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

-Shivani Johri¹

ABSTRACT

Community service is a form of punishment that requires offenders to perform unpaid work for the benefit of the community as part of their sentence. Community Service as a form of punishment has been introduced for the first time under the Bharatiya Nyaya Sanhita, 2023 (BNS). This represents a shift towards restorative justice, emphasizing rehabilitation and reintegration of offenders into society rather than purely punitive measures. Offenders involved in minor offences can avoid traditional punishment by performing community service.

KEYWORDS-Rehabilitation, reintegration, Community service, restorative justice.

INTRODUCTION

Community service is unpaid work performed by a person or group of people for the benefit and betterment of their community contributing to a noble cause.

Community service might seem like a new concept for us, but it has been lurking in the shadows, especially within the Juvenile Justice (JJ) Act. A recent example is the Pune Porsche accident, where the judge sentenced the offender to community service. Despite such precedents, the broader community service application remains to be seen. This article aims to analyze the potential of community service to address issues like prison overcrowding, rehabilitation of offenders, and its overall fit within the Indian judicial system.

Community service as a punishment has been widely adopted in Western legal systems. Countries like the United States, the United Kingdom, and several European nations have successfully integrated community service into their sentencing frameworks. These systems have demonstrated that community service can be an effective alternative to incarceration, especially for non-violent offenders.

¹ Assistant Professor, Jamia Hamdard University, Delhi

In the United States, community service is often used for minor offences, allowing offenders to contribute positively to society while avoiding the negative impacts of imprisonment. Programs are typically well-structured, with clear guidelines and monitoring mechanisms to ensure compliance. Similarly, community service orders are a standard sentencing option in the United Kingdom, often combined with other forms of rehabilitation such as counselling or vocational training.

BACKGROUND

(Community) service is a non-paying job performed by one person or a group of people for the benefit of their community or its institutions. Community service is distinct from volunteering, since it is not always performed on a voluntary basis and may be performed for a variety of reasons, including:

Required by a government as a part of citizenship requirements, like the mandatory "Hand and hitch-up services" for some municipalities in Austria and Germany, or generally in lieu of military service (see: Zivildienst and Alternative civilian service) or for civil conscription services.

Required as a substitution of, or in addition to, other criminal justice sanctions – when performed for this reason it may also be referred to as community payback or compensatory service.

Mandated by schools to meet the requirements of a class, such as in the case of service-learning or to meet the requirements of graduating as class valedictorian.

As an workfare obligation, as condition of the receipt of social and financial benefits, see Workfare in the United Kingdom

In Sweden it is a suspended sentence called "samhällstjänst" ("society service").

OBJECTIVE OF COMMUNITY SERVICE-

Community service is designed to:

- Hold offenders **accountable** for their offensive acts.
- Provide a means for offenders to **contribute** to society.
- **Reduce** the burden on the prison system.
- **Promote** the rehabilitation and reintegration of offenders

ELIGIBILITY FOR COMMUNITY SERVICE

MINOR OFFENCES

Community service is typically reserved for **minor offences, non-violent crimes, and first-time offenders**. This ensures that the punishment is proportionate to the crime.

JUDICIAL DISCRETION

Judges have the discretion to impose community service based on the **nature of the offence**, the circumstances of the case, and the background of the offender.

DURATION AND NATURE OF SERVICE

SPECIFIED HOURS

The **court determines** the number of hours of community service based on the severity of the offence.

NATURE OF SERVICE

The nature of the community service work is **decided in a way that it benefits** the community and is suitable for the offender's abilities. Examples include cleaning public spaces, working with non-profit organizations, or assisting in community development projects.

PROVISIONS UNDER BNS PROVIDING PUNISHMENT OF COMMUNITY SERVICE

Section 4(f) of the BNS formally introduces community service as a form of punishment in India. This legislative change aims to provide an alternative to traditional forms of punishment, addressing issues like prison overcrowding and promoting the rehabilitation of offenders. However, the success of this initiative depends on the precise definition and implementation of community service.

Community service is a non-custodial restorative justice approach aiming to reintegrate offenders into society. Community service has not been defined in the BNS and the nature of community service to be performed by the accused person will be decided by the Magistrate.

Explanation to Section 23 of the BNSS defines Community Service as work ordered by the Court as punishment that benefits the community, with no remuneration paid to the convict performing it.

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
- **Section 209:** Non-appearance in response to a proclamation under section 84 of BNSS, 2023
- **Section 226:** Attempt to commit suicide to compel or restrain exercise of lawful power
- **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.
- **Section 356(2):** Defamation .

Under BNSS, community service is now an option for minor offenses such as petty thefts, public nuisance, and false defamation complaints. Offenders involved in thefts of property valued under Rs 5,000 can avoid traditional punishments by returning the stolen goods and performing community service.

Judgments in which Courts Directed the Accused to Render Community Service

PARVEZ JILANI SHAIKH V. STATE OF MAHARASHTRA (2015):

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

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

The Court held that, as per Section 437(3) of the Criminal Procedure Code, 1973 (CrPC) Court can impose “**any other conditions in the interest of justice**” over accused by way of community service and other related reformatory measures and same can be innovated also but must be as per his capacity and willingness.

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

The Court directed the accused to do community service at Lok Nayak Jai Prakash Narayan Hospital on every Saturday and Sunday for one month.

RAJESH V. STATE OF CHHATTISGARH:

The Chhattisgarh High Court considered the appropriateness of a community service sentence for the accused, Rajesh. Rajesh, a 28-year-old man, was charged under Section 379 of the Indian Penal

Code for stealing an electrical transformer worth ₹50,000. He had no prior criminal record. The trial court had initially sentenced him to 6 months of rigorous imprisonment.

- On appeal, the High Court took a more rehabilitative approach and considered ordering community service as an alternative to imprisonment. Justice Sanjay K. Agrawal, writing the judgment, stated that the purpose of punishment should be reformatory rather than solely punitive. He noted that community service can be an effective way to instill a sense of responsibility and accountability in the offender, while also benefiting the community.
- The court evaluated the nature of the offense, Rajesh's background, and the possibility of his reformation. It was observed that Rajesh belonged to a poor family, and the theft was likely driven by economic compulsions.
- Consequently, the High Court set aside the jail term and instead sentenced Rajesh to 6 months of community service. He was ordered to work for 4 hours per day at a local orphanage, under the supervision of a probation officer.
- This judgment reflects a progressive shift in the Indian judiciary towards restorative justice principles, focusing on the offender's rehabilitation rather than just punishment. It demonstrates the courts' willingness to utilize community service as an alternative to traditional imprisonment, especially for first-time and non-violent offenders.²
- In ***Sunita Gandharva vs. State of M.P. and Anr***³, the MP High Court highlighted the importance of community service in the form that – *"it gives a chance in some cases to melt the ego of an accused who is facing the trial of those offenses which gave psychic gains or peevish pleasures to the accused while committing such crimes...the accused can again be assimilated into the mainstream society and would be accepted by the community...ingrained attributes of Love, Compassion Mercy, and Service can be rekindled through the concept of community service."* The court considered it fit to impose community service as *"any other condition in the interest of justice"* as per section 437(3) of CrPC over the accused or offender.
- In ***Babu Singh vs. the State of UP***⁴, the Apex court held that restorative devices through means of community service, meditative drills, or study classes should be innovated upon to redeem the offender.
- ***Vishal S Awtani vs State of Gujarat***⁵ – The court ordered the ones who are caught not wearing a mask, their services will be utilized for community services for 10 to 15 days on non-medical services. This would sufficiently work as a deterrent for COVID-19 for

² Rajesh v. State of Chhattisgarh, 2021 Scc OnLine Chh 441.

³ 2020 SCC OnLine MP 2193

⁴ Babu Singh & Ors. vs. The State of U.P (1978) 1 SCC 579

⁵ Vishal S Atwani vs. State of Gujarat C/WPPIL/108/2020

stricter implementation of rules. The Gujarat High Court stated that community service is not a punishment but a chance for the offenders for reparation.

- ***Ravi vs State of Haryana***⁶ – The juvenile was ordered to perform community service for three years in the hospital and was supervised by a medical officer.
- ***Pune Porsche Accident Case***⁷: A notable example is the Pune Porsche accident case, where a minor was sentenced to community service as part of his punishment. This case highlighted both the potential benefits and the challenges of implementing community service in the Indian context.

CHALLENGES

Implementing community service in the Indian context presents several challenges. These include defining the scope and nature of community service, establishing clear guidelines and monitoring mechanisms, and ensuring the punishment is proportionate to the crime committed. Without addressing these challenges, there is a risk of misuse and inconsistencies in applying community service as a punishment.

The Pune Porsche accident case is a notable example of community service being used as a punishment in India. In this case, a minor was involved in a fatal accident, and the court sentenced him to community service as part of his punishment. This decision sparked a significant public and legal debate on the appropriateness and effectiveness of community service as a form of punishment. However, the Juvenile justice board canceled the bail order later and transferred the minor accused to an observation home. The case also highlighted the shortcomings of juvenile laws in India and their implementation.

The case highlights several key issues, including the need for clear guidelines on when community service is appropriate, the importance of monitoring and evaluating the offender's compliance, and the potential for community service to impact the offender's behavior positively. The public response to this decision was mixed, with some supporting the rehabilitative approach while a significant population questioned its adequacy in addressing the severity of the offence.

This case underscores the need for a well-defined framework for community service in India, ensuring that it is used appropriately and effectively. It also highlights the potential benefits of

⁶ Ravi vs. State of Haryana, Criminal Revision No. 1001 of 2020 (O&M)

⁷ LiveLaw, <https://www.livelaw.in/lawschool/articles/community-service-bharatiya-nyaya-sanhita-indian-penal-code-juvenile-justice-act-national-crime-records-bureau-260813>, (last visited Aug. 22, 2024).

community service in promoting rehabilitation and reducing recidivism, provided that it is implemented with strict guidelines and oversight.

Prison overcrowding is a significant issue in India, with the country's prisons often operating well beyond their capacity. According to the National Crime Records Bureau (NCRB), the occupancy rate of Indian prisons is consistently above 100%, with some states experiencing even higher rates of overcrowding^[2]. This situation has profound implications for inmates' health, safety, and rehabilitation.

Overcrowding in prisons is primarily due to the high number of undertrial prisoners, lengthy judicial processes, and the reliance on incarceration as the primary form of punishment. The introduction of community service as an alternative punishment aims to address this issue by diverting non-violent offenders from prison, thereby reducing the burden on the prison system.

However, for community service to effectively alleviate prison overcrowding, it must be implemented on a large scale and integrated into the sentencing framework for a wide range of offences. To ensure compliance and effectiveness, this requires a coordinated effort from the judiciary, law enforcement agencies, community organizations, and robust monitoring and evaluation mechanisms.

Implementing community service as a form of punishment in India presents both challenges and opportunities. One of the primary challenges is ensuring that community service is used appropriately and consistently across different cases. This requires clear guidelines on the types of offences eligible for community service, the nature and duration of the service, and the mechanisms for monitoring and evaluating compliance.

Another challenge is preventing the misuse of community service. Without strict guidelines and oversight, there is a risk that community service could be exploited or used as a lenient alternative to severe offences. To address this, the BNS must include provisions for stringent monitoring and accountability, ensuring that offenders complete their community service as required and that the service is meaningful and beneficial to the community. The ethical concerns surrounding community service involve concerns about involuntary servitude, particularly when assigned tasks do not directly address the harm caused by the crime.

STRATEGIES FOR EFFECTIVE IMPLEMENTATION

Several strategies are essential to ensure its effective implementation in the current Indian scenario. Firstly, comprehensive guidelines need to be developed, as India currently lacks uniform standards

for community service, leading to inconsistencies. These guidelines should clearly define what constitutes community service, categorize eligible offences, and outline the processes for assigning, monitoring, and completing service duties. Additionally, personalization of community service assignments is crucial; instead of generic tasks, assignments should be tailored to match the offender's rehabilitation needs and skills, ensuring meaningful and beneficial contributions to the community. Collaboration with community organizations is another critical strategy; partnerships with NGOs, community organizations, and local authorities can help effectively design, implement, and supervise community service programs. Providing offenders with vocational training, counseling, and mentoring is essential for equipping them with the necessary skills and support to complete their service successfully. Utilizing technology can streamline program management and enhance participant engagement by tracking the effectiveness of community service projects. Rigorous monitoring and compliance verification are vital to ensure accountability and maintain the seriousness of community service as a form of punishment. Public awareness campaigns are needed to increase acceptance and trust in community service, highlighting its benefits through success stories and case studies. Finally, encouraging community involvement and engagement can foster a positive attitude towards the rehabilitation and reintegration of offenders. By implementing these strategies, India can effectively incorporate community service into its judicial system, promoting a more humane and progressive approach to justice.

Public awareness and acceptance of community service as a form of punishment are crucial for its successful implementation. It requires a concerted effort to educate the public about the benefits of community service and address any misconceptions or concerns.

One effective strategy is to highlight the positive outcomes of community service through case studies and success stories. This can help build public trust and confidence in the system, demonstrating that community service can be an effective and humane alternative to incarceration.

Public education campaigns can also play a key role in increasing awareness and acceptance. These campaigns can be conducted through various channels, including social media, television, radio, and community events, to reach a broad audience and promote the benefits of community service.

Community involvement and engagement are also essential. Encouraging community members to participate in and support community service programs can help build a sense of collective responsibility and foster a positive attitude toward rehabilitating and reintegrating offenders.

Community service programs should be tailored to effectively tackle the root causes of criminal behavior, particularly among disadvantaged populations. This involves integrating educational and

vocational training into community service initiatives, equipping offenders with the essential skills and opportunities required to carve out a better future. These programs should also actively address the social and economic factors that contribute to criminal behavior, including poverty, lack of education, and unemployment. By addressing these underlying issues, community service can significantly contribute to breaking the cycle of crime and fostering enduring positive change. For the successful introduction of community service as a sentencing option for non-violent offenders in India, the legal system needs to undergo substantial reforms. These reforms should ensure a fair and streamlined process, establish clear criteria for appropriate community service, and put in place effective monitoring and enforcement mechanisms. Furthermore, the reforms should prioritize the rehabilitation and reintegration of offenders over punitive measures. This shift in legal philosophy towards restorative justice emphasizes recognizing the potential for positive change in every individual and emphasizes the significance of making amends and contributing to society. Introducing community service as a form of punishment in India represents a monumental shift in the country's approach to justice. While there are challenges in its implementation, with careful planning, well-defined guidelines, and widespread public support, community service can emerge as a valuable tool for reducing prison overcrowding, rehabilitating offenders, and addressing the root causes of criminal behaviour. Community service offers a more humane and forward-thinking approach to justice, placing rehabilitation above retribution and acknowledging the potential for positive change in every individual. 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.

CONCLUSION

The inclusion of community service as a form of punishment in the Bharatiya Nyaya Sanhita 2023 marks a progressive step towards a more balanced and rehabilitative criminal justice system in India. By focusing on restorative justice, the BNS 2023 aims to create a system where offenders can make positive contributions to society, thereby promoting their rehabilitation and reducing the burden on the prison system. This approach not only benefits the offenders but also the community at large, fostering a more inclusive and constructive approach to justice.

Case studies from these countries highlight the benefits of community service, including reduced recidivism rates, positive behavioural changes among offenders, and cost savings for the criminal justice system. This approach also reflects a more humane and progressive view of justice, recognizing the potential for positive change in every individual.

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