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ADMONITION AND NON-CUSTODIAL SENTENCING IN INDIA AFTER THE NEW CRIMINAL LAWS - CONTINUITY, REFORM AND FUTURE DIRECTIONS

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I. ABSTRACT

The transition from the Code of Criminal Procedure, 1973 (CrPC) to the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) marks a significant moment in India's criminal justice reform. Yet, while procedural architecture has evolved, the foundational philosophy of non-custodial sentencing, particularly release after admonition and probation remains substantially rooted in the Probation of Offenders Act 1958 (POA). This article critically examines the concept of admonition as a sentencing response within Indian criminal law, tracing its philosophical, historical and statutory evolution. It analyses the present legal framework under the POA and BNSS, evaluates judicial trends, identifies structural and doctrinal lacunae, and situates admonition within contemporary debates on prison overcrowding, victim compensation and restorative justice. The article argues that although admonition remains normatively relevant in a reformative penal system, its practical marginalisation and institutional weaknesses undermine its transformative potential. It concludes with proposals for statutory harmonisation under BNSS, mandatory pre-sentence assessment mechanisms, integration with victim compensation schemes, and the institutional strengthening of probation services.

II. KEYWORDS

Admonition and Probation; BNSS 2023; Non-custodial Sentencing; Reformative Justice; Victim Compensation.

III. INTRODUCTION

Mahatma Gandhi's widely cited aphorism, "Hate the sin, not the sinner," captures the

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moral tension at the heart of criminal jurisprudence, namely how society may condemn wrongdoing without permanently condemning the wrongdoer. Indian criminal law has historically oscillated between retributive and reformative models, but contemporary sentencing jurisprudence increasingly recognises rehabilitation as a central objective.

The enactment of the Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS), replacing the Code of Criminal Procedure 1973, represents a structural overhaul of procedural criminal law. However, the philosophy underpinning non-custodial sentencing, especially probation and release after admonition, remains substantially anchored in the Probation of Offenders Act 1958 (POA).

Imprisonment as a default penal response has proven deeply problematic. *India's prisons remain chronically overcrowded. According to the National Crime Records Bureau's* Prison Statistics India 2022 report, Indian prisons had an overall occupancy rate of approximately 131%, with several states recording significantly higher figures, reflecting a persistent structural strain on custodial institutions. Empirical studies indicate that short-term imprisonment often exacerbates recidivism, particularly among first-time and youthful offenders. In this context, admonition, the mildest judicial response involving a formal warning without custodial or financial penalty represents the most liberal form of penal intervention.

This article explores whether admonition retains normative and practical relevance in post-BNSS India. It argues that although legally preserved, admonition suffers from doctrinal neglect, inconsistent judicial application, and institutional fragility. Without structural reform, its rehabilitative promise remains under-realised.

A. Research Objectives

1. To examine the conceptual and statutory foundations of release after admonition within Indian criminal law.
2. To analyse the relationship between the Probation of Offenders Act 1958 and the Bharatiya Nagarik Suraksha Sanhita 2023 in regulating non-custodial

sentencing.

3. To evaluate judicial interpretation and practical utilisation of admonition in contemporary sentencing practice.
4. To identify doctrinal and institutional limitations affecting the effective use of admonition.
5. To propose reforms for strengthening non-custodial sentencing within the post-BNSS criminal justice framework.

B. Research Questions

1. What is the legal and philosophical basis of admonition as a sentencing response in Indian criminal law?
2. How does the existing statutory framework under the Probation of Offenders Act 1958 operate alongside the BNSS 2023?
3. To what extent have courts utilised admonition as a reformative sentencing tool?
4. What structural and doctrinal challenges limit its practical effectiveness?

C. Research Methodology

This study adopts a doctrinal legal research methodology. It primarily analyses statutory provisions, including the Probation of Offenders Act 1958 and the Bharatiya Nagarik Suraksha Sanhita 2023, alongside judicial precedents of the Supreme Court and High Courts relating to non-custodial sentencing. Secondary sources such as academic literature, criminological scholarship, and policy reports including National Crime Records Bureau statistics are also examined to contextualise sentencing practices and institutional challenges.

IV. CONCEPTUAL FOUNDATIONS OF ADMONITION

Admonition, in legal terms, refers to a formal judicial warning delivered upon conviction,

without imposition of imprisonment or fine, while the conviction itself stands recorded. It differs from an absolute discharge in jurisdictions where conviction is not recorded.

In English law, analogous mechanisms existed under the Powers of Criminal Courts Act 1973 (now replaced by the Sentencing Act 2020), through provisions on absolute and conditional discharge. In the United States, diversion programmes developed in the 1960s and 1970s as alternatives to prosecution, particularly for non-serious offences. These schemes emphasised pre-trial diversion rather than post-conviction admonition, but the rehabilitative philosophy is comparable.

Similarly, Islamic jurisprudence recognised *ta'zir*, a discretionary category of punishment permitting private or public admonition as corrective discipline. Thus, admonition is not a modern innovation but reflects longstanding recognition that not all wrongdoing warrants incarceration.

Ancient Indian texts, including the *Dharmashastra*, recognised graded sanctions ranging from gentle admonition to corporal punishment. P V Kane notes that Manu and Yajnavalkya contemplated 'gentle reproof' as a legitimate punitive response. The conceptual continuity between ancient, graded punishment and modern admonition underscores its embeddedness in Indian legal culture.

V. STATUTORY FRAMEWORK IN CONTEMPORARY INDIA

The statutory foundation for release after admonition in India rests principally on the Probation of Offenders Act 1958 (POA), a legislation enacted to institutionalise reformative penology within the criminal justice system. Section 3 of the Act empowers courts to release certain offenders after due admonition instead of sentencing them to imprisonment or fine. The provision applies where the offender is found guilty of specified offences such as theft, dishonest misappropriation or cheating or of any offence punishable with imprisonment not exceeding two years, provided no previous conviction is proved. The discretion conferred upon courts is conditioned upon judicial satisfaction that, having regard to the circumstances of the case and the character of the

offender, it is expedient to release the person after admonition. This statutory design reflects a deliberate legislative choice to preserve incarceration as a last resort for minor, first-time offending.

The Supreme Court early recognised the transformative intent underlying the POA. In *Rattan Lal v State of Punjab*, the Court described the Act as a milestone in the shift from deterrent to reformative penology, observing that modern criminal jurisprudence increasingly rejects the view that imprisonment is the only effective response to crime. The Court emphasised that exposure to prison environments may convert minor offenders into habitual criminals, thereby frustrating long-term social interests. This reasoning resonates directly with the constitutional values embedded in Article 21 of the Constitution, which protects life and personal liberty against arbitrary deprivation. If deprivation of liberty must follow just, fair and reasonable procedure, as held in *Maneka Gandhi v Union of India*, then the sentencing stage where liberty is actually curtailed, must equally satisfy standards of fairness and proportionality.

Section 4 of the POA extends the reformative framework by authorising release on probation of good conduct. Unlike admonition under Section.3, probation under Section.4 may apply to a broader class of offences (excluding those punishable with death or life imprisonment) and typically involves supervision by a probation officer. The Supreme Court in *Mohd Giasuddin v State of Andhra Pradesh* articulated the philosophy of probation in explicitly constitutional terms, observing that the criminal law should be "therapeutic rather than deterrent" wherever possible. Krishna Iyer J emphasised that sentencing must be individualised and reform-oriented, particularly in cases involving socio-economic deprivation. This articulation reflects a substantive due process understanding of Article 21: punishment must not only be legally authorised but normatively justified.

The constitutional embedding of proportionality within jurisprudence of punishment and sentencing further strengthens the statutory framework of non-custodial measures. In *Mithu v State of Punjab*, the Supreme Court invalidated Section 303 of the Indian Penal

Code, 1860, which mandated the death penalty for certain categories of offenders, on the ground that it deprived courts of sentencing discretion and thereby produced arbitrary and disproportionate outcomes. The Court held that mandatory punishment without consideration of mitigating circumstances violates Article 21. Similarly, in *Bachan Singh v State of Punjab*, while upholding the constitutionality of the death penalty, the Court confined its application to the "rarest of rare" cases, thereby constitutionalising proportionality and individualised sentencing. These decisions establish that punishment must correspond not only to the gravity of the offence but also to the culpability and circumstances of the offender. Admonition, when applied in appropriate cases, represents the most proportionate penal response within this constitutional framework.

Judicial decisions concerning the interplay between the POA and procedural law further clarify the statutory landscape. Under the Code of Criminal Procedure 1973 (CrPC), Section 360 provided for release on probation or admonition in certain circumstances. However, in *Chhanni v State of Uttar Pradesh*, the Supreme Court held that where the Probation of Offenders Act is in force, its provisions override those of the CrPC. The Court reasoned that the POA constitutes a special legislation reflecting a more comprehensive rehabilitative policy and therefore must prevail over general procedural provisions. This interpretive approach ensures coherence and prevents dilution of reformative objectives. The same principle applies under the Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS), which replaces the Code of Criminal Procedure 1973. The probation-related framework earlier reflected in Section 360 of the CrPC is now substantially reproduced in Section 401 of the BNSS, which empowers courts to release certain offenders on probation of good conduct or after admonition. The BNSS does not repeal the Probation of Offenders Act 1958; rather, it operates alongside it The BNSS does not repeal the POA; rather, it operates alongside it. Consequently, the constitutionalised understanding of sentencing discretion developed under the CrPC continues to inform the operation of the POA within the new procedural regime.

The Supreme Court has repeatedly emphasised that probation and admonition should not be granted mechanically but must be grounded in principled judicial reasoning. In *Dalbir Singh v State of Haryana*, the Court cautioned that in offences involving rash and negligent driving causing death, undue leniency may undermine deterrence and public confidence in the justice system. The Court stressed that sentencing must balance reformative considerations with societal interests. Likewise, in *State of Haryana v Jagdish*, the Court held that probation may be inappropriate in cases involving serious moral turpitude or corruption, even where statutory eligibility exists. These decisions demonstrate that proportionality under Article 21 operates bidirectionally: excessive severity violates liberty, but undue leniency may compromise equality and the rule of law.

Conversely, in cases involving youthful or first-time offenders, the Court has favoured rehabilitative responses. In *Abdul Qayum v State of Bihar*, the Supreme Court directed release on probation for a young offender convicted of pickpocketing, emphasising the need to prevent contamination through prison association. Similarly, in *Soman v State of Kerala*, the Court underscored that sentencing must reflect not only the crime but also the criminal, and that mechanical imposition of custodial punishment is inconsistent with modern penology. These decisions reflect the maturation of Indian sentencing jurisprudence from rigid statutory application toward constitutionalised discretion anchored in proportionality.

The Juvenile Justice (Care and Protection of Children) Act 2015 further reinforces the reformative ethos embedded in the POA. The Juvenile Justice framework prioritises counselling, community-based rehabilitation and diversion over incarceration. The Supreme Court has consistently interpreted juvenile justice legislation in light of Article 21's protection of dignity and developmental potential. Although the Juvenile Justice Act applies specifically to children in conflict with law, its philosophy underscores a broader constitutional insight: deprivation of liberty must be exceptional and justified by necessity. This insight applies equally to adult first-time offenders eligible for admonition

under the POA.

When viewed through the lens of Article 21, the statutory framework governing admonition and probation reflects an implicit constitutional commitment to minimal penal intervention. Proportionality requires that the state adopt the least restrictive measure sufficient to achieve legitimate penological objectives. In minor offences committed without premeditation by first-time offenders, incarceration may constitute excessive deprivation of liberty inconsistent with substantive due process.

Admonition, by contrast, preserves the expressive function of criminal law *i.e.* public condemnation of wrongdoing without imposing the criminogenic and stigmatic consequences of imprisonment. It is thus not an act of indulgence but a constitutionally defensible calibration of state power. The post-BNSS landscape does not substantially alter this framework but heightens the need for doctrinal clarity. As procedural law is modernised, sentencing discretion must remain anchored in constitutional principles. The challenge lies not in expanding judicial benevolence, but in structuring discretion so that both incarceration and admonition are subjected to rigorous proportionality analysis. Only then can the statutory promise of the Probation of Offenders Act be fully realised within India's evolving constitutional order.

VI. STRUCTURAL AND DOCTRINAL CHALLENGES

Despite its strong statutory and constitutional foundations, the practical operation of release after admonition under the Probation of Offenders Act 1958 (POA) reveals significant structural and doctrinal weaknesses that limit its transformative potential. One of the most striking features of Section 3 of the Act is the absence of a mandatory requirement for a pre-sentence report. Unlike Section 4, which contemplates supervision and typically involves the probation machinery, Section 3 permits release after admonition without institutional assessment of the offender's socio-economic background, psychological disposition or rehabilitative prospects. Courts are required to consider the "circumstances of the case" and the "character of the offender", yet no statutory mechanism compels consultation with a probation officer prior to granting

admonition. This creates a structural asymmetry: judges are expected to evaluate character and reformative potential without the benefit of professional input. In contemporary society marked by rapid urbanisation, digital anonymity and internal migration such informal judicial assessment may be inadequate. The absence of structured pre-sentence inquiry risks reducing admonition either to mechanical leniency or to underutilised discretion, thereby undermining both proportionality and consistency in sentencing.

The institutional fragility of probation services further compounds this challenge. Although the Supreme Court in *In Re: Inhuman Conditions in 1382 Prisons* underscored the urgent need to reduce overcrowding and expand non-custodial measures, the infrastructure required to operationalise such measures remains uneven and underdeveloped across states. Probation services suffer from inadequate staffing, inconsistent training standards and limited coordination between judicial and executive authorities. Empirical assessments and policy discussions have repeatedly highlighted shortages of probation officers across several states and the absence of specialised training infrastructure.

The Law Commission of India has also noted that the effective implementation of reformative sentencing requires a strengthened probation system with adequate personnel and professional training. In many jurisdictions, probation officers remain overburdened and lack specialised training in social work or behavioural assessment. This institutional weakness diminishes judicial confidence in probation mechanisms and indirectly incentivises custodial sentencing, even in cases where statutory eligibility for admonition or probation exists. As the Supreme Court has repeatedly emphasised, sentencing discretion must be exercised with sensitivity to reformative objectives and not merely in retributive terms.

Another significant doctrinal concern relates to the integration of victim compensation and restorative justice within the framework of admonition. Section 5 of the POA and the compensation provisions now reflected under the Bharatiya Nagarik Suraksha Sanhita

2023 empower courts to award compensation to victims. In addition, statutory victim compensation schemes have been framed by State Governments pursuant to Section 357A of the Code of Criminal Procedure 1973 (now reflected in Section 398 of the Bharatiya Nagarik Suraksha Sanhita 2023). These schemes provide structured mechanisms for compensating victims of crime through state-administered funds. The Supreme Court in Ankush Shivaji Gaikwad v State of Maharashtra held that courts are duty-bound to apply their mind to the question of compensation in every criminal case and must record reasons where compensation is not awarded. Yet in practice, orders releasing offenders after admonition rarely incorporate compensation directives. This omission weakens the expressive and restorative dimensions of non-custodial sentencing. Modern sentencing philosophy increasingly recognises that justice must address not only the offender's rehabilitation but also the victim's loss and dignity. Admonition, when unaccompanied by restitution or structured accountability, risks being perceived as undue leniency rather than proportionate justice. Conversely, structured admonition coupled with compensation and community engagement can embody a balanced model of restorative accountability consistent with constitutional proportionality under Article 21.

Public perception and legitimacy present additional challenges. Critics argue that excessive resort to admonition may erode deterrence, particularly in economic offences such as theft or cheating. However, empirical criminological scholarship suggests that certainty of detection and conviction exerts a greater deterrent effect than severity of punishment. Excessively harsh sentences for minor offences may not enhance deterrence but may instead contribute to prison overcrowding and recidivism. The legitimacy of the criminal justice system depends not merely on severity but on fairness, consistency and proportionality. The Supreme Court in *Soman v State of Kerala* emphasised that sentencing must reflect a principled balancing of competing objectives, including deterrence, retribution and rehabilitation. When applied judiciously, admonition may reinforce rather than undermine public confidence by demonstrating that the state exercises penal

power with restraint and rationality.

These structural and doctrinal concerns must be situated within the broader context of prison overcrowding in India. Data from the National Crime Records Bureau's *Prison Statistics India 2022* report reveal occupancy rates exceeding sanctioned capacity in several states. Although a significant proportion of inmates are undertrials, convicted prisoners serving short-term sentences also contribute to systemic congestion. Short custodial terms for minor offences often disrupt employment and family structures while exposing first-time offenders to criminogenic influences within prison environments. The Supreme Court has recognised that incarceration for minor offences may do more harm than good and has encouraged the use of alternatives to imprisonment wherever appropriate. Such reasoning aligns directly with Article 21 jurisprudence, which requires that deprivation of liberty must be proportionate, fair and necessary.

Within this context, admonition assumes renewed significance as a pragmatic and constitutionally defensible response to minor criminality. It preserves the denunciatory function of criminal law while avoiding the social and institutional costs associated with imprisonment. By preventing unnecessary custodial exposure, admonition may reduce the risk of recidivism and alleviate pressure on overcrowded prisons. However, the absence of structured sentencing guidelines and uniform implementation practices limits consistent adoption. While appellate courts frequently endorse non-custodial measures in suitable cases, trial courts often hesitate to invoke Section 3 of the POA, either due to lack of institutional support or concern about public criticism. This inconsistency undermines the systemic role that admonition could otherwise play in rationalising penal policy.

Ultimately, the challenges confronting admonition are not conceptual but structural. The statutory framework reflects a reformative and proportionate vision aligned with constitutional values under Article 21. Yet without mandatory pre-sentence assessment, integration of victim compensation, professionalised probation services and clearer sentencing guidance, admonition risks marginalisation. In an era marked by

overcrowded prisons and evolving constitutional jurisprudence, revitalising non-custodial sentencing is not merely a matter of policy preference but of systemic necessity. A criminal justice system committed to proportionality and dignity must ensure that imprisonment remains a measure of last resort, and that alternatives such as admonition are implemented with rigour, transparency and principled consistency.

VII. REFORM PROPOSALS IN THE POST-BNSS FRAMEWORK

The continued relevance of admonition and probation within India's sentencing architecture depends not merely upon their statutory existence, but upon their structural refinement and principled integration within the post-BNSS criminal justice framework. Although the Bharatiya Nagarik Suraksha Sanhita 2023 has modernised procedural criminal law, it has not substantially restructured the administration of non-custodial sentencing. Consequently, meaningful reform must occur at both legislative and institutional levels to ensure that admonition operates as a constitutionally coherent and practically effective sentencing alternative.

A primary area requiring reform concerns the absence of mandatory pre-sentence assessment in cases where release after admonition is contemplated under section 3 of the Probation of Offenders Act 1958 (POA). Unlike section 4, which typically involves probation supervision and often necessitates a pre-sentence report, section 3 allows release after admonition without structured inquiry into the offender's background, socio-economic circumstances, psychological disposition or rehabilitative potential. In contemporary sentencing jurisprudence, informed discretion is essential to ensure proportionality under Article 21 of the Constitution. The Supreme Court in *Maneka Gandhi v Union of India* established that any deprivation of liberty must follow a just, fair and reasonable procedure. Sentencing, as the stage at which liberty is curtailed, must therefore satisfy substantive fairness. The Court's decisions in *Mithu v State of Punjab* and *Bachan Singh v State of Punjab* further constitutionalised proportionality in punishment by rejecting arbitrary and mandatory sentencing frameworks. Without professional assessment, judicial determination of "character" and "circumstances" risks

inconsistency and arbitrariness. Introducing a statutory requirement for a brief pre-sentence assessment in all cases where admonition is proposed would strengthen judicial reasoning and align section 3 with constitutional due process.

Equally important is the systematic integration of victim compensation and restorative engagement within admonition orders. The Supreme Court in *Ankush Shivaji Gaikwad v State of Maharashtra* clarified that courts are duty-bound to consider compensation in every criminal case and must record reasons where compensation is not awarded. The constitutional dimension of victim compensation has also been recognised as part of fair procedure under Article 21. Yet in practice, release after admonition frequently occurs without meaningful engagement with the victim's interests. In a justice system increasingly attentive to victimology, sentencing cannot remain exclusively offender centric. Structured admonition accompanied by compensation or restitution would reflect a balanced model of accountability consistent with modern sentencing theory.[34]

Legislative harmonisation between the BNSS and the POA is another pressing necessity. Judicial precedent has clarified that where the POA is in force, it prevails over general procedural provisions. However, interpretive uncertainty persists at the trial court level following the transition from the Code of Criminal Procedure 1973 to the BNSS. Express legislative clarification would prevent inconsistent application and reinforce reformative sentencing objectives. Sentencing discretion must be channelled, not replaced, and clarity regarding statutory hierarchy would promote coherence in judicial practice.

Institutional reform must also address the professionalisation of probation services. The Supreme Court in In Re: Inhuman Conditions in 1382 Prisons emphasised the need to expand non-custodial measures to address overcrowding. However, probation infrastructure remains uneven across states. A national framework for training probation officers, drawing inspiration from the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules), would modernise administration and enhance rehabilitative outcomes. In particular, Rules 10–14 of the Tokyo Rules, which address supervision, conditions of non-custodial measures and the responsibilities of competent

authorities, emphasise the importance of professional oversight and structured supervision in implementing community-based sanctions. Improved training in criminology, behavioural assessment and restorative justice would strengthen judicial confidence in non-custodial alternatives and ensure that probation is not perceived as a mere formality.

Finally, the absence of structured sentencing guidelines in India contributes to inconsistency in the application of admonition. The Supreme Court in *Soman v State of Kerala* underscored the need for principled and individualised sentencing. Yet without broader sentencing guidance, disparities persist. Structured guidelines identifying categories of offences and offender profiles where admonition is presumptively appropriate subject to recorded reasons would enhance transparency and proportionality. Such reform would align Indian sentencing practice with comparative jurisdictions that have institutionalised sentencing guideline frameworks.

For instance, in the United Kingdom the Sentencing Council issues structured sentencing guidelines that courts are statutorily required to consider, thereby promoting consistency and proportionality in sentencing decisions. Similarly, the United States Federal Sentencing Guidelines provide a structured framework that assists courts in determining proportionate penalties based on offence seriousness and offender characteristics. These models illustrate how structured guidance can enhance transparency and reduce disparities while preserving judicial discretion. By articulating clear parameters, the criminal justice system can reduce arbitrariness while preserving judicial discretion consistent with Article 21.

In sum, reform in the post-BNSS era must move beyond symbolic endorsement of non-custodial sentencing toward structural consolidation. Mandatory pre-sentence assessment, integration of victim compensation, legislative harmonisation, professionalised probation services and structured sentencing guidance collectively form a coherent reform agenda. These measures would ensure that admonition functions not as ad hoc leniency but as a principled, proportionate and constitutionally grounded

sentencing response. In an era marked by prison overcrowding and expanding Article 21 jurisprudence, strengthening non-custodial sentencing is essential to preserving both liberty and legitimacy within India's criminal justice system.

VIII. CONCLUSION

Admonition represents the most restrained form of penal censure; a judicial warning grounded in faith in human tendency of reform. In post-BNSS India, its statutory foundation endures, but its operational vitality is uncertain. If integrated with structured assessment, victim compensation and professional supervision, admonition can serve as a meaningful instrument of reformative justice. If applied mechanically or sparingly, it risks irrelevance.

The transition to the BNSS offers an opportunity not merely for procedural modernisation but for substantive rethinking of sentencing philosophy. In a system burdened by overcrowded prisons and delayed trials, non-custodial responses such as admonition are not signs of weakness but indicators of maturity in criminal jurisprudence.

Reformative justice is not antithetical to accountability; rather, it redefines accountability in socially constructive terms. Admonition, properly structured, affirms both societal condemnation of crime and belief in the offender's capacity for change.

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