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# CONCEPT OF COMMUNITY SERVICE AS PUNISHMENT UNDER BNS, 2023-A BOON OR A BANE?

- Srishti Rohilla<sup>1</sup>

## ABSTRACT

The fundamental tenets of Indian criminal law were established by the IPC, 1860. The retributive principle—punishing the criminal and compensating the victim—was the foundation of the IPC's historical emphasis on punitive measures. In order to serve as retribution and a deterrence to future offenses, this principle is predicated on the notion that the penalty ought to be commensurate with the offense committed. But Bharatiya Nyaya Sanhita, 2023 accepts a more comprehensive viewpoint and acknowledges the shortcomings of these methods. The implementation of community service as a form of discipline represents a shift away from the traditional understanding of punishment as merely a kind of retribution. Rather, the focus is on communal harmony restoration, rehabilitation, and reintegration. By incorporating community service into the Indian legal system, we can work towards fostering a more just and inclusive society where offenders are provided with opportunities to make amends and contribute positively to their communities. Though, the introduction of community service represents a progressive approach as has already been observed in many parts of the world however, addressing logistical and procedural challenges will be crucial in realizing its potential to combine justice with community welfare effectively. Several obstacles must be overcome, including public acceptance, effective implementation, disagreements among judges, ongoing monitoring, and the need to develop a completely new system. To achieve its full potential, efforts must focus on raising awareness, enhancing infrastructure, and ensuring equitable access to community-based alternatives across different regions

Keywords: Community Service, Bhartiya Nyaya Sanhita, Retributive, Reintegration, Communal harmony.

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## INTRODUCTION

For humans, the idea of punishment has existed since the dawn of time. Humans were initially exposed to punishment through religious spiritual texts that presented the ideas of heaven and hell. The punishment prevalent in ancient India was primarily of deterrent and retributive nature. It was believed that the only social control mechanism for crimes committed in the kingdom is punishment, and it must be cruel, sadistic, and relentless. As a result, ancient Indian punishments were cruel and agonizing. Human rights and human life were not taken into consideration. This barbaric nature of punishment continued even in the medieval period. The punishments during these periods included hanging, whipping, branding, mutilation, flogging and starvation to death. In the colonial era, in liberal spirit of reducing archaic forms of discretionary authority and differences in status the British enacted the Indian Penal Code, 1860, providing the statutory offences and punishments. It is commendable that the code eliminated cruel native penalties. Gradually the objective of punishment changed from traditional to deterrence and reformation.<sup>2</sup>

The Indian Penal Code 1860, provided for punishments of death penalty, life imprisonment, imprisonment simple or rigorous, forfeiture of property and fine.<sup>3</sup> There was no such provision for the concept of Community Service. However, the recommendations for its inclusion was made but it was not implemented.

For the first time “Community Service” as a form of punishment explicitly was introduced in BNS, 2023. It is widely accepted that community service sentencing is a novel strategy for reintegrating, re-amalgamating, and reintegrating the criminal or offender into society. In the Indian setting, the imposition of a community sentence is still very new and highly subjective.

## RESEARCH OBJECTIVES

1. To learn about the scope and implementation of community service.
2. To look into the difficulties the court may have when it comes to community service punishment.
3. To ascertain how the community service punishment affects both society and the offenders.

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<sup>2</sup> Gupta, Divyanshi (2024) 'Punishments under Indian Criminal Law: Current Scenario' <https://articles.manupatra.com/article-details/Punishments-under-Indian-Criminal-Law-Current-Scenario>

<sup>3</sup> Indian Penal Code.1860.s.53.

4.To determine whether community service sentencing helps offenders reintegrate into society.

## **RESEARCH QUESTIONS**

- 1.What is the nature and ambit of community service sentencing in Indian penal system?
- 2.Can community service sentencing result in declining rate of recidivism rates?
- 3.What are the possible challenges which can occur in implementing community service sentencing?
- 4.Does community service sentencing be able to bring positive change in attitudes and behaviors of offenders?

## **RESEARCH METHODOLOGY**

The research is purely doctrinal in nature. In order to demystify the issues that appear to be widespread, it places a strong emphasis on analyzing potential explanations and results from a variety of texts, articles, and studies. The research further integrates itself into the laws and expands upon pertinent literature on the issue. Also, a comparative study of different countries has been made as a part of this research paper.

## **COMMUNITY SERVICE AS A FORM OF DISCIPLINE**

Community sentencing, also known as non-custodial sentence or community service, is a legal framework that permits judges to punish offenders in ways other than traditional incarceration. In order to address the root causes of criminal behaviour and aid in the reintegration of criminals into society, this type of sentencing places more focus on rehabilitation than punishment. Following are some of the scenarios in which community service as punishment may be assigned:

- 1.Nonviolent offences
- 2.Juvenile cases
- 3.Traffic offences
- 4.As a probation condition
- 5.Financial hardship
- 6.Substance abuse related offences

Offenders who get community sentencing may be expected to complete a predetermined number of hours of unpaid labor in the community, take part in rehabilitation programs, or follow

particular behavioral guidelines. Reducing prison congestion, recidivism rates, and promoting restorative justice—which aims to mend the harm caused by criminal behavior—are the main objectives of community sentencing.

According to a research, community sentencing may be a more effective way to encourage long-term behavioral change than jail. According to studies, people who perform community service typically have lower recidivism rates than those who serve jail time. This is partially because of the focus on rehabilitation and the chance for offenders to build wholesome relationships in their communities. Community sentencing also helps the criminal justice system and society at large by reducing the administrative and financial strains of jail.

In India, the concept of community service sentence is not widely accepted. Only the Juvenile Justice Act of 2015 made reference to it. Section 18(1)(c) of the act provides that a delinquent in conflict with law can be awarded community service if the Juvenile Justice Board deems it proper.

However, earlier attempts were made to include community service as punishment in IPC but were in vain. An amendment bill known as the "Indian Penal code (Amendment) bill of 1978" was introduced in the parliament in 1978 with the intention of considering some other forms of punishment, such as community service, which were proposed to be included in section 53 of the Penal Code of 1860.

The Apex Court has stressed in a number of rulings that when punishing a condemned individual, the reformatory approach should be attempted wherever possible rather than using deterrent punishment. Consequently, the Law Commission recommended in its 156th report that the following extra form of punishment be added to or used in place of incarceration in the Penal Code<sup>4</sup>:

1. community service;
2. removal from office;
3. injunction to pay reparation;
4. public censure;

Defined in new criminal law under Section 23 of the Bhartiya Nyaya Suraksha Sanhita, 2023, Community Service means “the work which the Court may order a convict to perform as a form

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<sup>4</sup> 156th Law Commission of India Report, The Indian Penal Code, (1997) <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081040.pdf>

of punishment that benefits the community, for which he shall not be entitled to any remuneration.”.

Section 4, Chapter II of BNS, 2023 provides the statutory punishments which includes community service as one form of it. Community Service is a tool adopted by the penal policy of India explicitly to deter those who are guilty of commission of crime but also to let them repay them to the society, i.e. the tenets of the expiatory theory of punishment is incorporated expressly.

The BNS has introduced community service in addition to imprisonment or fine as a form of punishment for the following six offences:

Section 202: Public servant unlawfully engaging in trade

“Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both or with community service.”

Section 209: Non-appearance in response to a proclamation under section 84 of BNSS, 2023

“Whoever fails to appear at specified date and specified time as required by a proclamation under section 84(1) of BNSS, shall be punished with imprisonment for a term which may extend to three years or with fine or with both or with community service.”

Section 226: Attempt to commit suicide to compel or restrain exercise of lawful power

“Whoever attempts to commit suicide with intent to compel or restrain any public servant from discharging his official duty shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both or with community service.”

Section 303(2) proviso: Theft where the value of the stolen property is less than five thousand rupees and a person is convicted for the first time and returns or restores the value of property.

Section 355: Misconduct in public by a drunken person.

“Whoever in a state of intoxication appears in public place or in any place which is a trespass in him to enter and there conducts himself in such a manner as to cause annoyance to any person shall be punished with simple imprisonment of twenty four hours or with fine which may extend to one thousand rupees or with fine or with both or with community service.”

Section 356(2): Defamation

“Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years or with fine or with both or with community service.”

## **COMMUNITY SERVICE AS PUNISHMENT IN OTHER COUNTRIES**

United States of America: Community service as a formal sentencing option began gaining traction in the mid-20th century. It began in California in 1960. The service included cleaning litter from parks and playgrounds, sweeping in public places, serving at hospitals and social service centres, providing educational support to children in underserved schools, restoration projects etc. . In 2022, a total of 1, 203 offenders were placed on community service, with the sentences boasting an impressive success rate of 80%

United Kingdom: In 1972, the Criminal Justice Act of 1972 made community service a sanction in England. The title of the punishment is 'Community Payback Order'. The statute's rules are provided in Sections 15-19. One is required to perform unpaid labor that promotes community welfare and improvement as part of the punishment. The three main goals of requiring community services are to: Correct the faults done by society; Encourage criminals to associate with society on normal terms; to erect a barrier in order to prevent future offenses. According to a report 69, 491 community service orders has been passed in 2022.

Australia: In Australia, the criminal court system frequently uses community service as a kind of punishment. Courts usually impose it as a component of a sentence, either alone or in combination with other sanctions like fines or incarceration. The purpose of community service orders (CSOs) is to spare criminals from jail time while allowing them to give back to the community. Community service is commonly used for non-violent, less severe crimes such as petty theft, vandalism, minor drug offenses or those who have no previous criminal record The work is usually supervised by an organization or government agency, such as Corrective Services. Offenders are usually required to complete their community service within a specified period, typically between 6 months to a year. The use and structure of community service orders may vary across different states and territories in Australia. For example, New South Wales, Victoria, and Queensland may have slightly different processes for implementing and supervising community service orders.

Nordic Countries: There are various ways to perform community service. It is regarded as a separate sanction in Finland and Norway. However, community service is linked to probation or conditional incarceration in Sweden and Denmark. In Finland, a brief community service order (or "CSO") may be added to conditional prison sentences longer than a year. Community service

may be coupled with fines and unconditional incarceration in Denmark. The maximum number of community service hours varies from 240 to 420 across the Nordic countries.

Spain: Article 49 of Spain's 1995 Criminal Code stipulates that an offender may complete up to eight hours of community service, which consists of certain public utility tasks that may be related to the offense they committed. The duration of community service can vary from 31 to 180 days for less severe sanctions. Additionally, the Spanish Criminal Code stipulates that community service activity cannot be performed in a way that compromises the inmate's dignity or serves to advance financial benefit.<sup>5</sup>

## **NEED OF COMMUNITY SENTENCING IN INDIA**

When we look into India's criminal justice system, we come across various challenges that are inhabited in such a way that it becomes necessary for better justice that a well defined, effective system of community sentencing be introduced. Concerns over India's criminal justice system have increased recently, which is consistent with a concerning trend in the Rule of Law Index. As of 2023, India's ranking has been progressively dropping, and it is currently 79th out of 142 countries. Denmark is at the top of the list<sup>6</sup>. India's position in the criminal justice system is quite concerning, since it is ranked only 93rd out of 142 nations.

One of the biggest problems Indian prisons are dealing with is overcrowding. According to Prison Statistics India 2022, the jail occupancy rate increased to 131.4% in 2022. The number of prisoners in jails increased by 14% from 4.8 lakh in 2020 to 5.5 lakh as of December 31, 2021. The average prison overcrowding rate in the country rose from 119% in 2019 to 130% as a result

The authorized annual budget for prisons increased by 66.1%, from Rs 5.25 crores to Rs 8.73.23, between 2017–18 and 2022–23. Real spending increased by 63.7% from Rs 4.75 crores in 2017–18 to Rs 7.78 crores in 2022–23. Indian prisons lack the facilities and infrastructure necessary to accommodate the overpopulation of convicts<sup>7</sup>. The High Court decided in Pappu Khan v. State of Rajasthan<sup>8</sup> that a welfare state cannot sustain a sizable, ineffectual prison population due to the financial strain it places on the government. Because it would lead to fewer convictions, community sentencing for minor and petty offenses may drastically reduce the amount of money spent on prisoners.

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<sup>5</sup> Agarwal, Mitali(2019) 'Beyond the prison bars: Contemplating Community Sentencing in India' (2019) 12 NUJS Law<sup>3</sup> <https://nujlawreview.org/wp-content/uploads/2019/10/12>.

<sup>6</sup> World Justice Report <https://worldjusticeproject.org/rule-of-law-index/global>

<sup>7</sup>National Crime Records Bureau, Prison Statistics India 2022 (2023)

<sup>8</sup> 1999

Another major worry is how prisoners are treated, especially those who are first-time offenders. Because of the hardships of overcrowding, isolation, deprivation, and exposure to the cruel conditions of prison life, incarceration can have a long-lasting effect on an inmate's physical and mental health. Suicidal thoughts, substance abuse disorders, depression, and PTSD are common among prisoners.

When small or minor offenders are exposed to seasoned criminals, it can have a detrimental effect on them and leave them damaged even after their terms are up. It has been shown that those convicted of minor offenses may go on to commit more serious crimes after interacting with seasoned offenders.<sup>9</sup> Therefore, instead of being a tool for rehabilitation, incarceration encourages the development of prison gangs and other criminal activities, which can be stopped by using an alternative kind of discipline.

Because of the internalization of prison culture and the social stigma associated with serving time, incarceration also has a catastrophic effect on one's sense of self-worth. The process of reintegrating into society after jail is difficult because to the extreme material deprivation as well as the fear, loneliness, shame, and unease that come with being among criminals when they are released.<sup>10</sup>

## **ACTIVE ROLE OF JUDICIARY IN IMPLEMENTING COMMUNITY SERVICE SENTENCING**

The transition from the conventional retributive approach to the reformatory one has also been shown by the judiciary.

### **STATE V SANJEEV NANDA (2012)**

The Ministry of Social Justice and Empowerment will arrange for the accused to perform community service for two years within two months as ordered by the court. He will be subject to two years of simple jail upon default

### **PARVEZ JILANI SHAIKH V. STATE OF MAHARASHTRA (2015)**

The Court ordered the accused to render community service at B.A.R.C Hospital.

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<sup>9</sup> Gouri, V M(2024)' Out of the Cell: Introduction of Community Service as an Alternative Form of Punishment in India'Jus Corpus Law Journal

<sup>10</sup> ibid

## SUNITA GANDHARVA V. STATE OF MADHYA PRADESH (2020)

The Court ruled that, in accordance with Section 437(3) of the Criminal Procedure Code, 1973 (CrPC), the accused may be subject to "any other conditions in the interest of justice" through community service and other relevant reformatory measures. These measures may also be innovative, but they must be in accordance with the accused's ability and willingness.

## MANOJ KUMAR V. STATE (GOVT. OF NCT OF DELHI) (2022)

For a month, the offender was ordered by the court to perform community service at Lok Nayak Jai Prakash Narayan Hospital on Saturdays and Sundays.<sup>11</sup>

## **FUTURISTIC PANORAMA OF COMMUNITY SERVICE SENTENCING IN INDIA**

In addition to being beneficial for rehabilitation, the implementation of community service punishment will also decrease jail overcrowding and divert the trend away from locking people up. The goal of community service is to mark a constructive change and equilibrium to a new justice model that will enable the offenders to grow as individuals by providing their services and support. Giving is regarded as the greatest blessing that a person can receive, and if a criminal chooses to give, he is already confessing his faults and making amends.<sup>12</sup>

Having so many advantages and producing positive results still community service sentencing has to face many challenges in its implementation in India. First of all, the BNS and BNSS's ambiguous definition and explanation of community service create ambiguity and uneven execution. Also, none of them provide any guidelines for its administration and consequences for non-performance. Second, the potential of corruption or misuse in the administration of community service is not sufficiently addressed by the BNS. Thirdly, Rich people may use their money to evade punishment through bribery or undue influence if there are weak oversight procedures and lax sanctions for wrongdoing. Fourthly, there is often a lack of public awareness regarding community sentencing, leading to skepticism about its effectiveness.<sup>13</sup> However, the aspect of deterrence may not be as strong because community sentencing is more agreeable than incarceration, as there is no need to worry about the terrible conditions of prison or the payment of large fines which may result in increasing rate of recidivism.

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<sup>11</sup> . Community Service under BNS <https://www.drishtijudiciary.com/to-the-point/bharatiya-nyaya-sanhita-&-indian-penal-code/community-service-under-bns>

<sup>12</sup> <https://www.whiteblacklegal.co.in/public/uploads/issues/735333825>.

<sup>13</sup> <https://theamiksqriae.com/introduction-of-community-service-as-a-punishment-in-india-bhartiya-nyaya-sanhita-reforms>

## SUGGESTIONS

- 1.The term community service sentencing must be given proper legal definition as to what constitutes it. its proper undergoing term and consequences on its nonperformance.
- 2.There must be strict supervision of the activities through some agencies under community service sentencing as lack of proper supervision might relapse the offenders into criminal activities.
3. Campaigns to raise public knowledge of the advantages of community service through case studies and success stories are required to boost acceptance and trust in the practice.
- 4.Proper criteria should be clearly and concisely laid down for the determination of offenders suitable for community service sentencing.

## CONCLUSION

With the official inclusion of community service in the penal laws, a new system is emerging in India that will primarily increase the potential for restorative justice to flourish. It will be necessary to define and ring-fence the scope of community service projects. This method, based on the principle of “hating the crime, not the criminal,” is in line with the restorative values upheld by thinkers such as Gandhi.<sup>14</sup> By giving prisoners options for reformation through supervised labor and community engagement and making sure that the sentence is suitable for the offense, this strategy aims to end the cycle of crime. However, extensive legislative changes are also necessary for the effective integration of community sentencing into the Indian criminal justice system, as is a change in public perceptions of punishment and rehabilitation. To encourage the implementation of community service orders as an alternative to incarceration, the court, legislative branches, and civil society organizations must collaborate. By passing strict laws, thoroughly observing their application, and embracing restorative justice, India may set the stage for a more compassionate, effective, and equitable criminal justice system that safeguards the rights of both victims and offenders.

## REFERENCES

1. 1.Sharma, Priya(2024)'Assessing Community Service Implementation as Punishment in India:Is it truly Punitive?'NULAS Law Journal

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<sup>14</sup> .Sharma, Priya(2024)'Assessing Community Service Implementation as Punishment in India:Is it truly Punitive?'NULAS Law Journal

2. Gupta , Divyanshi (2024)'Punishments under Indian Criminal Law:Current Scenario'  
<https://articles.manupatra.com/article-details/Punishments-under-Indian-Criminal-Law-Current-Scenario>
3. [https://www.amoghvarta.com/uploads/current\\_issue/1716030131ommunity-Service-An-Alternative-form-of-Punishment.pdf](https://www.amoghvarta.com/uploads/current_issue/1716030131ommunity-Service-An-Alternative-form-of-Punishment.pdf)
4. Garg, R. (2021)' Community sentencing in India: Remedies and reforms', iPleaders.  
<https://blog.iplayers.in/community-sentencing-india-remedies-reforms/>
5. Gouri, V M(2024)' Out of the Cell: Introduction of Community Service as an Alternative Form of Punishment in India'Jus Corpus Law Journal
6. Community Service under BNS <https://www.drishtijudiciary.com/to-the-point/bharatiya-nyaya-sanhita-&-indian-penal-code/community-service-under-bns>
7. 156th Law Commission of India Report, The Indian Penal Code, (1997)  
<https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081040.pdf>
8. 8.World Justice Report <https://worldjusticeproject.org/rule-of-law-index/global>
9. Community Service: A Progressive Shift Introduced By Bharatiya Nyaya Sanhita  
<https://www.livelaw.in/lawschool/articles/community-service-bharatiya-nyaya-sanhita-indian-penal-code-juvenile-justice-act-national>
10. 10.Agarwal, Mitali(2019) 'Beyond the prison bars: Contemplating Community Sentencing in India' (2019) 12 NUJS Law' <https://nujlawreview.org/wp-content/uploads/2019/10/12.1-Agarwal.pdf>
11. 11.Indian Penal Code, 1860
12. 12.The Bharatiya Nyaya Sanhita, 2023
13. 13.The Bhariya Nyaya Suraksha Sanhita, 2023
14. 14.Juvenile Justice (Care and Protection of Children)Act, 2015
15. National Crime Records Bureau, Prison Statistics India 2022 (2023)