

Community Service as a Punitive Measure: A Critical Analysis Under India's Emerging Criminal Law Regime

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Abstract:

The primary tenet of ultramodern penology is "Reformation," but the list of penalties below falls short of this ideal since, as in Indian jails, a large number of prisoners still languish in jail awaiting their release. This suggests the need for a different method of discipline that, in addition to fulfilling the goal of transforming the suspect, also treats them fairly by not infringing upon their basic right to life and personal freedom, which is protected by Article 21 of the Indian Constitution. The goal of the current investigation is to analyze the legal framework governing "Community Service" in our nation, assess its efficacy in addressing the demands of recovery and deterrence, and identify the difficulties encountered while putting the law into practice. Using a doctrinal investigation approach, the research will analyze significant legislation, policy papers, and case laws. It will assess how well "Community Service" reduces recidivism and facilitates the reintegration of individuals caught by the police back into society. Furthermore, an effort should be made to determine the difficulties associated with overseeing, covering, and effectively engaging the offenders in community service. After analyzing the advantages and disadvantages of the current framework, the study will attempt to provide recommendations for improving the efficacy of community service in India.

KEYWORDS: Community service, BNSS, BNS, Restorative justice, Rehabilitation, Bail, Religious engagement

Introduction:

The primary function of a nation's criminal legislation is to achieve justice. The criminal justice system of a nation reaches its zenith when the purpose of the penal policy is to satisfy the victims, the public, and the individuals who have been affected by the crime. Justice is genuinely administered when the criminal policy uses a variety of methods to support the use of punishment.

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If every offender is treated as a serious criminal and all of them are subjected to physical punishment, then there is less and less opportunity for their rehabilitation. Given a chance, some offenders can be rehabilitated and demonstrate their value to society by admitting their errors and taking action to make amends for them, proving that not all offenders are inhumane. One example of a penalty that might fall under the reformatory theory of punishment is community service. Prisons are a dangerous place for everyone, including the offenders themselves. Consequently, creative non-custodial approaches and options have become essential.

The legislative modification in India that allows for community service as a punishment was included in the Bharatiya Nyaya Sanhita (BNS) of 2023. India's understanding of community service is, in a nutshell, like this. Indian lawmakers made significant progress toward a better criminal justice system with the implementation of this sort of non-custodial penalty under the new criminal laws. We have not yet analyzed how this system would be implemented in India, its effects, or its potential contribution to our criminal justice system's reform. However, it is certain that this right is extended to offenders of minor offenses since not all of them belong in prison.

It is essential to thoroughly consider the possible advantages and disadvantages of community service punishment as India continues to improve its justice system in order to ascertain its role in the future of the criminal justice system.

Community Service:

Definition:

*"Community Service" signifies a non-custodial punishment mandating the offender to undertake unpaid labor for the benefit of the community, as decreed by the court.*⁵

Meaning:

Community sentencing means, a non-custodial sentencing which empower the courts to impose sanctions on accused or offenders outside of traditional incarceration. And this kind of sentencing aims to look into the mental and other criminal behavior of the offenders which emphasize the rehabilitation mechanisms over the punishment. In these types of sentencing offenders would be engaged in unpaid work under certain condition for certain number of periods or hours within the community, or adhere to particular conditions.

The overarching goals of community sentencing include reducing prison overcrowding, lowering recidivism rates, and fostering restorative justice, which focuses on repairing the harm caused by criminal behavior.

Finally, it indicates a progressive approach towards the criminal justice system that will prioritize restorative or rehabilitation and community engagement than the mere punishments. By ensuring the causes of criminal behaviors and by improving restorative form of justice, this community service is contributing a effective equitable justice delivery system. Its successful implementation requires a comprehensive understanding of its principles, robust legal frameworks, and the active involvement of community organizations to ensure that it fulfills its intended goals.⁶

⁵ Section 4(f) of the Bharatiya Nyaya Sanhita (BNS), 2023

⁶ Institute for Criminal Policy Research, "Community Sentencing: A Review of the Evidence" (2020).

Evolution Of Community Service as a Mode of Punishment:

In 106 B.C., Cicero wrote “Let the punishment fit the Crime”. And still now this practice has been in use as integral part of criminal justice system all over the world.⁷ In England, in the year of 1970, a famous English social scientist named, Barbara Wootton, drafted a report called ‘Non-Custodial and Semi-custodial penalties.’⁸ This report emphasized that the community service as a replacement to imprisonment as a punishment. Following this suggestion, ‘The Criminal Justice Act of 1972’ in the UK which was also called as ‘The Powers of Criminal Courts Act, 1973.’ This particular act emphasize the requirements for adopting and executing community service in UK.⁹

In USA, in the year of 1966, this community service program has been started with the initiation of Alameda County California Program. Later, it was treated as a usual punishment for minor offences such as minor theft, shoplifting, vandalism, and drunk driving.

In India, the only legislation which dealt with community service was *Section 18(1)(c) of the Juvenile Justice (Care and Protection of Children) Act 2015*, which provides for community sentencing for convicted minors.”¹⁰ And now, the concept of community service was introduced under the New Criminal Justice law such as Bharatiya Nyaya Sanhita 2023 for the first time and also under BNSS even though its more effective form of sentencing in other countries than India, especially in UK, over 50 years from 1973. It is important to take into account that 156th Law commission report, in the year of 1997 which was proposed to amend section 53 of Indian Penal Code 1860, to introduce ‘community service’ as an alternative form of punishment but this proposal was not implemented.¹¹

Offences Providing Punishment of Community Service Under Bns:

1. 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.”*¹²

2. Non-appearance in response to a proclamation under section 84 of BNSS, 2023

*Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both, or with community service, and where a declaration has been made under sub-section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.”*¹³

3. Attempt to commit suicide to compel or restrain exercise of lawful power

⁷ Fauzia Shakil, “Community Service” Under the BNS – An Incomplete Yet Promising Penological advancement (2024), <https://www.livelaw.in/articles/community-service-under-bhartiya-nyaya-sanhita-262322?fromIpLogin=70448.04375546206>.

⁸ Supra 5

⁹ Ibid

¹⁰ Rituraj Kumar, Community Sentencing; a Positive Shift in the Indian Criminal Justice System

¹¹ Ibid

¹² Section 202 of the Bharatiya Nyaya Sanhita (BNS), 2023, No.45, Acts of Parliament, 2023 (India).

¹³ Section 209 of the Bharatiya Nyaya Sanhita (BNS), 2023, No.45, Acts of Parliament, 2023 (India).

“Whoever attempts to commit suicide with the intent to compel or restrain the exercise of any lawful power by a public servant or any other authority 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.”¹⁴

4. Theft

“Provided that where the value of the stolen property is less than five thousand rupees, and the convicted person is convicted for the first time, shall upon return of the value of property or restoration of the stolen property, shall be punished with community service.”¹⁵

5. Misconduct in public by a drunken person

“Whoever, in a state of intoxication, appears in any public place, or in any place which it 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 for a term which may extend to twenty-four hours, or with a fine which may extend to one thousand rupees, or with both or with community service.”¹⁶

6. Defamation

“Any person found guilty of defaming another individual shall face punitive measures that may include simple imprisonment for a duration that could extend to two years, or the imposition of a monetary fine, or a combination of both penalties, or may be subjected to community service, thereby underscoring the gravity of the offense of unjustly tarnishing another's reputation.”¹⁷

Rehabilitation over retribution - moving towards community service in criminal justice:

The main concept about the reformatory theory is to rehabilitate the offender and individualization, community engagement, restorative justice, and reformatory programs. Then its main goal is to convert the offenders into a law-abiding citizen even without imposing of any punishment. As Mahatma Gandhi, said, “Eye for an eye will make the whole world blind.”

As per 2021, the occupancy rate of prisons in India were over 120%, with many facilities exceeding their intended capacity.¹⁸ Secondly, over 70% of prisoners belong to the economically weaker sections of society.¹⁹ The cost of supporting a prisoner in India is ₹2,000 to ₹3,000 per month, while community service can be conducted at a fraction of that cost.²⁰

Besides that, by implementing community sentencing, resources can be reallocated to support rehabilitation and community programs, thus improving overall social welfare. Finally, the effectiveness of community sentencing in other countries,²¹ is providing us adequate knowledge about the need of it in our country. It can provide us numerous benefits, and a chance for our country to rehabilitate its citizens.²² There are certain perspectives of restorative justice which mandates community services. The principle behind this punishment theory is to rehabilitate criminals. In the case of *State of Gujarat v. Hon'ble High Court of Gujarat*,²³ the court emphasized that the main objective of punishment should be reformation,

¹⁴ Section 226 of the Bharatiya Nyaya Sanhita (BNS), 2023, No.45, Acts of Parliament, 2023 (India).

¹⁵ Section 303(2) of the Bharatiya Nyaya Sanhita (BNS), 2023, No.45, Acts of Parliament, 2023 (India).

¹⁶ Section 355 of the Bharatiya Nyaya Sanhita (BNS), 2023, No.45, Acts of Parliament, 2023 (India).

¹⁷ Section 356(2) of the Bharatiya Nyaya Sanhita (BNS), 2023, No.45, Acts of Parliament, 2023 (India).

¹⁸ National Crime Records Bureau, “Prison Statistics India” (2021)

¹⁹ Justice Verma Committee, “Prison Reforms in India: A Need for Urgent Action” (2013).

²⁰ National Institute of Criminology and Forensic Science (NICFS), “Cost of Incarceration in India: A Policy Perspective” (2020).

²¹ United Nations Office on Drugs and Crime (UNODC), “Community Sentencing: A Global Perspective” (2020)

²² Indian Institute of Management (IIM), Bangalore, “Recidivism in India: The Role of Rehabilitation” (2016)]

²³ AIR 1998 SC 3164

aiming to turn the offender into a better individual. Similarly, in *R.K Anand v Registrar High Court Delhi*,²⁴ the court stated that imposing these punishments would benefit the offenders in contributing towards their society rather than simply sitting in the jail.

In the case of *Babu Singh v state of Uttar Pradesh*²⁵, Justice V.R. Krishnaiyer and Justice D.A. Desai emphasized that the reformatory punishments and its need and the court prioritize on the importance of restoration and redemption of the offender through community service, meditative drills, study classes, etc. In the case of *Vipul v. State of Uttar Pradesh, 2022*, the Supreme Court observed that-

'A mere punishment without reformation would not serve the purpose as it might have the propensity of creating more such actions. The ultimate idea is to bring the convict back to the civil society. For this purpose, innovative solutions with respect to sentencing such as community service as an alternative may also be considered by the states/Union governments in due course.'

This above said decision indicates the judicial intension to not to punish them but to reform all the wrongdoer through alternative imprisonment like community service. It also shows the crucial role of judiciary on rehabilitative measures like this.

Potential Impacts of Community Sentencing:

1. For communities

Community sentencing prioritizes the rehabilitation of offenders above their punishment by imprisonment. Offenders can learn new skills and confront the underlying issues that contribute to their criminal conduct by engaging in community service. By lowering recidivism rates, this method might help people reintegrate into society.²⁶ The integration of the individual back into society facilitates interaction between offenders and members of the community, which aids in the rehabilitation of relationships and the establishment of trust. Additionally, community sentencing, which includes offenders' involvement in society, may instill in them a sense of responsibility and accountability, as well as increase their awareness of society. A criminal's life is more stable when they commit less crimes.²⁷

2. Fairness of justice

The move toward community sentencing offers India the chance to establish a fairer justice system that places importance on rehabilitation and community involvement. India can lay the groundwork for a justice system that fosters healing and social responsibility by learning from successful international practices. As previously said, incarceration has the most negative consequences for marginalized groups. The introduction of community sentencing under Indian laws may be a good first step toward addressing the disproportionate impact of incarceration on these disadvantaged groups.²⁸

3. For reformation of offenders

One of the fundamental rights that should be granted to offenders is the opportunity to change or rehabilitate themselves because not all of them are wicked. Community sentencing can aid in the rehabilitation of offenders in a variety of ways. In addition to assisting offenders in overcoming

²⁴ AIR 2013 SC 670

²⁵ (1978) 1 SCC 579

²⁶ Andrew von Hirsch, "Rehabilitation, Crime and Justice" 65(Hart Publishing, Oxford, 2003).

²⁷ Jeremy Travis, Prisoner Reentry and Crime in America, (Cambridge University Press, 2003)

²⁸ Priya Sharma, "Community Sentencing: Bridging Justice and Social Responsibility," The Indian Express, Chennai, October 24, 2024

addictions,²⁹ it enables them to deal with any psychological issues that may have led to their conduct. Community sentencing often includes vocational training programs and access educational programs such as adult literacy classes³⁰, that equip offenders with job skills, increasing their employability post-release.³¹

Law Commission of India Reports:

In the 42nd Law Commission Report (1971) report mainly recommended the alternative imprisonment and its necessity in the society. It also specifies certain kinds such as probation, fines, and community service, applicable for minor, non-violent offences. It also emphasize that the punishment by imprisonment method always a drawback as it lead to overcrowding of jails and not serve the purpose of rehabilitation. Another report suggested that community service can be imposed even for the first time offenders and for the convicted of minor offences. The main focus of this report was on decriminalization and giving any alternative.³² In the *156th Law report* recommended added Community Service as a form of punishment in the repealed Indian Penal Code.

A Law Commission report emphasized on "Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities, "and also some alternative punishments like community services.³³ Committee was headed *by Justice V.S. Malimath* on Reforms of Criminal Justice System and he recommended that for the offences committed by first time offenders who are non-violent, then non-custodial measures shall be applied as a punishment.³⁴ After the Gang Rape case of Delhi, 2012, the Justice Verma headed a committee and that report mainly dealt with altering of laws related to crimes against women effectively. Although the committee also recommended to impose community service as punishment in certain lesser offences.³⁵

Ambiguity In Determining the Scope of Community Service:

1. The Definition of Community Service is given in the Bharatiya Nagarik Suraksha Samhita,2023 Community Service as –

*"The Work which the court may order a convict to perform as a form of punishment that benefits the community, for which he shall not be entitled to any remuneration."*³⁶

While it is not always clear what kind of duties may be assigned under the purview of Community Service, the court would undoubtedly consider a person's skills and experience when sentencing them to social service labor as a form of punishment. Even if the courts make every effort to eliminate the ambiguity of what the statement could be, it would still exist. The main reason for ordering Community Service is when dealing with very minor and insignificant crimes that don't really warrant the perpetrator being sent to jail or receiving a more severe punishment.³⁷

²⁹ National Institute on Drug Abuse (NIDA), Substance Abuse Treatment for Adults in the Criminal Justice System, U.S. Department of Health and Human Services, 2017

³⁰ Office of Juvenile Justice and Delinquency Prevention (OJJDP), Educational Programs for Incarcerated Youth, (U.S. Department of Justice, 2014)

³¹ Jeremy Travis, Prisoner Reentry and Crime in America, Cambridge University Press, 2003

³² 154th Law Commission Report (1996)

³³ 239th Law Commission Report (2012)

³⁴ Malimath Committee Report (2003)

³⁵ Justice Verma Committee Report (2013)

³⁶ Explanation to Section 23 of Bharatiya Nagarik Suraksha Samhita,2023

³⁷ Kritika Malik, Navigating the New Criminal Laws, part 2, Community Service, <https://bharatchugh.in/2024/06/05/navigating-the-new-criminal-laws-part-2-community-service/> (assessed on Aug.24 at 8.42)

There is no precise definition of community service in the explanation to Section 23 of the BNSS, which reads as follows: It is not possible to define precisely what community service entails. Is it teaching or planting trees? or is it picking up garbage and cleaning toilets? Community service might have been defined and illustrated more clearly, but it was a missed opportunity.

2. Community service is only mandated as a form of punishment for six crimes. Community service could have been ordered for more offenses in order to make the most of the benefits. Alternative forms of punishment are warranted by the degree of overcrowding in our prisons.³⁸
3. The penalty for failing to complete community service is not specifically stated. It appears that a one-year sentence is granted for any community service default. It's possible that the offender has only completed a portion of the community service or is unable to complete it, but that they would still be sentenced to a year in prison. It would have been fairer and more transparent to make a pro rata allocation.³⁹
4. The goal appears to be to provide community service in instances of minor crimes. But the inclusion of non-appearance in answer to proclamation under Section 84, which carries a three-year jail sentence and is a cognizable and non-bailable crime, appears to be an unusual addition. Is it a minor offense for government employees to treat legitimate authority with disdain? Was this crime better left out?⁴⁰
5. It is notable at this point that the Supreme Court punished the offender in *State v. Sanjeev Nanda*⁴¹ for the offense of reckless homicide not amounting to murder by giving him community service. It was noted that convicts in other nations are willing to volunteer their services to the community, highlighting that community service is a way for the convict to give back to society rather than a real punishment. Considering the gravity of the offense in which six lives were taken, the court opted to sentence the perpetrator to two years of community service rather than additional jail time.

In this case, the Supreme Court failed to consider the potential for community service to serve as a way for offenders to avoid accountability for serious crimes. When it comes to awarding community service for serious offenses, this decision is especially contentious. Therefore, in order to establish legal certainty, it is important to specifically outline the categories of offenders for whom community service may be imposed as a punishment. First-time offenders in Malaysia are, for example, given community service.

Issue of Community Service as a Bail Condition:

Under BNSS, it does not explicitly mention community service as a bail condition, sections 436 to 439 BNSS allow courts to impose ‘any condition deemed just and reasonable’ when granting bail. This opens the door for community service orders as a bail conditions, especially for minor/heinous offences. Courts have inherent powers to craft bail conditions that balance liberty of the accused with societal interest. Examples, conditions already used, Surrendering passport, Regular attendance before police, Good behavior undertaking.

In the case of *Gudikanti Narasimhulu and Ors vs Public Prosecutor*⁴², High Court of Andhra Pradesh (1977), the Supreme Court of India has ruled that any deprivation of liberty is legitimate if it is based on social defense and individual correction in an anti-criminal orientation. The entire bail legislation should

³⁸ Supra 34

³⁹ Ibid

⁴⁰ Ibid

⁴¹ (2012) 8 SCC 450

⁴² 1978 AIR 429

be based on public justice, with the least amount of punitive severity possible. It should be illegal to tamper with evidence, intimidate witnesses, or commit crimes while on judicially sanctioned "free enterprise" in order to disturb the peace of society. Instead, restorative mechanisms should be created to redeem the man, whether through community service, meditation drills, study groups, or other means.

In the case of *Shiv Kumar v. State of MP*⁴³, the applicant for bail was directed to plant 10 seedlings (either fruit-bearing trees of Neem/Peepal) as a further requirement of bail, and to make arrangements for their maintenance and care.

In *Rishi Ahirwar v. State of Madhya Pradesh & Anr*⁴⁴ the bail petitioner was a Patwari (government officer who manages land records) who had been taken into custody in connection with a case that included charges under Sections 354 and 457 of the IPC as well as Sections 7 and 8 of the POCSO Act. The complainant claimed in court that the case was unfairly filed against him as a consequence of a personal dispute. In exchange for a Rs 2 lakh personal bond and two comparable guarantees, bail was allowed. Furthermore, Justice Pathak observed that the applicant wished to give blood as part of his community service commitment and that the same was permitted.

Religious Engagement as a Community Service:

Indian courts have, on occasion, ordered offenders to do community service in religious establishments like temples, gurdwaras, mosques, and churches. Since India is a secular nation and the government cannot encourage or compel adherence to any particular faith, this raises constitutional issue. Forcing someone to engage in religious activity as a punishment may contravene Article 25 of the Indian Constitution.

Secularism is a component of the Basic Structure Doctrine⁴⁵. Forcing criminals to work in religious institutions may be considered religious discrimination (Article 15). Non-believers or members of other faiths may have their freedom of conscience violated by Article 25. In violation of its obligations under Article 27 not to force people to practice religion.

In a radical departure from its century-old legal rules, courts in the eastern Indian state of Bihar are now sentencing criminals to community service in religious institutions and repentance for their previous misdeeds in Patna, instead of sending them to prison. The court has ordered offenders to perform community service in at least 40 recent instances, which has been met with resounding praise from every corner. The Patna High Court issued a new order requiring a criminal, Teju Chauhan alias Raushan Singh-who was charged with robbery, to clean the floors of the well-known Sun temple in Deo, Aurangabad district, for six months in order to be eligible for regular bail in the case⁴⁶. The court has given him the opportunity to repent for his sin. Now he will not commit any crime in future and engage himself in the service of humanity.

To atone for his crime of raping and killing a five-year-old girl, the court had previously sentenced Mantan Kumar, also known as Vishwajeet Singh, to clean the Hanuman temple in the neighborhood and dust the shoe stand for six months. This however does not violate the provisions under constitution.⁴⁷ Court must ensure neutrality in imposing community service, avoiding preferential religious alignment.

⁴³ 2005(3)MPHT466

⁴⁴ MCRC 7305-2017

⁴⁵ S.R. Bommai v. Union of India, (1994) 3 SCC 1

⁴⁶ Courts order community service to reform criminals in Bihar <https://gulfnews.com/world/asia/india/courts-order-community-service-to-reform-criminals-in-bihar-1.671767> last visited on 24th Aug, 2025

⁴⁷ Courts order community service to reform criminals in Bihar <https://gulfnews.com/world/asia/india/courts-order-community-service-to-reform-criminals-in-bihar-1.671767>

Judicial Interpretation Supporting Community Sentencing:

The necessity of these restorative practices is brought to light by the *State of Maharashtra v. Raju Ramesh Ghosalkar*⁴⁸ case particularly this method is in line with India's legal and cultural systems, which have historically favored reconciliation and community-based solutions, as seen in traditional panchayats and modern Lok Adalats. The Bombay High Court ordered community service as a component of the punishment for the defendant who had committed theft. The Madras High Court emphasized the significance of rehabilitation and reintegration into society by permitting a criminal to complete his sentence through community service rather than jail.⁴⁹

In *State of Punjab v. Dhananjay Singh*⁵⁰ deals with the topic of offender reformation and includes discussions on community service as a form of punishment. Although community service is not widely required, the case emphasized the necessity of rehabilitative and reformatory justice, stating that the legal system should prioritize correction over punishment where it is appropriate. This is consistent with the overarching goals of restorative justice, which seeks to reintegrate offenders into society while maintaining accountability and community benefits.

In the case of *Sunita Gandharva vs. State of M.P. & Anr*⁵¹, emphasized the value of community service by stating that "it gives a chance in some cases to melt the ego of an accused who is facing 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". According to section 437(3) of the CrPC, the court deemed it appropriate to impose community service as "any other condition in the interest of justice" over the accused or offender.

In a similar vein, the High Court of Gujarat considered the nature of community service in the case of *Vishal S Awtani v. State of Gujarat*⁵², concluding that it was a kind of restitution rather than punishment. The court stressed the advantages of community service sentencing and ordered the state to establish a program mandating that those who are found to have broken COVID-19 regulations do community service at a COVID care facility. The Supreme Court put a stop to what was considered a progressive decision. Even though community service punishments aren't expressly integrated into legislation or sentencing guidelines, courts are free to assign them at their discretion, subject to some limitations. Similarly in the case of *Parvez Jilani Shaikh v. State of Maharashtra*,⁵³ 2015: The Court ordered the defendant to perform community service at B.A.R.C. Hospital.

In the case of *Rajesh v. State of Chhattisgarh*⁵⁴: The Chhattisgarh High Court deliberated on the validity of sentencing the defendant, Rajesh, to community service. Rajesh, a 28-year-old man, was accused of stealing an electrical transformer worth ₹50,000 under Section 379 of the Indian Penal Code. He had no previous criminal history. He was first given a six-month sentence of severe incarceration by the trial

⁴⁸ 2018 SCC OnLine Bom 1646.

⁴⁹ *Badrinath v. Government of Tamil Nadu*, 2018 5 SCC 600

⁵⁰ 2016 (3) RCR (Criminal) 565 (P&H)

⁵¹ 2020 SCC OnLine MP 2193

⁵² C/WPPIL/108

⁵³ Writ Petition No. 4260 of 2015

⁵⁴ CRA No. 703 of 2014

court. 010The court considered Rajesh's history, the character of the crime, and the potential for his rehabilitation. It was noted that Rajesh came from a low-income family, and financial necessity was probably the reason for the burglary.

As a result, the High Court overturned the jail sentence and gave Rajesh a six-month community service sentence. Under the supervision of a probation officer, he was instructed to labor at a nearby orphanage for four hours each day. This ruling represents a progressive change in the Indian judiciary's approach to restorative justice principles, which prioritize the offender's rehabilitation over mere punishment.

Community Service as Reform: Illustrative Incidents From States Of India:

Porche car Accident in Pune: Porsche, a luxury sports car, was involved in an accident in Pune. On the tragic evening of May 19, 2024, a young 17-year-old man who was driving a Porsche struck two IT professionals on their bike, killing them both. The young man, the son of a builder, was given a mere punishment of composing a 300-word essay on "Road Safety" after a member of the Juvenile Justice Board, Danwade, granted him bail, which caused a nationwide uproar. Community service was the punishment in this instance. This ruling sparked a significant public and legal debate about the viability and effectiveness of community service as a form of correction. Public opinion on this decision was divided; while some people supported the rehabilitative strategy, the majority of the public questioned its efficacy in addressing the gravity of the offense. This case emphasizes the need for a strong and well-defined framework for community service in India to ensure that it is implemented effectively and efficiently. It also emphasizes how community service can aid in rehabilitation and reduce recidivism when it is carried out under close and strict surveillance and rigorous guidelines.⁵⁵

Arambai Tenggol Bandh in Manipur: In a creative break from traditional policing, Manipur Police have swapped handcuffs for brooms and shovels and started a "community service" initiative for scores of young people who have been detained in various areas of the valley since June 7 during violent demonstrations. This unusual strategy follows the turmoil seen on the streets following the arrest of Arambai Tenggol leader Asem Kanan Singh and four companions in a joint operation between Manipur Police and the CBI, as he was wanted in multiple cases. The protests called for the unconditional release of Singh and others, prompting Arambai Tenggol to call a 10-day bandh, which was ultimately canceled on Tuesday.⁵⁶

Authorities are providing a route to rehabilitation rather than punitive action by citing Section 4(f) of the BNSS, which recommends community service for first-time offenders engaged in minor misbehavior. The widely shared photographs and videos of these young people in custody cleaning up the mess left over from the three-day protest and sweeping the streets paint a compelling picture of justice tempered by civic duty.

Work in cow shelter as a punishment of public drinking in Chandigarh: Those who are caught drinking in public in the city can now get a second chance. Between January 1, 2023, and June 30, 2025, 514 individuals throughout the city were caught engaging in public drinking and disorderly behavior. Usually, the court would have just fined them, but now the approach is more reformatory. In the UT, people found guilty of such crimes are being sentenced to work in cow shelters and nursing homes for the elderly.

⁵⁵ The Hindu (2024) 'Pune Porsche car accident: Bail to minor accused: two members of Juvenile Justice Board removed', 10 October. available at: <https://www.thehindu.com>

⁵⁶ <https://timesofindia.indiatimes.com/city/guwahati/brooms-not-bars-manipur-cops-move-for-misguided-youths/articleshow/121785921.cms>

The Bharatiya Nyay Sanhita (BNS) mentions community service as an alternative to conventional penalties for minor crimes, and this choice reflects a change in the criminal justice system. The UT court in August sentenced five prisoners to four days of community service at nearby gaushalas and old age homes.⁵⁷

Global Perspective On Community Sentencing:

UK: The criminal legislation of several nations around the world also includes community service as a non-custodial kind of punishment in the UK. A community sentence is given in the United Kingdom (UK) if someone is found guilty without receiving a jail term. The term "**Community Payback**" in the UK refers to doing unpaid community service under the direction of a Community Payback Supervisor. The kinds of tasks covered by Community Payback include cleaning up waste, getting rid of graffiti, and beautifying public spaces and structures. The amount of community service time, which might range from 40 to 300 hours, often reflects the seriousness of the offense. Community Payback jobs are scheduled outside of work hours, during evenings or weekends, in order to prevent community service from interfering with one's career and personal life.⁵⁸

US: Restorative justice methods are used in certain U.S. states, where offenders must interact with victims and community members in order to comprehend their behavior, the effects of what they do. This might include community service, restitution, and apologies. The emphasis is on reconciliation and rehabilitation. Specialized community service programs for youth offenders focus on skill development, mentorship, and community participation. For instance, The Youth Offender Diversion Program in California provides alternatives to juvenile detention, such as therapy, community service, and education.

Germany: In Germany, offender-victim mediation programs are utilized, in which community service is frequently included in the arrangement. This method motivates offenders to assume responsibility for their deeds and immediately confront the harm they have done, promoting empathy and accountability. The German system frequently assigns community service that is immediately related to the crime, such as vandals assisting with neighborhood cleanup initiatives. This aids criminals in observe the results of their behavior firsthand.

Malaysia: In Malaysia, community service is given to punish youthful offenders as a substitute for a custodial sentence or fine.⁵⁹ The term "youthful offenders" is explicitly defined under **Section 2 of the Criminal Procedure Code of Malaysia**, hereinafter referred to as "CPC", as an individual who is above eighteen but below twenty-one years of age. Also, Section 293(1)(e) of CPC provides that-
'Community Service means any work, service or course of instruction for the betterment of the public at large and includes, any work performed which involves payment to the prison or local authority.'

The **Offenders Compulsory Attendance Act, of 1954**, in Malaysia establishes a Compulsory Attendance Order, according to which offenders who have committed specified crimes are given an imprisonment term, but they must carry out the sentence by carrying out required labor outside the jail. A sentence of this sort is often given to first-time offenders for carrying out minor crimes like riding a motorbike without a helmet, petty shoplifting, and so on. Additionally, the Parole and Community Services Center's Officer

⁵⁷ <https://timesofindia.indiatimes.com/city/chandigarh/public-drinkers-sentenced-to-serve-in-cow-shelters-old-age-homes/articleshow/123350716.cms>

⁵⁸ Shifting Contours of Criminal Laws: Analysing the Viability of Community Service as a Punitive Measure in India <https://nualslawjournal.com/2024/09/20/shifting-contours-of-criminal-laws-analysing-the-viability-of-community-service-as-a-punitive-measure-in-india/>

⁵⁹ Ibid

of the Malaysian Prison Department is sent to monitor offenders in order to ensure that rules are followed and that attendance is required.⁶⁰

Conclusion And Recommendations:

Community sentencing in India is a modern approach to criminal justice that places a priority on rehabilitation over punishment. It is consistent with the tenets of restorative justice, which prioritize reintegrating offenders into society, lowering recidivism, and treating the underlying reasons for crime. This strategy acknowledges that not every offender poses a serious danger to society and that community-based alternatives to incarceration may frequently result in more favorable results for both people and communities. Community sentencing has been integrated into India's legal system through mechanisms such as probation, parole, community service, and fines. The Probation of Offenders Act, 1958, is still a key piece of legislation that courts are allowed to place offenders on probation rather than sentence them to jail. First-time offenders and those found guilty of less serious offenses may have the opportunity to change while still being held accountable for their behavior. Community service orders are another option, though they are used less frequently.

The formal inclusion of community service in the criminal laws, which is primarily expanding the scope of restorative justice to flourish, is currently brewing in India. "The range of community service work will have to be defined and ring fenced."⁶¹ "It could include working in the social service arena such as services at hospitals or rehabilitation centers, or require performance of manual or non-manual work, or may require serving non-profit organizations for social services, or require assisting in government awareness programs etc." [31]

The following recommendations have to be considered by the government to improve the restorative justice system to be more effective:

1. Certainty In Application Of Community Service

It should be clear that under what circumstances community service can be given as a punishment and also its necessary to specify the acceptable types of community service, the length of time, the categories of offenders that are eligible, and the appropriate supervisory authorities. This aids in minimizing uncertainty and guaranteeing consistent application. So that judges could consider the proximity of offender and impose the appropriate punishments.

2. Develop Solid Monitoring And Oversight Systems

Establish explicit accountability systems, such as employing skilled supervisors, monitoring attendance, and maintaining frequent reporting mechanisms to the courts. There should be a proper mechanism for monitoring and evaluating the offenders who are engaged in community service to rank their compliances.

3. Extend The Scope Of Community Service

There are plenty of offences which does not need punishment of imprisonment and to prevent unnecessary prison crowd, community service can be extended to various petty offences. Whether the six offences which's mentioned in BNS is exhaustive or not? Again, it is a question. So, its again with the discretion of judges to decide and it may lead to any misinterpretation.

⁶⁰ Ibid

⁶¹ Fauzia Shakil, 'Community Service' Under the BNS- An Incomplete Yet Promising Penological Advancement (July 5, 2024, 9:58 AM), <https://www.livelaw.in/articles/community-service-under-bhartiya-nyaya-sanhita-262322?fromIpLogin=15112.910223767107>.

4. Efforts To Reduce Social Stigma

Use media campaigns, success stories, and community outreach to promote the understanding and acceptance of community service as a restorative justice approach. To gain public acceptance of the reformatory system, experts emphasize the importance of utilizing case studies and the media to increase confidence in the system.