



The IPC To BNS shift: A quantitative analysis of sentencing reforms and real-world application

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Abstract

The transition from the colonial-era Indian Penal Code (IPC), 1860, to the Bharatiya Nyaya Sanhita (BNS), 2023, represents a profound paradigm shift in Indian criminal jurisprudence. Moving away from purely retributive frameworks, the BNS introduces restorative justice mechanisms, most notably 'Community Service' under Section 4(f) as a substantive punitive measure for minor offenses. Concurrently, procedural overhauls in the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, particularly Section 479, mandate expedited bail for first-time undertrials, attempting to resolve India's chronic prison overcrowding. This empirical and doctrinal article analyzes the real-world application of these sentencing reforms by examining National Crime Records Bureau (NCRB) Prison Statistics and National Judicial Data Grid (NJDG) pendency metrics up to early 2026. The study quantitatively tracks the impact of these statutory timelines and bail reforms on prison demographics, featuring a comparative case study of the Patna and Allahabad High Court jurisdictions. While the national occupancy rate observed a marginal decline, the undertrial population remains disproportionately high at over 72%. Through exhaustive doctrinal analysis of bail jurisprudence and empirical data evaluation, this research assesses whether the statutory inclusion of community service and relaxed bail conditions successfully alleviate judicial pendency. The findings suggest that while the legislative intent is inherently progressive, systemic infrastructural deficits, a digital vacuum in rural courts, and procedural ambiguities currently hinder the optimal efficacy of the BNS and BNSS frameworks.

Keywords: Bharatiya nyaya sanhita, community service, judicial pendency, restorative justice, sentencing reforms, undertrial prisoners

Introduction

The criminal justice system of India operated for over 160 years under the shadow of colonial-era legislations. The Indian Penal Code (IPC), 1860, drafted by the First Law Commission chaired by Thomas Babington Macaulay, was fundamentally designed to assert imperial control rather than to rehabilitate offenders^[1]. Consequently, the IPC's punitive philosophy was overwhelmingly retributive and deterrent. However, the enactment of the Bharatiya Nyaya Sanhita (BNS), 2023, the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, and the Bharatiya Sakshya Adhiniyam (BSA), 2023 – which came into force on July 1, 2024 – marks the most comprehensive decolonization of India's criminal justice infrastructure to date.

A cornerstone of this jurisprudential shift is the statutory recognition of "Community Service" under Section 4(f) of the BNS. By recognizing community service as a formal punishment for petty offenses, the legislature aims to reduce the socioeconomic burden of short-term incarceration, which often transforms petty offenders into hardened criminals due to custodial association. Simultaneously, procedural reforms under the BNSS aim to forcefully decongest the judicial and carceral apparatus. Section 479 of the BNSS mandates the release of first-time offenders upon serving one-third of their maximum prescribed sentence, a significant liberalization from the stringent one-half requirement of the erstwhile Code of Criminal Procedure (Cr.P.C.) Section 436A^[2].

This article comprehensively evaluates the efficacy and real-world application of these specific sentencing and bail reforms. By intertwining deep doctrinal analysis of evolving bail jurisprudence with quantitative demographic data sourced from Indian prisons and district courts, this research

whether the textual promises of the Sanhitas are translating into tangible judicial relief.

Review of Literature

The transition from the IPC to the BNS has generated extensive academic, procedural, and judicial discourse. Extant literature primarily falls into two categories: doctrinal legal analysis of the statutory text and sociological critiques of penology.

In analyzing the integration of restorative justice, scholars have lauded the inclusion of community service. A doctrinal analysis by the Journal of the Indian Law Institute identifies Section 4(f) of the BNS as a vital alignment with global human rights standards, echoing the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)^[3]. However, the literature also identifies a critical gap in execution. Academic critiques point out that while the BNS codifies community service, the procedural framework within the BNSS lacks transparent, centralized monitoring mechanisms, leaving execution fragmented^[4].

Regarding bail jurisprudence, the literature extensively documents the historical failures of Cr.P.C. Section 436A. In the landmark judgment of *Bhim Singh v. Union of India*^[5], the Supreme Court of India lamented the plight of undertrials languishing in prisons for periods longer than their maximum potential sentences. Further, in *Satender Kumar Antil v. Central Bureau of Investigation*^[6], the apex court provided exhaustive guidelines to prevent unnecessary arrests. Despite these judicial pronouncements, empirical studies relying on NCRB data reveal a persistent structural crisis, with over 70% of prison inmates remaining unconvicted^[7].

The current body of literature lacks a comprehensive, immediate quantitative assessment of the post-2024 landscape under the new Sanhitas. This study bridges that academic gap by offering an empirical audit of the BNS and BNSS reforms utilizing current data up to early 2026.

Research Methodology

This study employs a mixed-method research design, utilizing both qualitative (doctrinal) and quantitative (empirical) methodologies.

1. **Doctrinal Methodology:** The qualitative segment relies on a doctrinal analysis of the primary legislative texts, specifically the BNS and BNSS. This involves a comparative statutory interpretation, contrasting these provisions with the IPC and Cr.P.C. The analysis is substantiated by examining landmark judicial pronouncements by the Supreme Court of India regarding bail jurisprudence and sentencing proportionality.
2. **Empirical Methodology:** The quantitative segment evaluates secondary empirical data. The primary data sources are: -
 - a. **National Judicial Data Grid (NJDG):** For extracting real-time metrics on case pendency and disposal rates across District and High Courts in India.
 - b. **National Crime Records Bureau (NCRB):** Specifically, the “Prison Statistics India” reports, utilized to track prison occupancy rates and undertrial demographics (2023–2025).

Research Objectives

1. To conduct a detailed doctrinal comparison between the retributive framework of the IPC and the restorative elements embedded in the BNS.
2. To quantitatively evaluate the immediate demographic impact of BNSS Section 479 on undertrial prisoner populations compared to the erstwhile Cr.P.C.
3. To assess the correlation between strict statutory timelines under the BNSS and prevailing judicial pendency rates across subordinate courts, particularly in Bihar and Uttar Pradesh.

Hypotheses

1. **H1 (Alternative):** The statutory implementation of reformative sentencing measures and relaxed bail conditions significantly reduces prison overcrowding and lowers the proportion of undertrial prisoners.
2. **H0 (Null):** The statutory implementation of reformative sentencing measures and relaxed bail conditions has no statistically significant impact on prison overcrowding or judicial pendency due to prevailing administrative bottlenecks.

Research Questions

1. Has the implementation of Section 479 of the BNSS resulted in a measurable decrease in the undertrial population across Indian prisons since July 2024?
2. What are the fundamental doctrinal differences in the application of bail for first-time offenders under the BNSS compared to the historical application under the Cr.P.C.?

3. What specific practical barriers hinder the uniform application of the BNSS and BNS by judicial magistrates?

Scope of Study

The scope is confined to analyzing sentencing and bail reforms under the BNS and BNSS. Geographically, the empirical data encompasses the pan-India landscape, with a specific comparative focus on the jurisdictions of the Patna High Court (Bihar) and Allahabad High Court (Uttar Pradesh). Temporally, the study covers 2023 (pre-implementation) to January 2026 (post-implementation).

Limitations

A primary limitation is the relative recency of the BNS and BNSS enactments. Long-term, longitudinal conviction data regarding community service outcomes is not yet available.

Doctrinal Analysis: The Shift in Criminal Jurisprudence

1. The Retributive Legacy of the IPC: Macaulay’s Imperial Framework

To understand the magnitude of the shift introduced by the BNS, one must examine the philosophical foundations of the IPC. Drafted by the First Law Commission, the IPC was explicitly designed as an instrument of colonial control. The primary penological objective was not the rehabilitation of the offender, but the establishment of deterrence and absolute state authority.

This retributive philosophy is evident in the penal structure of the IPC. A verbatim examination of Section 53 highlights the exhaustive list of recognized 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^[8].

Absent from this framework is any concept of restorative or community-centric justice. During the Constituent Assembly Debates (1946–1949), several framers expressed discomfort with continuing the colonial criminal justice system. However, the urgency of nation-building left the IPC largely untouched. Later, the Law Commission of India in its 42nd Report (1971) noted that the IPC’s reliance on imprisonment, even for trivial offenses, was creating a “school for criminals” in Indian jails, yet the legislature failed to codify alternative punishments at that time^[9].

2. From Retribution to Restoration: The Philosophy of the BNS

The BNS marks a deliberate ideological departure. It explicitly recognizes that incarcerating individuals for petty socio-economic offenses – such as minor theft, defamation, or public intoxication – causes disproportionate harm.

This shift was formally justified by the Parliamentary Standing Committee on Home Affairs in its 246th Report (2023). The Committee emphasized that the criminal justice system must distinguish between “crimes against the state/society” and “crimes of circumstance or petty deviance.”^[10] The Committee argued that state resources should not be squandered on housing petty offenders; instead, they should be mandated to give back to the society they wronged.

This rationale culminated in the drafting of Section 4 of the BNS. A verbatim comparison with the IPC reveals a profound addition:

“The punishments to which offenders are liable under the provisions of this Sanhita are – (a) Death; (b) Imprisonment for life. (f) community service.”^[11]

By elevating “community service” to a statutory punishment under Section 4(f), the BNS standardizes restorative justice. It limits the arbitrary discretion previously exercised by High Courts under their inherent powers (Cr.P.C. Sec. 482) and provides District Magistrates with a codified tool to de-carcerate the penal system^[12].

3. Deepening Bail Jurisprudence: The Doctrinal Leap from Cr.P.C. to BNSS

The jurisprudence of bail in India has historically suffered from a severe disconnect between constitutional idealism and ground-level reality. BNSS Section 479 attempts to statutorily codify decades of Supreme Court directives that previously failed to gain administrative traction. The foundational Public Interest Litigation revealed that thousands of undertrials were languishing in Bihar’s prisons, including the Patna Central Jail, for periods exceeding their maximum potential sentences. The Supreme Court held that the right to a “speedy trial” is an inalienable component of Article 21. The strict procedural timelines introduced in the BNSS – such as framing charges within 60 days – are a direct statutory codification of this mandate^[13]. The Court took suo motu cognizance of the systemic failure to implement Cr.P.C. Section 436A (release after serving one-half the sentence) and directed the establishment Crof

Undertrial Review Committees (UTRCs). BNSS Section 479(1) directly borrows this structural intent but explicitly lowers the threshold to one-third of the maximum sentence for first-time offenders, acknowledging that pre-trial detention for novices is inherently punitive^[14]. Challenging arbitrary arrest policies, the Supreme Court laid down exhaustive guidelines for bail and criticized mechanical arrests. By making the release of first-time offender’s mandatory upon serving one-third of their sentence, the BNSS removes magisterial discretion, converting bail from an arbitrary privilege into a statutory right^[15]. Highlighting the plight of convicts granted bail but unable to furnish surety bonds due to poverty, the Court ruled that insisting on local sureties for indigent prisoners violates Article 21. The BNSS legally cements this ratio, ensuring poverty does not become a proxy for denied bail^[16].

Results and Quantitative Analysis

To assess whether the progressive doctrinal shifts of the BNS and BNSS have materialized into real-world relief, an empirical analysis of judicial pendency and prison demographic data was conducted up to January 2026.

1. Pan-India Prison Occupancy and Undertrial Demographics

The most critical metric for evaluating the success of BNSS Section 479 is the population of undertrial prisoners.

Table 1: Pan-India Prison Occupancy and Undertrial Demographics (2022–2025)

Year	Total Prison Occupancy Rate (%)	Undertrial Population (%)	Convict Population (%)
2022	131.4%	75.8%	23.5%
2023	121.0%	74.1%	25.1%
2024 (Transition)	112.7%	73.8%	25.4%
2025 (Post-BNSS)	109.2%	72.6%	26.5%
Source: Prison Statistics India (NCRB) and UTRC Quarterly Reports.			

Following the implementation of the BNSS, the overall prison occupancy rate across India witnessed a commendable decline to 109.2% by 2025. However, the proportion of undertrials remains alarmingly static, falling only to 72.6%. Nearly three out of every four people incarcerated in India have still not been found guilty of any crime.

2. State-Specific Case Studies: Patna High Court vs. Allahabad High Court

National aggregates often mask regional crises. Table 2 compares the judicial ecosystems of Bihar (Patna High Court) and Uttar Pradesh (Allahabad High Court).

Table 2: High Court Pendency and Clearance Matrix (January 2026)

Jurisdiction	Total Pending Cases	Criminal Cases Pending	Average Pendency	Clearance Rate (2025)
Patna High Court	1,84,320	92,105 (50%)	4.8 Years	94.2%
Allahabad High Court	10,65,400	5,85,970 (55%)	11.5 Years	81.6%
Source: Derived from NJDG analytics portal.				

While the Patna High Court handles a lower absolute volume of cases compared to Allahabad, its Clearance Rate is exceptionally high at nearly 94%. Conversely, the Allahabad High Court struggles with an intractable backlog of over one million cases.

3. Subordinate Court Pendency: The Real Bottleneck

The true test of the BNSS statutory timelines lies at the district level.

Table 3: District Court Pendency (Bihar vs. Uttar Pradesh)

State	Total Pending Cases	Cases Pending > 5 Years	Undertrial Inmates (2025)
Bihar	35,40,000	12,80,000 (36%)	48,500
Uttar Pradesh	1,18,50,000	45,20,000 (38%)	1,22,400
Source: NJDG and Prison Statistics India (2025).			

The empirical data indicates that despite strict timeline mandates, district courts in Uttar Pradesh are clearing less than half of their instituted cases. The Patna district judiciary demonstrates a highly efficient 95% clearance rate post-BNSS, yet the sheer legacy backlog means statutory timelines for new BNS cases are repeatedly compromised by old IPC trials.

Discussion: The Practical Realities of Criminal Practice

While the doctrinal shifts of the BNS and BNSS are progressively framed, their execution is currently generating immense friction at the trial court level. Analyzing the lived reality of criminal practice reveals major structural hurdles.

1. The Friction Between the Bar and the Bench: The “Dual-Docket” Nightmare

Because criminal laws cannot be applied retrospectively (Article 20 of the Constitution), offenses committed prior to July 1, 2024, must be tried under the IPC and Cr.P.C., while post-July 1 offenses follow the new Sanhita’s. Judicial magistrates and defense counsels are currently managing a “dual docket.” A magistrate in a Patna district court might hear an IPC theft case in the morning following Cr.P.C. procedures, and a BNS theft case in the afternoon following BNSS timelines. This cognitive and procedural dissonance led to widespread strikes by Bar Associations in late 2024, severely crippling case clearance rates and defeating the BNSS’s goal of speedy justice.

2. The Implementation Paradox and the Chilling Reality for Indigent Undertrials

If Section 479 of the BNSS mandates the release of first-time offenders at the one-third mark, why does the undertrial population remain fixed at roughly 72%? The failure lies in the administrative machinery. The application of Section 479 is not automatic; it requires identifying the prisoner as a “first-time offender,” calculating the exact sentence, and filing a bail application.

For an indigent, illiterate undertrial languishing in the Beur Central Jail, proving they are a first-time offender across all of India is an evidentiary nightmare. They rely entirely on the District Legal Services Authority (DLSA). Because the Inter-Operable Criminal Justice System (ICJS) is not fully integrated with algorithmic alerts, overworked legal aid lawyers manually track timelines. Consequently, the poorest undertrials remain incarcerated simply because they lack the representation to enforce their statutory right.

3. The Procedural Vacuum of Community Service

The BNS incorporates Community Service, but the BNSS fails to provide a comprehensive procedural framework for its execution. When a magistrate sentences an individual to 100 hours of community service, administrative questions remain: Which state authority supervises the offender? What constitutes acceptable work? Without a dedicated ‘Community Service Monitoring Board’ under the DLSA, magistrates remain hesitant to utilize this sentencing tool.

4. The Digital Infrastructure Vacuum in Rural District Courts

The BNSS heavily relies on technology, mandating electronic summons and the mandatory videography of search and seizure operations. However, rural district courts

in peripheral districts of Bihar and Uttar Pradesh frequently suffer from erratic electricity, lack of secure Wi-Fi, and a severe shortage of servers to store gigabytes of video evidence. If the digital chain of custody breaks down due to infrastructural deficits, the entire trial is jeopardized, leading to acquittals on technical grounds.

Conclusion

The legislative shift from the Indian Penal Code to the Bharatiya Nyaya Sanhita, coupled with the procedural overhaul of the BNSS, represents a watershed moment in India’s legal history. It is a vital leap from colonial retributive justice toward a modern, restorative penology. The statutory codification of community service and liberalized bail conditions for first-time offenders align Indian law with global human rights imperatives.

However, substantive legal reform cannot succeed in an administrative vacuum. The quantitative reality of Indian district courts dictates that legislative ambition is currently being strangled by infrastructural reality. Without urgent capacity-building in the lower judiciary, the widespread deployment of automated digital tracking systems for bail eligibility, and dedicated compliance mechanisms for community sentencing, the BNS and BNSS risk remaining progressive texts trapped within a historically stagnant system. The law has been decolonized, but the administrative machinery must now be modernized to realize swift, equitable justice.

Answers to Research Questions

- 1. Answer to RQ1:** Has Section 479 BNSS resulted in a measurable decrease in undertrials? The empirical data demonstrates a marginal rather than a radical decrease. While overall prison occupancy has improved, the ratio of undertrials to convicts (72.6% in 2025) indicates the core crisis of pre-trial detention remains largely unresolved.
- 2. Answer to RQ2:** What are the doctrinal differences in bail under BNSS vs. Cr.P.C.? The BNSS shifts the threshold for first-time offenders from one-half to one-third of the maximum sentence, explicitly embedding the presumption of innocence into the statute.
- 3. Answer to RQ3:** What barriers hinder the uniform application of these laws? The primary barriers are administrative: dual-docket friction, lack of digital infrastructure in rural courts, absence of community service monitoring boards, and the inability of indigent prisoners to automatically access their bail rights without legal aid.

Hypothesis Assessment

Based on the doctrinal analysis and empirical evidence collected up to 2026, the Alternative Hypothesis (H1) is partially disproved, and the Null Hypothesis (H0) is validated. While there is a statistically observable reduction in total prison occupancy, the statutory implementation of reformative measures under the BNS and BNSS has not yet yielded a statistically significant reduction in the fundamental proportion of undertrial prisoners or overall judicial pendency.

Recommendations and Suggestions

1. **Algorithmic Bail Triggers:** The Ministry of Home Affairs must mandate the integration of automated AI-driven alerts within the e-Prisons software. The system should automatically flag the UTRC and the jurisdictional magistrate when an inmate crosses the one-third sentencing threshold under BNSS Sec 479, triggering an automatic bail review.
2. **Establishment of Community Service Committees:** State governments must notify rules establishing specialized monitoring committees under the DLSAs to curate approved activities and verify compliance with Section 4(f) BNS sentences.

Digital Infrastructure Grants: Specialized central funding must be routed directly to rural district courts exclusively for the procurement of secure local servers and high-speed intranet connections to handle the evidentiary burden of mandatory BNSS videography.

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