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THE ROADBLOCKS TO COMMUNITY SERVICE AS PUNISHMENT AND HOW TO OVERCOME THEM

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Abstract:

- Community service as a form of punishment under the Bharatiya Nyaya Sanhita (BNSS) is a new form of punishment recognised under law. This article discusses the rationale behind its introduction, the legal provisions governing it, challenges in its implementation, and potential solutions to ensure its effectiveness. By analyzing judicial precedents and practical concerns, the article suggests a structured approach to executing community service as a viable alternative to incarceration for petty offences.

I. Introduction:

1. Understanding Community Service as a Punishment under BNSS:

- “Community service” has been formally recognized as a punishment under the BNS³. Judicial Magistrates of both First and Second Class have the discretion to impose community service. The provisions governing this are outlined in **Section 23 of the BNSS**⁴
- Bharatiya Nyaya Sanhita (BNS i.e., new criminal law) does not provide a comprehensive definition of community service but states that it must benefit society without remuneration. This raises concerns about the clarity and execution of such punishment.
- Interestingly, the BNSS does not define community service in a general sense. However, the explanation appended to Section 23 of BNSS states that community service refers to work that the court may order a convict to perform as a form of punishment. The service must benefit society, and the convicted individual is not entitled to any remuneration for this work. This definition itself raises certain questions.

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³ BHARATIYA NYAYA SANHITA, 2023 (Act 45 OF 2023)

⁴ Bharatiya Nagarik Suraksha Sanhita (Act 46 of 2023)

2. Rationale Behind Introducing Community Service:

- The introduction of community service stems from India's efforts to address concerns raised by the United Nations regarding prison reforms. Overcrowding in prisons has been a long-standing issue, especially in central jails like Tihar. In many instances, individuals convicted of minor offences are housed alongside those serving sentences for graver crimes. This environment can lead to negative influences, increasing the likelihood of recidivism even after release. The introduction of community service as a punishment seeks to address these issues in two key ways:
 - 1. Reducing Overcrowding in Prisons** – By diverting minor offenders away from imprisonment, the burden on the prison system is alleviated.
 - 2. Rehabilitation and Reform** – Community service serves as a rehabilitative and reformatory measure, allowing offenders to contribute positively to society instead of being incarcerated.
- The legislature has also considered the economic implications of criminal law. Over time, community service as an alternative punishment could prove to be more cost-effective, reducing the economic burden associated with maintaining an ever-growing prison population. High rates of recidivism and prison overcrowding have necessitated alternative sentencing mechanisms. Community service aims to:
 1. Reduce overcrowding in prisons by diverting minor offenders away from incarceration.
 2. Serve as a rehabilitative measure that promotes reintegration into society.
 3. Reduce economic costs associated with maintaining a large prison population.

II. Can the community service be implemented in every criminal case.?

- **Section 4(f) of BNS includes community service as a form of punishment for six specific petty offences:**
 1. Public servant unlawfully engaging in trade (Sec. 202)
 2. Non-appearance in response to a proclamation (Sec. 209)
 3. Attempt to commit suicide to compel or restrain a public servant (Sec. 226)
 4. First-time conviction in petty theft of less than Rs. 5000 (Sec. 303(2))
 5. Misconduct in public by a drunken person (Sec. 355)
 6. Defamation (Sec. 356(2))

So, the answer is No. Community service can be imposed only for the aforementioned crimes as per BNS.

III. Concerns and Challenges:

- Despite its potential benefits, there are certain concerns regarding the implementation of community service as a punishment. One major issue is the lack of a proper framework for enforcing community service across the country. As of now, only few countries have implemented community service as part of judicial sentencing, but there is no uniform structure governing its execution.
- A notable precedent for community service as a punishment was set for the first time in India by the Apex Court in the case of *State Tr. P. S. Lodhi Colony, New Delhi v. Sanjeev Nanda*⁵. In this case, a 20-year-old boy was convicted of causing an accident that led to the deaths of six people. As part of his punishment, the Supreme Court directed him to perform community service for two years, under the supervision of the Ministry of Social Justice and Empowerment. If he failed to comply, he would have to undergo simple imprisonment for two years.
- This case serves as a significant example of how community service can be integrated into the legal system. However, to ensure its effectiveness, a well-defined framework must be established, addressing concerns such as monitoring, enforcement, and accountability.

IV. Challenges That Are Faced In Implementing Community Service:

- *There are no proper guidelines and structured process for implementing community service, raising questions about who will monitor convicts, the duration of service, and enforcement mechanisms.*
- *Courts may struggle with ensuring proper supervision without adequate institutional support. Without a well-defined monitoring system, there is a risk that convicts may not comply with service orders effectively. On whom accountability is to be fixed in such cases.*
- *Moreover Full-day service could deprive convicts of their livelihood, impacting their families. Therefore, **economic and Social Considerations of the convict is to be considered.***

⁵ AIR 2012 SC 3104

V. Solutions for Effective Implementation:

- To ensure the success of community service as a punishment, courts should adopt the following measures:
 1. **Assessing Convict's Skills:** The nature of service should align with the convict's abilities. For instance, an uneducated convict with experience in manual labour can be assigned tasks such as sweeping roads.
 2. **Time-Bound Execution:** Instead of full-day service, a structured approach like three hours per day ensures convicts can sustain their livelihood while fulfilling their punishment.
 3. **Supervision Mechanism:** Authorities such as the Municipal Commissioner (if the convict is asked to sweep roads in municipal limits) can oversee the convict's work and submit daily reports to the court.

VI. Hypothetical Case Study:

- Lets take up a situation where 'X' commits an offence punishable under Section 303(2) BNS, where the value of the stolen property is less than Rs 5000/- and the guilt of accused is proved by the prosecution. Now what the magistrate is supposed to do??

As per S. 303 BNS. (Theft):

(1) xxx

(2) Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both and in case of second or subsequent conviction of any person under this section, he shall be punished with rigorous imprisonment for a term which shall not be less than one year but which may extend to five years and with fine:

Provided that in cases of theft where the value of the stolen property is less than five thousand rupees, and a 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.

- So, if the Court finds that the stolen property is valued less than Rs 5000/-, the above proviso to Section 303(2) of the BNS mandates community service for first-time offenders upon restitution/restoration of property. This means that, in the present case, with regard to the offence under Section 303(2) of the BNS, the word "shall" in the

proviso to subsection (2) of Section 303 indicates that the Court has no discretion except to impose community service as the sole punishment.

- Sometimes, the court does not know if the offender is a first-time offender or if he has already been involved in criminal activities. In such cases, how court is supposed to proceed further. In such cases :

(i) The better course of action is that, once the guilt of the accused is proven, the Court should direct the Station House Officer (Police) to immediately provide information on the accused's antecedents by verifying criminal records through CCTNS⁶ and other available records. This will help ascertain whether the offender is a first-time offender, providing a clear picture of their criminal history

(ii) Another important tool is the ICJS⁷. This platform facilitates the transfer of data between various components of the criminal justice system. ICJS connects the police, courts, jails, forensic labs, and prosecution. A separate login will also be provided to the police at the Station House Officer level. ICJS helps ensure that all important information related to a case is available to the courts in a timely manner. Through this system, we can access the details of prisoners across India.

(iii) In no time, the concerned police officer can access both CCTNS and ICJS to submit their report, based on the search, to ascertain if the accused has any past criminal history. The information provided by the police enables the court to determine whether the offender is a first-time offender or not, which is crucial for deciding on the implementation of community service.

- Regarding the implementation of Community Service, there are currently no established guidelines detailing **how it should be conducted/implemented?; who will monitor the convict?; the duration; or the authority responsible for its execution?;** so on and so forth. But as Magistrate has no discretion in the instant case except to impose community service and the Court cannot simply overlook or avoid this obligation solely due to the absence of specific guidelines in the statute for implementation.

⁶ Crime and Criminal Tracking Network & Systems (CCTNS)

⁷ Inter Operable Criminal Justice System (ICJS)

- It is a settled law that when a statute or code does not provide specific procedural guidance, courts must devise or adopt a reasonable procedure that aligns with the statute's objectives and principles of justice and this approach upholds fairness while respecting legislative intent.
- Now, turning to the exercise of implementation of Community Service in an effective manner, the convict can be asked about his working skills to assign him a proper task/work for the benefit of society. For example if the Convict is uneducated and says that he is a coolie or sweeper etc, we can come to an understanding that he has some familiarity with sweeping.
- In imposing community service, Court must consider that the convict will receive no remuneration, as the service is intended as a kind of punishment in terms of **explanation appended to section 23 of BNSS**. As such, engaging the convict in full-day community service could deprive his family of essential income, as his dependent family members relies on his work for their livelihood. At the same time, implementing community service without taking the convict's circumstances into account, and solely at the Court's discretion, could have adverse consequences. Therefore, the Court after a comprehensive analysis of the facts and circumstances, whatever period deems it appropriate to impose Community Service in a feasible and workable manner may be mentioned.
- Instead of mandating full-day service, if the convict is directed to perform community service for three hours each day or alike, that kind of arrangement allows the convict to work as a labourer or seek other employment for the remaining hours, ensuring that he can continue to provide bread and butter to his family.
- For instance, if the convict is ordered to perform sweeping duties on the arterial roads or streets of local area in the municipality from 6:00 AM to 9:00 AM for a period of two months, under the supervision of the Municipal Commissioner of that area, such service will contribute to cleaner streets, reduce pollution, and improve public hygiene, thereby benefitting society at large.
- Moreover, through this Community Service, the convict will recognize the significance of this alternative to imprisonment, which is legally recognized as a reformatory approach. Rather than serving a prison term, mingling with hardcore criminals, engaging in service on the roads (community service), will give him a real opportunity for personal reformation.

- The Court should hope and trust that the procedure adopted by it will meet both ends, as it will benefit society at large and also aid in the convict's reformation, helping him emerge as a responsible citizen apart from instilling habits of societal responsibility.
- It is needless to state that **sub-section (5) of Section 8 of the BNS** empowers the Court to impose imprisonment in case of default of community service by the convict (i.e., if the convict fails to complete the assigned community service); however, such imprisonment so imposed in default of Community-Service shall be **simple**.
- **Appraisal to the Convict :**
 1. Convict shall be apprised of his right to prefer an appeal against the judgment, in case of any grievance. Convict shall also be made aware of his right to legal aid to assist with the appeal process, if he wishes to prefer.
 2. Convict shall be informed of his right to receive the true copy of the Judgment, free of cost (Conviction Judgment)
 3. It shall be further informed to the convict that for the Community service performed as a form of punishment, the convict shall not be entitled to any remuneration. (Explanation appended to **section 23 of BNSS**)
- **Direction to Authorities concerned :**
 1. Say for example, if the convict is asked to sweep roads in the municipal limits of Kanigiri, then the following directions appear feasible.
 2. The Municipal Commissioner, Kanigiri, shall submit or cause to be submitted a daily attendance and work report of the convict, along with photographs, (either physically or through electronic mode) to this Court.
 3. It is needless to state that in the event of non-compliance by the convict, regarding the community service as directed by this Court, Municipal Commissioner, Kanigiri, shall without any delay, inform this Court, for necessary action.
 4. It is also needless to state that the Municipal authorities shall provide the convict with all necessary tools and equipment required for cleaning and sweeping.
 5. The Municipal Commissioner of Kanigiri shall, under his supervision or that of a designated municipal official, ensure that the community service ordered by this

⁸ sub section (5) of section 8 BNSS : If the offence is punishable with fine or community service, the imprisonment which the Court imposes in default of payment of the fine or in default of community service shall be simple.

Court is implemented effectively. The convict is not entitled to any remuneration for the work done by him and as such Municipal Commissioner.

○ **Directions to Accused/Convict :**

1. The convict shall furnish a Bond of Undertaking for Compliance with Community Service Order apart from furnishing his address particulars and contact number.
2. Upon finishing the daily work (community service) by 09:00 AM, the convict shall report to this Court on or before 5 PM everyday, with a copy of attendance record from the municipal officials of Kanigiri and sign in the register maintained by the superintendent of this Court, which will be opened by the superintendent of this Court, by virtue of this Judgment, for monitoring compliance.
3. Since Community Service is a form of punishment, the convict shall not leave the jurisdiction of this Court, until the completion of community service period, without the leave of the Court.

○ **Special Directive to Police :**

The SHO of Concerned Police Station may be directed to perform periodic, random check-ins with the Municipal Commissioner (in the given hypothetical case study) or the designated supervisor of that particular Municipality. This is to ensure effective implementation of the Court's judgment without intruding into the convict's privacy by the police and at the same time, enabling the police to stay informed of the convict's compliance without direct monitoring.

○ **Directions to the Office/Section of the Court:**

1. Office shall specify all the aspects clearly in the conviction warrant of the convict so as to enable the jailer concerned to have proper clarity on the kind of conviction, this court imposed.
2. The Court shall direct its office to furnish a true copy of the Judgment of the case to the convict as contemplated under Rule 72 of Criminal Rules of Practice and Section 404 of BNSS, forthwith on pronouncing judgment, free of cost and to receive the acknowledgment of the same from convict.
3. The Court shall direct its office to obtain Bond of Undertaking from the accused/convict for Compliance with Community Service Order, for its effective implementation.

4. The Court shall mark the copy of this Judgment to SHO, concerned, the Municipal Commissioner Kanigiri for effective implementation apart from addressing a letter.

The above directions are merely illustrative and suggestive. The court, in implementing community service, should take all necessary precautionary steps to ensure that the community service is carried out effectively, benefiting both the convict and society.

VII. Bond of Undertaking for Compliance with Community Service Order:

- Even no proforma of Bond of undertaking is contemplated anywhere in the BNSS but through this article, keeping the intent of legislature, the following bond is prepared to meet the requirements until guidelines are framed and necessary changes are made to existing criminal rules of practices of the respective states :

Model- Bond of Undertaking for Compliance with Community Service Order

BEFORE THE COURT OF JUDICIAL MAGISTRATE I CLASS:: (Name of the Court)

Case No.: _____

Convict's Name: _____

Father's Name: _____

Address: _____

Age: _____

Conviction Details: Offence punishable under Section _____ of the BNS

Bond for Compliance with Community Service Sentence

I, _____ (Name of Convict), aged _____ years, son of _____, residing at _____, do hereby solemnly affirm and undertake as follows:

1. That I have been convicted under Section _____ of the BNS and sentenced by this Honorable Court to perform community service for a period of _____ (specify period i.e, days or months), from _____ (from date to till date --/--/2025 to --/--/2025) _____, by (for ex: cleaning and sweeping the arterial roads and streets (nature of work allotted by court)) from _____ AM to _____ AM/PM, under the supervision of the (concerned Authority . For ex : Municipal Commissioner, if the convict is asked to clean roads in the municipality)

2. That I shall duly comply with this sentence by reporting for duty daily at the designated time and location, equipped with the necessary work implements provided by the concerned authorities.
3. That I understand my obligation to appear before this Honorable Court by 5:00 PM each day upon completion of my duties, with a copy of my attendance record signed by the supervising (Municipal) officials. I shall also sign the register maintained by the Superintendent of this Court, specifically opened for monitoring compliance with this Judgment.
4. I acknowledge that, as per the Explanation to Section 23 of the BNSS, I am not entitled to any remuneration for the community service performed under this sentence, as it is part of my punishment.
5. I am aware that in the event of non-compliance with any of the directives in this order, the (ex: Municipal Commissioner, *****) will promptly inform this Court. I further understand that failure to comply with these community service requirements shall result in my undergoing simple imprisonment for a period of _____ days, as stipulated in Section 8(5) of the BNS for offences punishable under Section _____ (mention the section for which conviction is pronounced) of the BNS.
6. I fully understand the terms and conditions of this bond and undertake to fulfill the obligations of this community service order faithfully and without any default.

Signature of Convict:

Date:

**Signature of Presiding
Officer/Magistrate**

VIII. Conclusion:

- Community service as a form of punishment presents a progressive alternative to incarceration, particularly for minor offences. However, its successful implementation depends on structured guidelines, coordination between judicial and administrative authorities, and robust monitoring mechanisms. Courts must ensure that community service aligns with the principles of justice and rehabilitation, creating a balance between punishment and reform. By refining implementation strategies, India can effectively integrate community service into its criminal justice system, benefitting both offenders and society at large.