

Community Service as a New Form of Punishment under the Bharatiya Nyaya Sanhita, 2023: A Comparative Study with the Indian Penal Code

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Abstract

The criminal laws made a significant change in criminal justice system of India in the year 2023. Legal status of Community service's as punishment under Section 4(f) is a new amendment. Community service was never a punishment in Section 53 of the "Indian Penal Code (IPC) 1860" but BNS not only focuses on jail time and fines but added community service as a new punishment for some offenses. Instead of just punishment for offenders, this change focuses more on helping people in transforming and contributing to society.

In this research study The idea, aims, and historical development of community service as a criminal penalty is discussed. It examines the legislative amendments made by the government and compares them with old criminal laws. The study also examines the evolution and effective use of community service in nations like Australia, Netherlands, United States, Germany etc. focusing on their impact on current sentencing norms.

The study also assesses the advantages of community service, such as involvement of society in the legal system, cost-effectiveness, rehabilitation of offender and help to reduce in jail overcrowding. Simultaneously, it identifies practical issues with enforcement, supervision, and implementation. The study comes to the conclusion that the Bharatiya Nyaya Sanhita, 2023's inclusion of community work is a legal change that supports the ideas of restorative and reformatory justice. However, to work well in the long run, it needs clear rules, proper monitoring, and good cooperation between the responsible institutions.

Keywords; Bharatiya Nyaya Sanhita, 2023 (BNS); Community Service; Criminal Justice System; Restorative Justice; Reformatory Justice; Rehabilitation of Offenders.

INTRODUCTION

As it is well known that on July 1, 2024 new criminal laws took the place of old criminal laws. "Bharatiya Nyaya Sanhita (BNS)" "Bharatiya Nagarik Suraksha Sanhita (BNSS)" and "Bharatiya Sakshya Adhiniyam (BSA)" have taken the place of the IPC, CrPC, and Evidence Act. This was done because the criminal laws we were using has been established in the British era and we need new laws that fulfil the needs of Morden society. The key element of any law is change. These laws have undergone through many

modifications by parliament. One of the sections of the IPC additional modifications were made it was section 53 which is currently section 4(f) in BNS. In IPC there was no provision of community service as punishment but after introduction of new criminal law in BNS it was introduced as new form of punishment. Previously Order of Community service as punishment was given by magistrate under section 482 of Crpc and it was also given in “Juvenile Justice (Care and Protection of Children) Act” 2015 but it was never introduced as punishment under IPC. Many countries have community service as punishment with different provision but in India after introduction of new criminal laws community service was also introduced.

CONCEPT OF “COMMUNITY SERVICE”

“community service” is that type of punishment in which an offender is ordered by the court to perform social-beneficial activity for which an individual does not get paid but he performs it as a punishment. It is an unpaid labour in which it is believed that it will be beneficial for society and also help in someone's rehabilitation. Community service as punishment was added in BNS 2023 after introduction of new laws. In this offender must do social services for the community such as cleaning parks and public roads, do things which improve the environment, doing administrative work, etc. When an individual commits a minor offense for which harsh punishment is not reasonable then they are subject to this punishment. In this offender is compelled to perform community service he is not doing it voluntarily but by this he realized his mistake and the reason he wasn't sent to jail is because they want to keep non-violent offenders separate from violent offenders and give them a chance to reform.

ORIGIN OF COMMUNITY SERVICE

Origin of Community service can be seen from two perspectives first as a kind of social work and second as punishment. It was introduced as a legal punishment to reduce overcrowding of jails and for rehabilitation of those offenders who commit minor or non-violent crimes. With this it also helps to perform unpaid labour for the benefit of society. This strategy aims to rehabilitate prisoners while reducing the use of short-term incarceration. If we see legal validation of community service it can be seen from the past fifty years where several nations have accepted community service as punishment like USA and the UK. But community service is an older concept than acceptance of USA and UK. It extends back to 1553 in London¹ at that time unemployed or idle persons were made to perform community service. Alaskan judges also employed community work to improve behaviour of people during and after World War II. In 1970 a recommendation was given by Wootton Report's that community service can be used as an alternative to imprisonment for specific criminals after that community service became an official punishment in England and Wales. According to the study community service was less expensive than keeping up criminals in jail and also beneficial to society. The Criminal Justice Act of 1972 formally included community service as a punishment option based on these recommendations. The United States authority starts community service programs in Alameda County, California in 1966. Instead of imposing penalties like imprisonment judges sentenced many individuals convicted of traffic offenses to perform unpaid labour for the community. To manage these initiatives a unique organization was established who can manage things. Community service is now a common criminal penalty in several nations such as Germany, Australia, and Sri Lanka.

International Perspective on Community Service as Punishment.**United Kingdom: Structured Community Orders²**

In UK people who break the minor laws Instead of sending them to prison they have to do unpaid works like cleaning up public places, go to rehabilitation programs, get help for drug problems, or stay at home during certain hours. People are watched closely to make sure they do what they're told. If they don't follow the rules they can get a stricter punishment like going to prison or something else.

Australia: Diversion Programs

Under Australia's diversion program offender whose age is less than 18 and he has committed offense which is minor in nature and offence is committed for the first time than they have to do community service or educational programs instead of going jail and no criminal history is added in their profile. In certain areas, they have to contribute to cultural awareness and rehabilitation via community involvement and cultural education.

Netherlands: "Training and Community Integration"

In Netherland "community service" don't include only unpaid labour but it also includes skill-building programs and when training is completed individuals get certificates. These certificate help them develop new skills which gave them chances of finding new employment and teach them lesson not to commit the same crime again. The government creates fresh programs time to time, programs like maintaining public parks and supporting community centres and local festivals. These methods help not only to develop offenders' sense of culpability but also help them to sense connection to the community.

United States: Restorative Justice Initiatives

The primary objective of restorative justice is to make the offender realize the pain he caused to the victim. By this offender can understand the impact of his actions so victim and the offender came together ³ some time any reputed member of the community also included for discussion. Restorative justice concepts can be included into offender rehabilitation programs to better prepare offenders for successful reintegration into society.

Germany: "Offender-Victim Mediation"

The Offender-victim mediation program is followed in Germany where it is (community service) usually source of mediation agreement. The aim of this system is to make realize offenders that what they did and help to rectify the situation. In Germany community service is usually connected to those type of crime like damaging public property may be required to help clean or repair public places.

DEVLOPMENT IN INDIA

Indian Jail Committee (1880–1883) :It was the first committee which purpose the idea to make "community service" as punishment in India .It was suggested for those crime which were less serious in nature and in response of overcrowding in jail but no implementation was done on it.⁴

Multiple References Point to the Same Conclusion:

When Indian jail committee⁵ recommends community service as punishment then other sources also made the same advice. Before IPC (Amendment) Bill, 1978 came into force in that also it was proposed that allow community service as a penalty for offenses that carry a sentence of less than three years by giving

40 to 1000 hours of unpaid labour but it was never implemented. After this Law Commission's 42nd and 156th reports ⁶(1971 and 1997, respectively) and the Malimath Committee (2000–2003) also made similar recommendations, although they were also never implemented.

Community Service in Criminal Justice of India (Role of Section 482 CrPC):

After numerous recommendations community service was not added as punishment in IPC but The Court of India used it by their inherent power which was granted by section 482 of the Criminal Procedure Code (CrPC) The courts have power that it can withdraw an FIR or release someone on bail. They can also order that the offender have to perform community service rather than punishing him court can give these order of community service in petty offenses or where there is mutual agreement between the parties.

What does Section 482 say?

According to Section 482 of CrPC the High Court have inherent powers so that justice may prevail. Such powers are used for executing the orders of Court and it can save from the misuse of process of judiciary which makes a just decision. Such powers can be exercised by the High Court only in those cases where there is no other provision of law provided.

In *Rajeev Kourav v. Baisahab & Ors*⁷. [(2020) 3 SCC 317, the Supreme Court stated that the High Court may dismiss proceedings under Section 482 CrPC when a dispute is primarily private or personal in nature and the parties have reached an amicable resolution. In case of compromise the High Court may also impose appropriate punishment like community service which includes donation to a charitable cause or involvement in social welfare initiatives.

“Juvenile Justice (Care and Protection of Children)” Act, 2015

Concept of community service was also seen in JJ Act, 2015 in which if minors convicted of some offence which is minor in nature **Section 18(1)(c)** allows the J. J Board to impose community service as punishment. This was the only statutory recognition of community service in Indian law before section 4(f) of BNS. Court don't give harsh punishment to minor but give community service it is a non-custodial and non-punitive procedure that aims towards encouraging social responsibility and help to reform the minor. The JJB has the authority to order community service for minors in the following situations:

1. Before passing a sentence the court will see the nature and seriousness of the crime so that the reasonable sentence can be imposed.
2. Board recognize Social inquiry report of the minor which includes the circumstances, reasons and background of the minor.
3. Previous conduct of minor.
4. The need for guidance or assistance and the best way to rehabilitate the minor

The juvenile board will always choose a responsible individual to keep an eye on a minor who is sentenced to community work as punishment. They find this kind of responsible person or group so that order must be followed with proper control and without any negligence. For this persons from NGOs, schools, hospitals and other institutions are chosen so that the child can't leave the work or punishment unfinished and he can do it correctly this help to maintain the service secure, focused and aids in the child's recovery.

“ Bharatiya Nyaya Sanhita” ⁸(BNS) 2023 – (A Turning Point)

By the replacement of the IPC with the BNS it make a significant change in criminal justice system of India. “Community service” was major reforms which was introduced by the BNS .In IPC no such provision was mentioned However the BNS has officially recognized it as a type of punishment. This is provided under Section 4(f) of the BNS ⁹and Section 23 of the BNSS.

SECTION 4 OF BNS: This section defines different type of punishment includes ¹⁰:Death, Imprisonment for life, Imprisonment which is of two descriptions: (a)Rigorous imprisonment (with hard labour). (b)Simple imprisonment, Forfeiture of property, Fine, Community service.

SECTION 23 of BNSS – Sentences which Magistrates may pass

23(3) Magistrate of the second class is authorized to give a sentence of imprisonment for not more than one year, fine of not more than ten thousand rupees or community service or both.

Explanation; “Community Service” means unpaid labour which the Court imposes on the convict as a form of punishment which will be beneficial for the society but no money will be paid to him for this labour.

According to BNS there are following offences in which community service as punishment is given;

1. **Section 209 of BNS:** ¹¹According to section 209 if court give order to any person that they have to appear in court on specific time and date under section 84(1) of BNSS but he don’t appear then court can give him punishment of 3 years of imprisonment or fine or community service or both.
2. **Section 266 of BNS:** If person try to commit suicide so that public officer like police officer or any other public authority cannot perform his duty then he will be punished for 1 year of fine or both. He can also be punished with community service.
3. **Section 303(2) proviso BNS:** When a person commit theft and he is first time offender and theft is of amount less than 5000 and the thing stolen is restore and given back he will get community service as punishment.
4. **Section 355 of BNS:** ¹²If a person is restricted to any area in intoxication but he still enter the area and make nuisance he will be punished for imprisonment of 24 hours or fine or both. He can also liable of community service.
5. **Section 356(2) of BNS**¹³: If a person is liable of defamation he will be liable for 2 years of imprisonment or fine or both. can be liable for community service as punishment.

Conclusion

The implementation of community service as a punishment is add in Section 4(f) of the BNS, 2023 constitutes an important change from Indian criminal justice system. It is based on that type of punishment which focuses on reform and restoration. Unlike the Indian Penal Code, 1860.which recognized only conventional forms of punishment, the BNS adopts a reformative approach by recognizing the need for offender rehabilitation while ensuring that offenders become socially responsible members of society. After analysis of international countries like Australia, Germany, Netherlands and United States indicates that community service can be a successful sentencing choice when there is legal regulation and

monitoring. After analysing the experience of these countries community service helps in reducing prison overcrowding and also helps financial burden on the authorities but also allows individuals to change for the better.

to implementation any law in India it is important that how effectively it will be implemented. there may be difficulties Without procedural guidelines and standards in the process of implementation. India need guidelines, supervision, and coordination of the process for community service to be significant and achieve its goals.

Generally speaking, the implementation of community service in the BNS 2023 is a step in the right direction as far as change in law is concerned. The principles of restorative justice and reformatory justice have been adhered to. Properly implemented of this law it can enhance the criminal justice system and work to the benefit of all parties involved in the case.

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