencing trends, though specific rules regarding its implementation may be notified separately.

<sup>274</sup> *Bharatiya Nyaya Sanhita, 2023*, Section 5; read with *Bharatiya Nagarik Suraksha Sanhita, 2023*, Section 474.

<sup>275</sup> *Ibid.*, Explanation to Section 5.

- For fines **up to ₹10,000** – **maximum 4 months** default imprisonment
- For fines **exceeding ₹10,000** – **maximum 1 year** default imprisonment

The default sentence is **in addition to** any primary punishment and is typically **simple imprisonment**, especially when the offence is not heinous in nature.

### Section 9: Compound Offences

Section 9 addresses situations where a single criminal act comprises **multiple overlapping offences**. It prohibits the imposition of **cumulative punishments** for each constituent offence unless the law expressly permits it. This prevents disproportionate sentencing and upholds the principle of **proportionality** in criminal law<sup>276</sup>.

For example, if a single act amounts to both theft and mischief, the offender should not be punished separately under each head unless the statute explicitly mandates such a course.

### Section 10: Doubtful Offence

This provision applies in cases where the court is convinced that the accused is guilty of **one of several possible offences**, but is **uncertain as to which one** specifically. In such instances, the court must impose **the punishment corresponding to the offence with the least penalty**. This principle protects the accused from the risk of harsher punishment in the face of judicial uncertainty.

### Section 11: Solitary Confinement

Solitary confinement may be imposed **only in cases where the court awards rigorous imprisonment**. The section prescribes a **graded limitation** on the total duration based on the length of the imprisonment:

- **Up to 6 months** imprisonment: **Maximum 1 month** of solitary confinement
- **More than 6 months but ≤ 1 year**: **Maximum 2 months**
- **More than 1 year**: **Maximum 3 months**

This ensures that solitary confinement, which is psychologically harsh, is not applied indiscriminately.

### Section 12: Limitations on Solitary Confinement

Further refining the previous section, Section 12 limits solitary confinement to **no more than 14 days at a time** and requires **intervals of equal duration** between confinements. Additionally, if the total term of imprisonment exceeds 3 months, solitary confinement **cannot exceed 7 days per month**. These safeguards are in line with **international human rights standards** and aim to prevent abuse of prisoners.

### Section 13: Enhanced Punishment on Repeat Offences

Section 13 provides for **stricter punishment for repeat offenders**. If a person has previously been convicted under **Chapter X (Public Tranquility Offences)** or **Chapter XVII (Property Offences)** and commits a similar offence punishable with **three years or more**, the court may impose:

- **Imprisonment up to 10 years**, or
- **Imprisonment for life** in certain aggravated cases<sup>277</sup>.

This provision serves a **deterrent purpose** and reflects the doctrine of **recidivism** in penal policy.

### 4. Comparative Perspective: BNS 2023 vs IPC 1860

The *Bharatiya Nyaya Sanhita, 2023* (BNS) has replaced the *Indian Penal Code, 1860* (IPC) with the aim of modernizing India's penal laws and making them more in tune with contemporary

<sup>276</sup> Ibid., Section 9; see also related IPC provision: Section 71 of IPC, 1860 (now repealed).

<sup>277</sup> Ibid., Section 13; applicable particularly to habitual offenders under serious criminal heads.

societal needs and constitutional principles. Although many foundational aspects of the IPC have been retained, the BNS introduces significant changes, especially in the area of

punishments. The following comparative table offers a detailed perspective on key differences and continuities:

Aspect	IPC, 1860	BNS, 2023
<b>Types of Punishment</b>	The IPC provided for <b>five types of punishment</b> under Section 53: (i) Death; (ii) Imprisonment for life; (iii) Imprisonment—rigorous or simple; (iv) Forfeiture of property (rarely applied); and (v) Fine. No scope was given for alternatives like reformatory punishment.	The BNS retains the five traditional punishments and <b>introduces “Community Service”</b> under Section 4(f) as a formal punishment type, marking a shift towards <b>restorative justice</b> especially for minor or first-time offences.
<b>Solitary Confinement</b>	Permissible under Section 73 IPC, with similar time limits (maximum 3 months total, with conditions under Section 74 IPC). However, its application lacked specific procedural safeguards.	Permitted under <b>Section 11 of BNS</b> , with more clearly <b>defined thresholds and durations</b> . Section 12 further strengthens protection by specifying that solitary confinement cannot exceed 14 days at a time and must have alternating rest periods.
<b>Enhanced Punishment</b>	Provided under <b>Section 75 IPC</b> for repeat offenders of serious crimes, but the scope and language were limited.	Expanded and <b>clearly articulated in Section 13 of BNS</b> , specifying enhancement for <b>repeat offenders of offences under Chapter X or XVII</b> punishable with three years or more. Allows for <b>up to life imprisonment</b> , reflecting a stronger deterrent intent.
<b>Imprisonment Type Flexibility</b>	Section 60 of IPC permitted courts to choose between rigorous and simple imprisonment or a mix of both for offences that allowed such discretion.	<b>Section 7 of BNS</b> carries forward this discretion, allowing the court to impose <b>wholly rigorous, wholly simple, or partly both</b> types of imprisonment, depending on the circumstances of the case.

Aspect	IPC, 1860	BNS, 2023
<b>Fines and Default Clauses</b>	Fines were dealt with under <b>Sections 63 to 70</b> of the IPC, offering general provisions for their imposition and default clauses, though these were fragmented.	<b>Section 8 of BNS</b> consolidates and expands fine-related provisions into a <b>single, comprehensive section</b> . It introduces <b>graded punishment</b> for default of payment and clarifies proportionality, making it more accessible and fair.
<b>Reform-Oriented Sentencing</b>	IPC had <b>no formal provision</b> for community service or reformation-centric alternatives except through probation laws or juvenile justice framework.	BNS, through the introduction of <b>community service</b> , reflects <b>modern penological trends</b> and caters to <b>restorative justice</b> , rehabilitation, and societal reintegration of low-risk offenders.
<b>Legislative Clarity and Accessibility</b>	IPC, being a product of colonial-era drafting, contained <b>archaic language</b> , complex cross-referencing, and less accessible structure.	BNS adopts a <b>simplified, codified, and Indianized language</b> and structure, making penal law more <b>user-friendly</b> for practitioners, administrators, and citizens.

## 5. Critical Insights and Evaluation

The penal provisions under Chapter II (Sections 4–13) of the *Bharatiya Nyaya Sanhita, 2023* (BNS) signify a thoughtful reform in India's criminal justice philosophy. By combining **traditional punishment mechanisms** with **progressive reforms**, the BNS reflects a broader shift from colonial retribution to **modern penal rationality**. Below are critical observations and evaluations of key aspects:

### 5.1. Modernization and Humanization of Sentencing

One of the most notable changes in the BNS is the **introduction of community service** as a statutory form of punishment under Section 4(f). This represents a **paradigm shift** in Indian criminal jurisprudence, where **reformation and rehabilitation** of offenders are prioritized over

mere retribution<sup>278</sup>. Community service is especially effective for **minor, non-violent offences** and **first-time offenders**, reducing prison overcrowding while allowing offenders to contribute constructively to society<sup>279</sup>. This approach aligns with **international standards** on non-custodial sentencing, such as the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules).

### 5.2. Structured Solitary Confinement: Human Rights Alignment

Sections 11 and 12 of the BNS retain the provision for **solitary confinement**, but introduce **detailed limitations** on its application. These restrictions ensure that:

- No solitary confinement exceeds **14 days at a time**.

<sup>278</sup> *Bharatiya Nyaya Sanhita, 2023*, Section 4(f).

<sup>279</sup> Ministry of Home Affairs, *Consultation Paper on Criminal Law Reforms* (2020), para 2.3.

- Intervals between periods must be **equal in duration to the solitary period**.
- In sentences exceeding 3 months, only **7 days of solitary confinement per month** is permitted<sup>4</sup>.

Such detailed safeguards reflect a more **humanized and constitutionally compliant approach**, as solitary confinement is often criticized globally for its **psychological effects** and potential for misuse. These changes bring Indian penal law more in line with **international human rights principles**, including Article 10 of the International Covenant on Civil and Political Rights (ICCPR)<sup>280</sup>.

### 5.3. Proportional Punishment and Procedural Fairness

Sections 9 and 10 are significant from the standpoint of **sentencing proportionality**. Section 9 prohibits excessive punishments in cases where a single act constitutes multiple offences, unless expressly allowed by statute. Section 10 mandates that if the specific offence is uncertain, punishment must correspond to the offence **with the least prescribed penalty**.

These provisions promote **judicial restraint** and prevent **over-penalization** in ambiguous cases. They embody the principle of *nulla poena sine lege* (no punishment without law) and reinforce **due process** safeguards. The structure upholds **Article 20(1)** of the Indian Constitution, which protects individuals from ex post facto criminal legislation.

### 5.4. Discretionary Commutation Powers: Need for Safeguards

Section 5 of the BNS authorizes the **appropriate government** to commute punishments **without the convict's consent**, similar to existing remission provisions under the *Criminal Procedure Code*. However, this power remains **broadly discretionary** and **lacks detailed procedural checks**.

There is concern that such powers, if not exercised transparently, may lead to **arbitrariness or political misuse**. For example, commutations granted on partisan grounds or in violation of judicial orders could undermine public trust in the justice system<sup>281</sup>. Hence, **clearer guidelines** and **judicial review mechanisms** are needed to ensure that the use of commutation aligns with principles of **equity, fairness, and public interest**.

### 6. Conclusion

The *Bharatiya Nyaya Sanhita, 2023* (BNS) represents a landmark transformation in India's criminal justice framework, replacing the colonial-era *Indian Penal Code, 1860* with a codified structure more attuned to the country's evolving socio-legal realities. In particular, Chapter II of the BNS introduces a comprehensive and refined scheme of punishments that reflects a delicate balance between the imperatives of **deterrence, retribution, reformation, and restorative justice**.

By retaining essential punitive tools such as the **death penalty, life imprisonment, and fines**, the law ensures continuity in addressing grave offences. Simultaneously, the addition of **community service** as a statutory form of punishment underscores a progressive and reformative outlook, focusing on **rehabilitation and reintegration** rather than mere incarceration. This innovation is especially critical in reducing prison overcrowding and addressing non-violent or first-time offences through non-custodial means.

Further, the BNS introduces a more **structured and humane approach to solitary confinement**, backed by time-bound restrictions and procedural safeguards, thereby enhancing compliance with **constitutional guarantees** and **international human rights norms**. The codification of **graded fines**, clarity in **commutation powers**, and emphasis on

<sup>280</sup> *International Covenant on Civil and Political Rights*, Article 10: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

<sup>281</sup> Law Commission of India, *Report No. 262: The Death Penalty* (2015), Chapter IX – discusses the need for transparent executive discretion in clemency and commutation.

**proportionality** in sentencing (Sections 9 and 10) reinforce the values of fairness, due process, and legal certainty.

At the same time, the law strengthens deterrence through **enhanced punishment provisions for habitual offenders** (Section 13), indicating the legislature's concern with protecting societal interests while upholding individual rights.

In essence, the BNS offers a more **equitable, transparent, and efficient penal system**. It modernizes India's approach to criminal punishment by emphasizing not only the gravity of the offence but also the **circumstances of the offender**, thereby facilitating a more nuanced and individualized justice delivery model. If implemented effectively, these reforms have the potential to **restore public faith in the justice system**, align Indian law with **global best practices**, and reinforce the **foundational principles of justice, dignity, and constitutional morality**.

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