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JUSTICE BEYOND BARS: REDEFINING PENAL REFORM THROUGH COMMUNITY SERVICE

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Abstract

Classical criminology suggests that individuals commit crimes through rational choice. However, this idea seems insufficient in a post-liberal context. According to proponents of conflict theory, criminal acts are shaped by complex economic and social realities that often exist beyond the control of the individual. However, incarceration has become such a common form of punishment that even parents often use "grounding," which is a type of confinement, to discipline misbehaving children. The cycle of poverty often created by incarceration leaves individuals and their families in financial hardship due to job loss, social stigma and limited opportunities for reintegration. The trend of stricter incarceration has been reinforced by recent legislation. Although there may be theoretical disagreements about the rationale and goals of incarceration, it has been demonstrated that incarceration is a contributing factor to deepening poverty and the depletion of individual's skills. The introduction of community work as an alternative penalty in the Bhartiya Naya Sahita, aimed at addressing these issues, marks a significant shift in Indian penal law. Through community service, offenders can fulfill their communal commitments without facing the financial and social repercussions of incarceration, offering a restorative approach to justice. This alternative punishment addresses the need for incarceration while emphasizing accountability and rehabilitation, in line with the principles of restorative justice. This article examines how community service can break the cycle of incarceration and transform criminal justice policies.

Keywords: Incarceration, Criminal justice, Community service, Penal laws, Impoverishment

INTRODUCTION

“Hate the sin, not the sinner.” -Mahatma Gandhi

Punishment is the foundation of criminal law everywhere in this world. The primary goal of punishment is to provide a safe environment in society. This is accomplished in either

rehabilitating the offenders or stopping the offenses. In light of the offender's socioeconomic circumstances, it holds that the penalty ought to be designed to promote reformation. The offender's mentality and thought process should improve as a result, enabling them to follow the law and lead a normal life after completing their sentence. The Supreme Court ruled in *TK Gopal v. State of Karnataka*¹ that "a criminal must be punished and given the prescribed punishment, but at the same time, reforming the criminal through various processes should entitle him to all the basic rights, human dignity, and human sympathy, despite the fact that he has committed a crime." *Section 53* of the Indian Penal Code lists the following punishments: death, life in prison, harsh imprisonment, simple imprisonment, property forfeiture, and fine.² The majority of these punishments go counter to India's claimed commitment to the reformative concept. Many nations are now using alternatives to these penalties in an effort to "reform" criminals.

Quakers consider alternative sentencing as alternatives that are more beneficial to society and, consequently, the community at large than punishment.³ A convicted individual may be able to contribute to society and learn about appropriate behaviour through alternative punishment. In some situations, it saves money on both hiring an employee and the cost of incarcerating the offender. Alternative sentencing is a type of punishment designed to alleviate prison overcrowding and provide a fresh way to keep an eye on convicted criminals.

In addition to lowering incarceration costs, alternative sentencing for women was created because female offenders are typically less violent and hence pose less of a threat than male offenders. *Section 4* of the *Bhartiya Nyaya Sanhita, 2023*, which encapsulates *Section 53* of the Indian Penal Code, has established community service as a common option to incarceration. Instead, it focuses on rehabilitation, reintegration, and restoring communal harmony. Its goal is to teach convicts how their actions affect others and to connect them with society. A convicted person repays a debt to society by serving the community. Convicted of some crimes, offenders must now complete unpaid community service, which could involve helping nonprofits or cleaning public spaces. This kind of punishment attempts to give criminals a sense of duty and responsibility and make constructive contributions to society. Furthermore, by

¹ *T.K. Gopal v. State of Karnataka*, (2000) 6 SCC 168.

² *Indian Penal Code*, § 53 (1872).

³ Asherry Magalla, *Alternative Punishments and Their Roles in Improving Socio-Economical and Political Aspects in Tanzania*, [2018] SSRN Electronic Journal, available at <https://ssrn.com/abstract=xxx> (last visited Jan. 1, 2025).

focusing on mending the harm caused by criminal behaviour and reintegrating convicts into society, community service is consistent with the ideals of restorative justice.

Although community service punishment has been effectively applied in a number of other nations, there are advantages and disadvantages to its implementation in India. On the one hand, it might lessen jail congestion, lower the financial and social expenses of incarceration, and boost community participation in the legal system. A sizable portion of those behind bars are from low-income families, and their incarceration frequently results in family dissolution, job loss, and unstable finances. They struggle to reintegrate into society after being released due to a lack of job possibilities, social stigma, and legal obstacles. By adjusting responses to offenses according to their seriousness, it also advances the principles of justice, proportionality, and fairness.

However, there are a number of obstacles to community service punishment in India, such as infrastructural problems, cultural differences, and social inequality. In order to overcome these obstacles, policymakers and practitioners must make sure that community service opportunities are distributed fairly, negotiate cultural norms surrounding punishment, and thoroughly evaluate the approach's scalability and long-term effects.

The necessity for punitive changes that put rehabilitation above punishment is highlighted by this cycle of incarceration and poverty. Adopting community service as a substitute for jail time is one such reform, particularly for non-violent offenders. Community service offers a way for offenders to make reparations while remaining integrated into society, ultimately reducing the financial and social burdens associated with traditional incarceration. As India continues to reform its justice system, it is crucial to carefully weigh the potential benefits and drawbacks of community service punishment in order to determine its place in the criminal justice system moving forward.

ORIGIN OF COMMUNITY SERVICE AS A FORM OF PUNISHMENT

Parliament in the United Kingdom passed legislation in the early 1970s that gave judges the authority to impose community service as a punishment. marking the beginning of formal community service programs in the United States.⁴ The 1970 "*Wootton Report*" promoted non-

⁴ Ken Pease, *Community Service Orders: Crime and Justice*, 6 *CHICAGO J. OF CRIMINOLOGY* (last accessed Feb. 8, 2025), available at <https://www.journals.uchicago.edu/doi/abs/10.1086/449104?journalCode=cj>.

custodial alternatives and emphasized the advantages of community service as a beneficial and economical substitute, which led to the official adoption of community service as a sentencing option in England and Wales. In the early 1980's after a series of private pilot projects the Dutch implemented community service nationwide and evaluators made comparable findings.⁵ It was Lenin who also stressed on the importance of community service. In order to discourage laziness and vagrancy, the idea of community service was first used in *London in 1553*. Judges in Alaska also used it during and after World War II, requiring community service as a condition of probation. In 1966, the Alameda County, California the first formalized community service program was created on an as-needed basis with the goal of consistently replacing brief jail terms. As a result, community service served as an indirect substitute for incarceration. The judges of the municipal court sentenced many traffic offenders to community service or unpaid labour as a punishment, and a special agency was created to oversee its implementation. In several nations today, such as Australia, Sri Lanka, and Germany, community service is a common form of punishment.

UNDERSTANDING COMMUNITY SERVICE

The concept of community service is not provided, nonetheless, and will be determined by jurisprudential discourse in the near future. Until then, it is important to remember the widely recognized definition in order to interpret the rules more clearly. Participating in community service is a way for the offender to make amends for the harm he has caused to the community. As a type of punishment, community service is emphasized in the research as a "alternate to incarceration." It is a court order that requires an offender to assist the community through unpaid work while being supervised by a probation officer, who will also offer the offender proper direction and rehabilitative counselling. In addition to trying to reform the offender, community service orders aim to reintegrate them into their community and require them to make a contribution to the betterment of the community they have damaged. Following conviction, the court may impose a non-custodial sentence that requires the offender to perform unpaid community service. Such a sentence addresses those who might normally wind up behind bars, even for nonviolent or minor offenses, crimes for which incarceration would not be practical, or crimes for which other forms of punishment would be more appropriate. Because of this, it is not applicable to serious or heinous offenses in the areas where it is chosen. *Kenneth D. Miller* defines it to be a sort of symbolic restitution when the person gives of

⁵ Douglas McDonald, *Punishment without Walls: Community Service Sentences in New York City* (Rutgers Univ. Press 1986).

himself and his time for the betterment of the community.⁶ The reformatory approach of criminal law is the source of this type of punishment. Probation and community service share many conceptual similarities as reformatory measures. Both of these punishments are often imposed following a conviction or a finding of guilt (either by a trial or a guilty plea). Both serve as alternatives to jail time and advocate for giving the guilty individual a chance to be changed and rehabilitated as a member of society rather than locking them up in a prison. During the term, the offender is allowed to lead a normal social life, and both sentences aim to prevent any interference with that life. Heinous crimes are typically not eligible for these types of punishments, which are generally thought to be suitable for non-violent or less serious offenses. In community service, in addition to maintaining good behaviour, the offender must perform the specified work for the specified number of hours as stipulated by the order. In probation, the offender is only monitored to adhere to the probationary conditions. This is the only way that the enforcement strategies vary. The instruction calls for both punitive and rehabilitative methods. It contradicts logic to argue that a sentence cannot be equally reparative, rehabilitative, and punitive; nonetheless, it is debatable if community service handles each tactic equally. There would not have been a need to advocate for the Indian Penal Code to include community service if it had been a common idea at the time. Community work as a reformation tool is exemplified by its inclusion in *Section 15 of The Juvenile Justice (Care and Protection of Children) Act, 2000*. Under the supervision of a probation officer, an offender (who must give their agreement and be at least 16 years old) must complete 40–240 hours of unpaid labour as part of a community service order. It is also known as "a community order which requires the offender to do unpaid work in the community under the supervision of a probation officer." Previously, it was called a "community service order." Moreover, the nature of the offense is clearly related to the task that the offender must perform.

PURPOSE OF COMMUNITY SERVICE AS A SENTENCE

According to *Young*, prisons in the UK have long been seen as detrimental rather than useful deterrents because of worries about overcrowding and the potential economic costs of constructing new prisons.⁷ He contends that the rise in crime rates has not been addressed by conventional non-custodial approaches, which has led to an emphasis on novel alternatives like

⁶ Kenneth D. Miller, *Community Service as Restorative Justice: A Symbolic Restitution*

⁷ W.A. Young, *Community Service Orders: The Development of a New Penal Measure*, available at <https://ojp.gov/ncjrs/virtual-library/abstracts/community-service-orders-development-and-use-new-penal-measure> (last accessed Jan. 8, 2025).

community service. In the US and New Zealand, similar claims have been made. According to research, community service is a more affordable option than jail, has a lower recidivism rate, and helps both communities and offenders.⁸ The importance of community service as a flexible, individualized, and compassionate punishment that benefits all parties involved has been highlighted in reports from US courts. The objectives of rehabilitation, deterrent, punishment, retribution, and justice are all in line with community service. Effective community initiatives that are well-planned and run have been shown to lower recidivism rates.⁹ According to *Hudson and Galaway*¹⁰, community involvement has the following benefits:

- a) lessens recidivism and the intrusion of the legal system,
- b) benefits agencies from the work done by the offender,
- c) boosts community support for the criminal justice system,
- d) lowers costs, and
- e) serves as a substitute sentencing for the courts.
- f) Criminals may also feel the need for additional.

The lives of criminals and community safety may be at risk, nevertheless, due to worries that community service is not always given out equitably and impartially. The court's decision about the duration and nature of service is frequently arbitrary and subjective, necessitating the development of a better method. It is proposed that, in addition to the courts and prison administration, a distinct department be created to supervise the implementation of community service sentences. To decide who should be eligible for community service sentencing, more research is also required. It's often reserved for small infractions, first-time offenders, property crimes, and traffic infractions, but there are questions over which offenders should receive this punishment and how the court should make that decision.

(A)As a restorative justice reform:

There are many viewpoints on the restorative approach to community service. Rehabilitating criminals is the guiding idea of this system of punishment. The court stressed that the primary goal of punishment should be reformation, with the intention of making the criminal a better person, in the *State of Gujarat v. Hon'ble High Court of Gujarat*¹¹. In a same vein, the court in

⁸ Ibid.

⁹ F. Allen & H. Treger, Community Service Orders in Federal Probation: Perceptions of Probationers and Host Agencies, 54 *FED. PROBATION* 8 (2000).

¹⁰ J. Hudson & B. Galaway, Community Service: Toward Program Definition, 54 *FED. PROBATION* 3 (2000).

¹¹ State of Gujarat v. Hon'ble High Court of Gujarat, AIR 1998 SC 3164.

*R.K. Anand v. Registrar High Court Delhi*¹² proposed that rather than merely locking up criminals, it would be advantageous to have them make useful contributions to society. A crime is viewed as an offense that needs to be addressed by the government to preserve social harmony and order. Since crimes are considered offenses against the state, punishment is the duty of the state. Proponents of this approach of punishment think that by teaching criminals useful skills while they are incarcerated, it can help them become better people. They view community service as a means for criminals to fulfil their social obligations and pursue rehabilitation rather than as a form of punishment. This type of social service offers a chance for reform and constructive change, even though society may not always value it.

(B) As an alternative form of sentencing:

The court decides the harshness of punishment for infractions according to the seriousness of the crime. Because it lessens the load on jails, community service has been acknowledged as a more cost-effective and efficient option, especially for minor infractions. For many years, the conventional strategy of keeping criminals in jail for long periods of time has been shown to be costly and ineffectual at lowering crime. In actuality, incarceration for an extended period of time frequently causes minor offenders to get more involved in criminal activity. The effectiveness of lengthy prison terms alone in discouraging crime is not well supported by evidence. By giving offenders, the opportunity to atone for their crimes and assist the community, community service offers a more restorative kind of discipline. Faster case resolution and justice delivery are made possible by its streamlining of the legal system. The legal system as a whole as well as the criminals gain from this economical and effective strategy.¹³

COMMUNITY SERVICE AS A PUNISHMENT - PRIOR TO BNS

Community sentences have not received much attention in the Indian criminal justice system, despite the introduction of numerous alternatives to custodial sentences over time and in the name of reforms, such as the use of open prisons, parole, probation, rehabilitation centres, and others.¹⁴ The influence of community service as an alternative in the Indian context is not well documented in the literature, despite the fact that overcrowding, cruel jail conditions, and

¹² R.K. Anand v. Registrar, High Court Delhi, AIR 2013 SC 670.

¹³ Riya Ranjan, Community Sentencing in India: Remedies and Reforms, I Pleaders, <https://blog.ipleaders.in/community-sentencing-india-remedies-reforms/> (last accessed Jan. 18, 2025).

¹⁴ Priyanshi Gupta, Community Service: As a Part of Sentence in India, SSRN JOURNAL, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3850264 (last visited Feb. 8, 2025).

expensive confinement are issues that also exist there. Only Section 18(1)(c) of the Juvenile Justice (Care and Protection of Children) Act, 2015¹⁵, now specifies the legal recognition of community service. For young offenders, this clause offers community service. Nonetheless, attempts have been made to implement community service as a kind of discipline. First, the Indian Penal Code (Amendment) Bill 1978 suggested that some offenses with work hours between 41000 could be punished with community punishment. In its 156th report,¹⁶ the Malimath Committee also suggested implementing community service, but these efforts have failed. Notwithstanding, a few of High Courts have taken the initiative to assign community service by using their innate authority under Section 482 of the 1973 Code of Criminal Procedure¹⁷. For example, the Delhi High Court has used this discretionary clause to order two young males who attempted to assault and assaulted a female to wash their shoes and wash their utensils in a Gurudwara.¹⁸ Community sentencing reduces the strain on the state coffers and the prison system.

In the *Pappu Khan v. State of Rajasthan*¹⁹ case, the Rajasthan High Court emphasized this point by noting that the welfare state cannot support a sizable number of inmates who are not productive since doing so places a significant financial strain on the public coffers.

COMMUNITY SENTENCE AND INDIAN JUDICIARY

The lack of a unified sentencing theory is causing uncertainty as the judiciary's approach to sentencing offenders changes. Without a suitable framework, the introduction of community punishments may increase this ambiguity. Despite not being specifically addressed in penal statutes, courts are increasingly using community service as an alternative sentencing option, demonstrating the exercise of judicial authority. In the *Sunita Gandharva v. State of M.P. & Anr.*²⁰ case, the significance of community service was emphasized by the statement that "it gives a chance in some cases to melt the ego of an accused who is facing trial of those offences which gave psychic gains or peevish pleasures to the accused while committing such

¹⁵ The Juvenile Justice (Care and Protection of Children) Act, 2015, § 18, cl. 1, No. 2, Acts of Parliament, 2015 (India).

¹⁶ Law Commission of India, Report on Indian Penal Code (1997).

¹⁷ The Code of Criminal Procedure, 1973, § 482, No. 2, Acts of Parliament, 1974 (India).

¹⁸ Nupur Thapliyal, Delhi High Court Orders Accused To Do Community Service At Gurudwara, Says Offence Of Outraging Woman's Modesty Can't Be Compromised, LIVE LAW, <https://www.livelaw.in/amp/high-court/delhi-high-court/delhi-high-court-orders-accused-to-do-community-service-at-gurudwara-says-offence-of-outraging-womans-modesty-cant-be-compromised-264569> (last accessed Feb. 5, 2025).

¹⁹ 2005 CRILJ 4732

²⁰ 2020 SCC Online MP 2193.

crimes...the C/WPPIL/108/ accused can again be assimilated into the mainstream society and would be accepted by the community “The idea of community involvement can stimulate the long-standing qualities of love, compassion, mercy, and service. Community service was imposed on the accused or offender by the court as "any other condition in the interest of justice" under section 437(3) of the CrPC. In *Babu Singh vs. the State of U.P.*,²¹ the Supreme Court ruled that innovative restorative measures, like as study sessions, meditation exercises, or community work, should be used to redeem the offender. The petitioner, who was found guilty under section 304 IPC, was given a community service order by the Madhya Pradesh High Court in the *Azad Khan v. State of MP*²² case. The applicant also asked for a revision. The Supreme Court noted that prisoners in various nations are prepared to serve their communities willingly in the *State v. Sanjeev Nanda*²³, highlighting the fact that community service is a means for the convicted to contribute back to society rather than a real punishment. Because the crime was so serious and six lives were lost, the court decided to sentence the convicted person to two years of community service instead of more jail time. The Gujarat High Court also considered the nature of community service in the case of *Vishal S. Awtani vs. State of Gujarat*²⁴ and concluded that it was a kind of restitution rather than punishment. The court emphasized the advantages of community service sentencing and ordered the state to establish a rule mandating that anybody found in violation of COVID-19 criteria complete community service at a COVID care facility. The Supreme Court blocked this ruling, despite the fact that it was thought to be progressive. Despite not being officially incorporated into statutory law or sentencing policies, courts have the discretionary power to impose community service sentences within certain constraints.

IMPACT OF COMMUNITY SERVICE ON OFFENDER’S MINDSET

A major change in conventional ideas of justice has occurred with the implementation of community service as a form of punishment for criminals. Instead of just receiving punishment, offenders are challenged to rethink their prior perception of the repercussions of their conduct and offered the chance to positively impact the community. A more comprehensive understanding of how their actions affect society may result from this. By actively participating in community service projects that help the community, offenders develop personal

²¹ (1978) 1 SCC 579

²² (2012) 8 SCC 450

²³ AIR 2012 S.C. 3104

²⁴ C/WPPIL/108/

accountability. They are inspired to accept responsibility for their conduct by this practical experience, which makes them more aware of the wider repercussions of their behaviour. Offenders who engage in community service also have the chance to reflect and grow in empathy as they see how their contributions benefit others. Through constructive behaviour, it facilitates criminals' reintegration into society, acting as a re-socialization tool. Offenders who actively participate in community projects can develop a sense of purpose and belonging that can aid in their rehabilitation and lower their risk of reoffending. Furthermore, community service emphasizes restorative justice principles of restitution and relationship restoration. Through proactive efforts to improve the community, offenders can help mend any connections that may have been damaged by their behaviour. As offenders get recognition and gratitude for their contributions, this type of positive reinforcement can also assist them in redefining who they are. Offenders may be less inclined to commit crimes again as they start to perceive themselves as valuable members of society with the power to make positive changes, which would ultimately make society safer and more inclusive.²⁵

CHALLENGES AND CONSIDERATIONS

The use of community service as a form of criminal punishment is criticized due to its apparent leniency and uneven implementation by various judges. People feel that the justice system is unfair and unequal because of the inconsistent sentencing of offenders to community service. The effectiveness of community service as a punitive and therapeutic measure is further compromised by the frequent lack of oversight and enforcement of community service orders, which permits some offenders to avoid their obligations. There is a need for additional rehabilitative interventions because research indicates that community service alone may not be an effective way to lower reoffending rates.²⁶

Community service programs are further hampered by issues with agency coordination and budget distribution, which raises doubts among the public about their efficacy as a form of discipline. Concerns about forced labour come up as well, especially when the tasks given don't directly address the harm that the crime has created.

²⁵ Khush Brahbhatt, "Transforming Justice: Community Service as Punishment in Bharatiya Nyaya Sanhita, 2023 and Its Impact on Offender Mindsets," LINKEDIN, available at: <https://www.linkedin.com/pulse/transforming-justice-community-service-punishment-nyaya-brahmbhatt-gd7df> (last accessed on Feb 4, 2025).

²⁶ Md. Imran Wahab, "Analysing Community Service as a Mode of Punishment in Bhartiya Nyaya Sanhita," LEGAL SERVICE INDIA, available at: <https://www.legalserviceindia.com/legal/article-17100-analysing-community-service-as-a-mode-of-punishment-in-bharatiya-nyaya-sanhita-bns-2023.html> (last accessed on Jan 23, 2025).

When requiring community service as a form of discipline, the following factors need to be taken into account:

1. *Ensuring Equality and Fairness*: When community service is utilized as a form of discipline, it is critical to guarantee that people from all backgrounds have equal access to these chances. This entails considering elements such as socioeconomic position to guarantee that all offenders are treated equally.
2. *Effectiveness of Supervision and Evaluation*: To guarantee that offenders fulfill their community service requirements, appropriate monitoring and evaluation procedures must be established. For this strategy to be successful, it is essential to monitor their contributions and evaluate their development.
3. *Handling Possible Stigmatization*: Community service as a form of discipline carries the risk of social stigma. To lessen prejudice and judgments against offenders who complete their community service requirements, efforts should be made to inform the public about the rehabilitative effect of this type of punishment.

CONCLUSION

The purposes of community service include rehabilitation, restitution, punishment, and even retribution. It benefits victims, the community, offenders, and even the legal system. Thus, there are social and cognitive advantages to community work. It also acts as a substitute for incarceration, as India has 41 prisoners for every 1 lac inhabitants. The number of prisoners in India as of December 31, 2022, was 5,73,220, which is unacceptable and unjustifiable.²⁷ Furthermore, prisons have not been successful in changing the criminals. About half of all prisoners are likely to be arrested again and sent back to jail, according to research, and many of these re-arrests occur shortly after they are released from an institution. The essence of existence behind bars is contamination. Prisons are dens of criminality. Due to his forced association with hardened professional criminals, the unsophisticated offender not only learns the methods of executing the crime but also the particular motivations, justifications, and mindsets of criminals. By mandating that the offender make amends by working for the community, the Community Service Program aims to improve things a bit. Offenders must not only be treated as active players in the process of changing law-abiding lifestyles, but also as active participants who are not passive recipients of punishment or treatment. Offenders were made aware of their societal contributions by performing community service and being

²⁷ National Crime Records Bureau (NCRB), *Prison Statistics India 2022*, Ministry of Home Affairs, Government of India, December 31, 2022.

required to repay society. For a nation like India, the systematic mechanism of community service is advantageous, and it must be fully integrated for its execution. The Bhartiya Nyaya Sanhita prescribes community service as an alternative punishment for six major offenses, including theft less than Rs. 5,000, attempting suicide to coerce or restrain the exercise of lawful authority, appearing in public while intoxicated, defaming the president, vice president, governors, ministers, and others, engaging in unlawful trade as a public servant, and failing to appear in court.²⁸ It should be mentioned that community service is an alternative form of punishment, and the judge has the power to impose it or not, depending on the specific facts and circumstances of the case.



²⁸ Bhartiya Nyaya Sanhita (BNS) 2023, Section on Alternative Punishments