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LEGAL AND INSTITUTIONAL OBSTACLES TO INDIA'S PENAL REFORM OF COMMUNITY SERVICE PUNISHMENT

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Abstract

The Bharatiya Nyaya Sanhita, 2023 ('BNS') has, for the first time in India's post-independence criminal law, recognised community service as an independent mode of punishment.¹ This is presented by its proponents as a decisive doctrinal shift towards reformatory and restorative sentencing, offered as partial relief to a prison system in which undertrials habitually constitute three-quarters or more of the total inmate population.² Yet statutory recognition of community service is not self-executing: it requires a supporting architecture of definitional clarity, supervisory institutions, monitoring mechanisms and victim engagement that the present BNS–BNSS framework does not supply. This article undertakes a doctrinal and comparative examination of community service as an instrument of penal reform in India, situating it within the wider theoretical vocabulary of restorative justice. It identifies the principal legal and institutional barriers confronting the Indian model — definitional vagueness, the absence of a task schedule and duration guidelines, the collapse of the pre-existing probation infrastructure, a blunt default-and-enforcement mechanism, and the near-total absence of victim participation — and situates these against the statutory 'unpaid work' regime and restorative justice framework of the United Kingdom and the decentralised, victim-offender-mediation-centred model of the United States. It argues that meaningful decarceration and restoration require institutional investment commensurate with legislative ambition, and proposes doctrinal and administrative reforms — including a model community service manual, integration with the Legal Services Authorities network, and a national outcome-evaluation framework — through which India might convert a promising statutory innovation into an operative instrument of

¹The Bharatiya Nyaya Sanhita 2023, s 4(f). The Indian Penal Code 1860, s 53, had earlier recognised only five modes of punishment: death, life imprisonment, imprisonment (rigorous or simple), forfeiture of property, and fine.

²National Crime Records Bureau, Ministry of Home Affairs, Government of India, Prison Statistics India – 2023, recording an all-India occupancy rate of 120.1% and an undertrial share of 76.2% of the total prison population; National Crime Records Bureau, Prison Statistics India – 2022, recording an occupancy rate of 131% (5,73,220 inmates against a sanctioned capacity of 4,36,266) and an undertrial share of 75.8%.

restorative penal reform.

Keywords: Community service; restorative justice; Bharatiya Nyaya Sanhita; penal reform; probation; comparative criminal justice; unpaid work; sentencing.

I. Introduction

For over a century and a half, the Indian criminal law recognised only five modes of punishment: death, imprisonment for life, imprisonment (rigorous or simple), forfeiture of property, and fine.³ Non-custodial correction existed, if at all, at the margins — through the narrow release-on-probation mechanism of the Probation of Offenders Act, 1958, or through ad hoc invocations of the High Courts' inherent jurisdiction. The Bharatiya Nyaya Sanhita, 2023, which replaced the Indian Penal Code with effect from 1 July 2024, altered this settled architecture by adding a sixth punishment — community service — defined, procedurally, in the Bharatiya Nagarik Suraksha Sanhita, 2023.⁴ The reform has been welcomed as a long-overdue embrace of reformatory and restorative sentencing philosophy, and as a modest but symbolically significant response to the chronic overcrowding that leaves Indian prisons operating well in excess of sanctioned capacity.⁵

Yet the enactment of a punishment is not the same as the institutionalisation of a punishment. A sentence of community service presupposes an apparatus that does not spring into being merely because a statute names it: a catalogue of suitable tasks, a body to identify placements and certify their completion, a supervisory cadre, a proportionate and consistent approach to duration, a mechanism for addressing non-compliance that does not simply default to the very incarceration the sentence was designed to avoid, and — if the reform is to be described, as it often is, in the vocabulary of restorative justice — some means by which victims and communities are meaningfully involved. This article examines whether the BNS–BNSS framework supplies that apparatus, and, finding that it largely does not, asks what may be learned from two jurisdictions with long, if imperfect, experience of community-based sanctioning: the United Kingdom, whose statutory 'unpaid work' regime and restorative justice provisions offer a model of centralised, rule-bound design; and the United States, whose fragmented, state-by-state practice offers a model of victim-centred, locally adapted delivery. The argument proceeds in eight further parts. Part II situates community service within

³The Indian Penal Code 1860, s 53 (now repealed and replaced by the Bharatiya Nyaya Sanhita 2023).

⁴See n 1 above.

⁵See n 2 above.

restorative justice theory, distinguishing a purely offender-facing labour sanction from a genuinely restorative one. Part III traces the statutory evolution of community service in India, from the abortive reform proposals of the twentieth century to its present BNS–BNSS form. Part IV identifies the principal legal and institutional barriers to its effective operation. Parts V and VI examine, respectively, the United Kingdom and United States models. Part VII draws the threads together in comparative overview. Part VIII derives recommendations for India, and Part IX concludes.

II. Conceptual and Theoretical Framework: Community Service within Restorative Justice

Restorative justice, as conventionally understood since Howard Zehr's influential reframing of the field, treats crime primarily as a violation of people and relationships rather than, or in addition to, a violation of the abstract authority of the State; the central question it asks is not only 'what law was broken and what punishment is deserved' but 'who has been harmed, what are their needs, and whose obligation is it to meet those needs'.⁶ John Braithwaite's theory of reintegrative shaming supplies the complementary insight that disapproval of an act is compatible with, and indeed most effective when combined with, the offender's continued inclusion within a web of respectful relationships — as opposed to stigmatising shame, which severs those bonds and entrenches criminal identity.⁷ The United Nations Office on Drugs and Crime situates community service alongside victim-offender mediation, family group conferencing and sentencing or peacemaking circles as one of several modalities through which these restorative aims may be pursued.⁸

It is important, however, not to conflate the label with the substance. A sentence that merely requires an offender to perform unpaid labour for the benefit of the State or the public, without any structured opportunity for the offender to understand or address the harm caused to an identifiable victim, is restorative in aspiration but not necessarily in design: it may reduce custodial pressure and offer a proportionate, reformatory alternative to imprisonment — goals with an independent pedigree in Indian constitutional jurisprudence, most notably in the Supreme Court's early articulation of reformatory sentencing philosophy⁹ — without discharging the distinctive restorative promise of repairing relational harm. Whether

⁶Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Herald Press, 1990).

⁷John Braithwaite, *Crime, Shame and Reintegration* (Cambridge University Press, 1989).

⁸United Nations Office on Drugs and Crime, *Handbook on Restorative Justice Programmes* (2nd edn, United Nations, 2020).

⁹*Mohd. Giasuddin v State of Andhra Pradesh* (1977) 3 SCC 287.

community service functions as a restorative practice or merely as a lenient custodial substitute is, on this view, chiefly a question of institutional design: who administers it, what tasks are assigned, whether victims have any voice in the process, and whether the community that is said to benefit has any means of registering that benefit. It is this design question, rather than the bare fact of statutory recognition, that occupies the remainder of this article.

III. Community Service in India: Statutory Evolution and Present Framework

A. Pre-BNS Attempts and Recommendations

Prior to the BNS, Indian law recognised community service only in the narrow context of juvenile justice, where the Juvenile Justice (Care and Protection of Children) Act, 2015 permitted it as a disposition for children in conflict with law.¹⁰ Outside that context, courts occasionally fashioned community service orders through the inherent powers preserved by section 482 of the Code of Criminal Procedure, 1973 — a well-known instance being a Delhi High Court order directing offenders to perform tasks such as cleaning utensils at a Gurudwara — but such orders rested on judicial improvisation rather than legislative authorisation.¹¹

Legislative reform was attempted, and abandoned, more than once. The Indian Penal Code (Amendment) Bill, 1978 proposed community service, ranging from forty to one thousand hours, for offences punishable with less than three years' imprisonment, but lapsed without enactment.¹² The Law Commission of India, in its 156th Report of 1997, revisited the question and declined to recommend statutory community service, expressing reservations about the practicability of continuous monitoring and administrative supervision, and preferring instead the expansion of the open-prison system — a preference that, with the benefit of hindsight, understated the very custodial pressures that open prisons and community service alike were meant to relieve.¹³ The Committee on Reforms of the Criminal Justice System, chaired by Dr Justice V.S. Malimath, took a different view in 2003, endorsing the introduction of community

¹⁰The Juvenile Justice (Care and Protection of Children) Act 2015, s 18(1)(c).

¹¹See the discussion in 'Community Sentencing: A Positive Shift in the Indian Criminal Justice System', Oxford Human Rights Hub (blog, 2021), noting High Court orders directing offenders to perform tasks such as cleaning utensils at a Gurudwara, made under the inherent powers preserved by section 482 of the Code of Criminal Procedure 1973.

¹²The Indian Penal Code (Amendment) Bill 1978, which proposed community service, ranging from forty to one thousand hours, for offences punishable with less than three years' imprisonment; the Bill lapsed without enactment.

¹³Law Commission of India, *The Indian Penal Code*, Report No. 156 (1997) vol I, which considered but declined to recommend statutory community service, expressing reservations about the practicability of monitoring and administrative supervision, and preferring expansion of the open-prison system.

service as a sentencing option and framing it explicitly in reformatory and restorative terms.¹⁴ More than two decades separate that endorsement from its eventual, partial legislative realisation — a gap that is itself instructive of the institutional inertia this article goes on to examine.

B. The BNS–BNSS Framework

Section 4(f) of the BNS lists community service as the sixth mode of punishment.¹⁵ The BNS itself does not define the term; the definition is instead found in an Explanation to section 23 of the BNSS, which describes community service as work that a court may order a convict to perform, without remuneration, for the benefit of the community.¹⁶ The sentence is currently available for six offences only: unlawful trading by a public servant; non-appearance in response to a proclamation; attempting suicide in order to compel or restrain the exercise of lawful power; a first conviction for theft of property valued below five thousand rupees, where the property is restored; public misconduct by a drunken person; and defamation.¹⁷ Each is a comparatively minor, regulatory or victimless offence, and several — non-appearance, attempted self-harm to compel authority, drunken misconduct — have no identifiable individual victim at all.

Where an offender defaults on a sentence of community service, the BNS does not create a bespoke consequence. Instead, section 8 — which consolidates the fine-default provisions formerly spread across sections 63 to 70 of the Indian Penal Code — extends the same default machinery to community service, permitting a court to imprison a defaulting offender for a term corresponding to the punishment that could otherwise have been imposed for the offence.¹⁸ The much-discussed sentencing of a juvenile offender to community service in a high-profile 2024 road-accident case illustrated, in practice, how unsettled the contours of the sentence remain in the absence of clear implementing guidance, prompting public debate over

¹⁴Government of India, Ministry of Home Affairs, *Report of the Committee on Reforms of the Criminal Justice System* (March 2003) (Malimath Committee), which endorsed the introduction of community service as a sentencing option.

¹⁵See n 1 above.

¹⁶The Bharatiya Nagarik Suraksha Sanhita 2023, s 23, Explanation: ‘community service’ is ‘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’.

¹⁷Bharatiya Nyaya Sanhita 2023, ss 202 (public servant unlawfully engaging in trade), 209 (non-appearance in response to a proclamation under s 84 of the Bharatiya Nagarik Suraksha Sanhita 2023), 226 (attempt to commit suicide to compel or restrain the exercise of lawful power), 303(2) proviso (first-time theft of property valued below five thousand rupees, where the property is restored), 355 (misconduct in public by a drunken person), and 356(2) (defamation).

¹⁸Bharatiya Nyaya Sanhita 2023, s 8, which consolidates the default provisions formerly found in sections 63 to 70 of the Indian Penal Code 1860 and extends the same default machinery to sentences of community service.

both its adequacy and its administration.¹⁹ Even before the BNS, courts had occasionally used community service as an incident of bail or as a substantive disposition — as in orders directing service at a public hospital, or the exercise of bail powers under section 437(3) of the Code of Criminal Procedure conditioned upon community service — illustrating a judicial appetite for the sanction that pre-dated, and to some extent anticipated, its statutory recognition.²⁰

IV. Legal and Institutional Barriers in India

The barriers to the effective operation of community service as penal reform in India may be grouped under four heads: drafting and definitional deficiencies; the absence of supervisory infrastructure; a weak enforcement design; and the near-complete absence of a restorative, victim-facing dimension.

- 1. Definitional vagueness and the absence of a task schedule.** The Explanation to section 23 of the BNSS offers only a skeletal definition of community service, without any accompanying schedule of permissible tasks. Unlike jurisdictions that maintain an approved list of projects — environmental work, work for charitable or public institutions, and the like — Indian magistrates are left to improvise the content of the sentence case by case, with no statutory or administrative guidance as to what counts as work that ‘benefits the community’.²¹
- 2. No statutory duration or hour bands.** The BNS is silent on both the minimum and the maximum duration of community service, in marked contrast to jurisdictions that fix a statutory band — for instance, an hour range calibrated to the seriousness of the offence.²² The absence of any such calibration invites inconsistent and potentially arbitrary outcomes as between similarly situated offenders, a concern that resonates with the constitutional guarantee against arbitrary State action that the Supreme Court has read into Article 14.²³

¹⁹See Poonam Tamrakar and Ashwani Kumar, ‘A Comparative Analysis of Community Service Punishment with Open Prison in Indian Criminal Justice System’, *International Journal for Legal Research and Analysis* (2024), discussing the sentencing of a juvenile offender to community service in the widely reported Pune motor-accident case and the resulting public debate over the absence of clear guidelines.

²⁰*Parvez Jilani Shaikh v State of Maharashtra* (2015), and *Sunita Gandharva v State of Madhya Pradesh* (2020) (the latter concerning the exercise of bail powers under section 437(3) of the Code of Criminal Procedure 1973), both noted in *Drishti Judiciary*, ‘Community Service in BNS’ (2024).

²¹See n 16 above.

²²Sentencing Act 2020 (UK), pt 9, consolidating the unpaid work requirement formerly found in the Criminal Justice Act 2003; HM Inspectorate of Probation, ‘Unpaid Work’ (evidence summary), noting that unpaid work may be imposed for between forty and three hundred hours, to be completed within twelve months, and is one of up to thirteen requirements available under a community or suspended sentence order.

²³*E.P. Royappa v State of Tamil Nadu* (1974) 4 SCC 3; *Maneka Gandhi v Union of India* (1978) 1 SCC 248, on the guarantee against arbitrary State action under Article 14 of the Constitution of India.

3. **No designated supervising or certifying authority.** Neither the BNS nor the BNSS identifies anybody responsible for identifying suitable placements, supervising attendance, or certifying that ordered work has in fact been performed and has in fact benefited the community. The obvious candidate — the probation cadre created under the Probation of Offenders Act, 1958²⁴ — has not been formally extended to this new sentence, and is in any event severely under-resourced: recent estimates place the ratio of probation officers to active caseloads at roughly one to five hundred or seven hundred in India, against an internationally recommended ratio closer to one to thirty.²⁵ A sentence with no one to administer it is, in practical terms, a sentence that exists chiefly on paper. The point is not a new one: as early as 1963, the Supreme Court construed the Probation of Offenders Act as directed at preventing young offenders from hardening into career criminals through enforced association with the general prison population²⁶ — a protective purpose that an unsupervised, nominal sentence cannot serve any better than an unsupervised prison term could.
4. **A blunt default-and-enforcement mechanism.** By folding community-service default into the general fine-default machinery, section 8 of the BNS permits a court to revert directly to imprisonment on non-compliance, without any intermediate, graduated response — a warning, an extension of time, or a modification of the task — of the kind more commonly associated with breach-management practice elsewhere.²⁷ This risks precisely the outcome the reform was intended to avoid: offenders who default, whether through genuine hardship or administrative failure attributable to the absence of supervision under barrier 3 above, being returned to the custodial system that community service was meant to relieve.
5. **Narrow, non-victim-facing offence coverage.** The six offences presently eligible for community service are overwhelmingly regulatory or victimless in character.²⁸ The sentence is, by design, offender-facing and community-facing, but not victim-facing: it does not require, or even contemplate, any engagement between the offender and a person harmed by the offence. It therefore borrows the vocabulary of restorative justice

²⁴The Probation of Offenders Act 1958, ss 4 (release on probation of good conduct), 5 (compensation to victims), 6 (mandatory probation officer's report for offenders under twenty-one years) and 14 (duties of probation officers).

²⁵'A Roadmap for India's Probation System Reform', *International Journal for Multidisciplinary Research* (2025), noting a probation officer-to-caseload ratio of approximately 1:500–700 in India, against an internationally recommended ratio of approximately 1:30.

²⁶*Ramji Missar v State of Bihar*, AIR 1963 SC 1088.

²⁷See n 18 above.

²⁸See n 17 above.

while omitting what restorative theory treats as its defining feature — attention to the needs of an identifiable victim.²⁹

6. **Institutional and judicial reluctance rooted in custodial culture.** The Law Commission's own 1997 preference for open prisons over community service reflects a broader institutional habituation to custodial thinking that the Malimath Committee's contrary 2003 recommendation did not immediately displace.^{30, 31} In the absence of structured judicial training or sentencing guidance, individual courts are left to develop their own, potentially inconsistent, comfort with a genuinely novel sentencing option.
7. **Federal structural constraints.** Police and prisons fall within the State List of the Seventh Schedule to the Constitution of India,³² meaning that the practical administration of any custodial or non-custodial sentence ultimately depends on State-level rules, manuals and budgetary allocation. In the absence of a model manual analogous to the Model Prison Manual, individual States are left to design — or, more commonly, not to design — their own implementing frameworks, risking wide variation in whether the sentence is administered at all.
8. **Absence of an outcome-evaluation architecture.** Because the BNS took effect only from July 2024, no full annual cycle of national prison and crime statistics has yet captured community service sentencing outcomes. More fundamentally, no discrete reporting category presently exists within India's prison statistics framework for the number of community service orders imposed, their completion rates, or subsequent reoffending — a gap that, if left unaddressed, will make evidence-based refinement of the sentence impossible.³³

V. The United Kingdom Model: Statutory Unpaid Work and Restorative Justice

Community-based unpaid labour has a much longer institutional history in England and Wales, where Community Service Orders were introduced by the Criminal Justice Act 1972 following the recommendations of the Advisory Council on the Penal System, and were successively renamed 'Community Punishment' in 2000 and 'Unpaid Work' under the Criminal Justice Act

²⁹See n 6 above.

³⁰See n 13 above.

³¹See n 14 above.

³²Constitution of India, Seventh Schedule, List II (State List), entry 4 (prisons) and entry 2 (police).

³³See n 2 above.

2003.³⁴ The sentence is now governed by Part 9 of the Sentencing Act 2020, under which unpaid work may be imposed for between forty and three hundred hours, to be completed within twelve months, as one of up to thirteen requirements that may be attached to a community order or a suspended sentence order.³⁵ The statutory band is not merely nominal: it is calibrated to offence seriousness through Sentencing Council guidance, substantially reducing the scope for arbitrary variation between courts — the very deficiency identified as barrier 2 in the Indian context above.

Delivery of unpaid work has, since the Ministry of Justice's 2012 'Transforming Rehabilitation' reforms, been substantially outsourced to privately or third-sector operated Community Rehabilitation Companies, a change that has attracted sustained academic criticism on labour-standards grounds and that HM Inspectorate of Probation's own 2016 thematic inspection found to have produced significant variation in the quality of delivery and unsatisfactory responses to non-compliance.^{36, 37} The UK experience therefore offers a double lesson: the existence of a dedicated, statutorily embedded delivery structure is itself a considerable institutional achievement absent in India, but the manner of that structure's administration — and in particular the risks attendant on wholesale outsourcing without robust independent inspection — requires continued vigilance even in a mature system.

The United Kingdom also illustrates the value, and the limits, of treating restorative justice as a distinct track rather than folding it into an ordinary punitive sentence. The Crime and Courts Act 2013 inserted a specific power enabling courts to defer sentence, with the consent of both the offender and every participating victim, so that a restorative justice process — typically a facilitated meeting between offender and victim — may take place before sentencing.^{38, 39} The evidence in support of such conferencing is substantial: research summarised by the College of Policing associates victim-offender conferencing with a fourteen per cent reduction in the frequency of reoffending for serious offences, and with cost savings estimated at roughly nine

³⁴Community Service Orders were introduced in England and Wales by the Criminal Justice Act 1972, following the recommendations of the Advisory Council on the Penal System (the Wootton Committee, 1970); see Ministry of Justice (UK), *Service Specification: Unpaid Work/Community Payback* (2017), tracing the subsequent renaming to 'Community Punishment' (2000) and 'Unpaid Work' under the Criminal Justice Act 2003.

³⁵See n 22 above.

³⁶Virginia Mantouvalou, 'Unpaid Work Requirements of Offenders: Rehabilitation or Exploitation?', UK Labour Law Blog (25 March 2021), discussing the outsourcing of unpaid work delivery to Community Rehabilitation Companies following the Ministry of Justice's 2012 'Transforming Rehabilitation' reforms.

³⁷HM Inspectorate of Probation, *Thematic Inspection of the Delivery of Unpaid Work* (2016), finding significant variation in the quality of delivery and unsatisfactory responses to non-compliance.

³⁸Crime and Courts Act 2013 (UK), sch 16, pt 2, inserting a new section into the Powers of Criminal Courts (Sentencing) Act 2000 empowering courts to defer sentence, with the consent of the offender and of every participating victim, to allow a restorative justice activity to take place.

³⁹Ministry of Justice (UK), *Restorative Justice Action Plan for the Criminal Justice System* (November 2012).

pounds for every pound spent, once reduced reoffending is accounted for.⁴⁰ Yet parliamentary evidence indicates that the deferred-sentence power, though available since 2013, remains ‘rarely used’ in practice, owing to limited judicial awareness and inadequate funding of restorative justice providers.⁴¹ Northern Ireland’s statutory Youth Conferencing Service, to which courts are required to refer almost all young offenders’ cases prior to sentencing, offers a contrasting model of mandated, rather than discretionary, referral, and correspondingly higher rates of restorative engagement.⁴² The comparative lesson is unambiguous: even a carefully designed statutory restorative mechanism will under-perform without active institutional promotion, judicial training and dedicated funding — a caution India would do well to heed before assuming that legislative text alone will generate restorative practice.

VI. The United States Model: Decentralised, Victim-Centred Restorative Practice

The United States presents a structurally opposite starting point. There is no unified federal community-service or restorative justice statute; criminal justice authority rests overwhelmingly with the individual states and, within them, counties and municipalities, producing a fragmented but experimentally rich landscape.⁴³ Restorative practice in the American context also developed principally through juvenile diversion rather than adult sentencing reform, reflecting an institutional entry point distinct from the UK’s adult-sentencing-centred unpaid work regime.⁴⁴

Four modalities dominate American restorative practice: victim-offender mediation, family group conferencing, peacemaking circles, and victim-offender dialogue — each explicitly organised around direct engagement between the offender and an identifiable victim, in contrast to the offender-community model that characterises Indian community service.⁴⁵

⁴⁰College of Policing, ‘Restorative Justice: Evidence Briefing’ (2022), summarising research by Shapland and others on the effectiveness and cost-effectiveness of restorative justice conferencing, including a reported 14% reduction in the frequency of reoffending following victim-offender conferencing for serious offences, and estimated savings of approximately £9 for every £1 spent.

⁴¹Written evidence to the House of Commons Justice Committee (RJU0031), observing that the statutory power to defer sentence for restorative justice, though available since 2013, is ‘rarely used’ in practice.

⁴²Written evidence to the House of Commons Justice Committee (RJU0014), describing Northern Ireland’s statutory Youth Conferencing Service, to which courts are required to refer almost all young offenders’ cases prior to sentencing.

⁴³Office of Justice Programs, US Department of Justice, ‘Restorative Juvenile Justice’; Marilyn Pavelka, ‘Restorative Justice in the States’, *Justice Policy Journal* (Fall 2016), discussing the Community Juvenile Accountability Programs under Washington Revised Code ss 13.40.500–13.40.540, and noting that nineteen US States had introduced or enacted ‘balanced and restorative justice’ legislation by 2010.

⁴⁴The Annie E. Casey Foundation, ‘Juvenile Justice: Young People and Restorative Justice’ (15 November 2022).

⁴⁵See n 44 above.

Several States have given this approach statutory expression: Washington's Community Juvenile Accountability Programs, established under sections 13.40.500 to 13.40.540 of the Revised Code of Washington, formally recognise citizen and victim participation as integral to disposition, and by 2010 nineteen States had introduced or enacted 'balanced and restorative justice' legislation embedding similar principles into their juvenile codes.⁴⁶ Delivery in practice typically combines state juvenile-justice agencies with non-profit partners — Florida's restorative justice programming, for example, is delivered through a mixed ecology of state agencies and community organisations, with statutorily empowered juvenile boards able to order restitution or service to the victim or the community as part of a disposition.⁴⁷

The evidentiary record is comparatively strong. Multi-jurisdiction evaluations report reoffending rates roughly one-third lower among young people who participate in restorative justice diversion compared with matched peers processed through the conventional system.⁴⁸ One widely cited restorative community conferencing programme recorded a one-year reoffending rate of 18.4 per cent among participants, against 32 per cent among traditionally processed peers, at a fraction of the annual cost of standard probation supervision.⁴⁹ The American experience suggests that decentralisation, often assumed to be an obstacle to consistent reform, can instead enable localised innovation, inter-state policy learning, and rigorous programme-level evaluation of a kind India's centralised-but-unimplemented statutory model currently lacks. The same decentralisation, however, produces its own version of the unevenness that troubles the Indian federal structure: access to restorative programming in the United States varies considerably by geography and by the presence or absence of local non-profit capacity, a caution against treating decentralisation as a costless virtue.

VII. Comparative Overview

Table 1 draws together the preceding analysis across the three jurisdictions. It shows India occupying the least institutionalised position on almost every dimension, having enacted what might be called the 'front end' of penal reform — statutory recognition of a new, non-custodial sentence — without the 'back end' institutional apparatus that gives such recognition operative

⁴⁶See n 43 above.

⁴⁷Florida Office of Program Policy Analysis and Government Accountability, *A Review of Restorative Justice in Florida and Other States* (Report No. 20-02, 2020).

⁴⁸The Sentencing Project, 'Restorative Justice Diversion: A Better Way to Provide Meaningful Accountability for Youth' (2026).

⁴⁹The Annie E. Casey Foundation (n 44), citing a one-year reoffending rate of 18.4% among participants in a restorative community conferencing programme compared with 32% among traditionally processed peers, and an average one-time programme cost of approximately US\$4,500 compared with an average annual probation-supervision cost of approximately US\$23,000.

effect in both comparator jurisdictions, albeit in markedly different forms.

Dimension	India (BNS/BNSS, 2023)	United Kingdom	United States
Statutory basis	BNS 2023, s 4(f); BNSS 2023, s 23	Sentencing Act 2020, pt 9 (from Criminal Justice Act 2003)	No federal statute; state juvenile and criminal codes
Offence coverage	Six named petty offences only	Any offence punishable with imprisonment, at court's discretion	Wide; mainly juvenile and low- level adult offences
Duration/hours	No statutory floor or ceiling	40–300 hours, within 12 months, guided by Sentencing Council bands	Varies by state/county; locally set
Supervising authority	None designated; probation cadre not extended to this sentence	Probation service / Community Rehabilitation Companies	State juvenile- justice agencies and NGO partners
Victim participation	Absent from the community-service sentence itself	Separate, consent- based deferred- sentence RJ track	Central design feature (VOM, conferencing, circles)
Default/enforcement	Reverts to imprisonment under general fine-default provision	Formal breach proceedings; graduated responses	Varies; often judicial review hearing
Outcome data/evaluation	None yet published	HM Inspectorate of Probation thematic inspections	Extensive state and foundation- level evaluations
Principal limitation	Statutory text without implementing infrastructure	Well-designed RJ provision remains under-used in practice	Geographic unevenness from decentralisation

Table 2 translates this comparison into a working reform agenda, mapping each identified Indian barrier onto the corresponding comparative lesson and a suggested institutional response, developed further in Part VIII.

Barrier in India	Comparative lesson	Suggested reform
No schedule of permissible tasks	UK: HMPPS-approved project lists	Model Community Service Manual with an indicative task schedule
No hour bands; unguided discretion	UK: statutory 40–300 hour band tied to Sentencing Council guidance	Offence-linked hour bands issued as sentencing guidance
No designated supervising body	UK probation service; US state agency–NGO partnerships	Anchor supervision in District Legal Services Authorities
Hollow probation infrastructure	UK/US maintain dedicated case-carrying officers	Cadre expansion under the Probation of Offenders Act 1958
No victim participation	UK deferred-sentence RJ; US victim-offender mediation	Discrete, consent-based restorative/mediation track
Blunt default reverting to prison	UK graduated breach procedure	Graduated response ladder before recommitment
No outcome data	UK Inspectorate reports; US foundation evaluations	Dedicated NCRB/BPRD reporting category

VIII. Lessons for India and Recommendations

The comparative analysis above suggests eight interlocking reforms, several of which may be pursued without fresh primary legislation.

1. **A Model Community Service Manual.** Drawing on the UK’s Sentencing Council-guided hour bands and approved-project practice, the Union Government could frame an advisory Model Community Service Manual — analogous to the existing Model Prison Manual — prescribing an indicative schedule of permissible tasks and offence-linked hour bands, for adoption or adaptation by States exercising their competence

over prisons and police under the Seventh Schedule.^{50, 51}

2. **Anchoring supervision in the Legal Services Authorities network.** Rather than creating an entirely new bureaucracy, supervisory and certifying functions could be assigned to District Legal Services Authorities under the Legal Services Authorities Act, 1987, which already possess a decentralised, pan-India presence and a statutory mandate oriented towards access to justice.⁵²
3. **Revitalising the probation cadre.** Because supervision of community service and supervision of probation are functionally intertwined, closing the gap between India's present probation officer-to-caseload ratio and internationally recommended standards is a precondition for, rather than an alternative to, effective community service administration.^{53, 54}
4. **A discrete, victim-consent-based restorative track.** Following the UK's Crime and Courts Act 2013 model, India could introduce a separate, consent-based restorative justice or mediation option — administered, for instance, through District Legal Services Authority-run mediation cells — rather than treating community service itself as a proxy for restorative justice. Such a track could also be designed to interface naturally with the victim compensation provisions of the BNSS.⁵⁵
5. **A graduated default-and-response mechanism.** In place of the direct reversion to imprisonment presently contemplated by section 8 of the BNS, a graduated response — warning, extension, modification of task, and imprisonment only as a last resort — modelled on UK breach-management practice would better preserve the decarceral purpose of the sentence.⁵⁶
6. **Judicial sensitisation and sentencing guidance.** Structured training through State Judicial Academies, supported where possible by indicative sentencing guidance of the kind issued by the UK Sentencing Council, would reduce the inter-court disparity that unguided discretion presently invites.⁵⁷
7. **Mandatory outcome tracking.** A dedicated reporting category within the National Crime Records Bureau's prison and crime statistics, or a parallel dataset maintained by

⁵⁰See n 32 above.

⁵¹See n 22 above.

⁵²The Legal Services Authorities Act 1987, establishing the National Legal Services Authority and, at the district level, District Legal Services Authorities.

⁵³See n 24 above.

⁵⁴See n 25 above.

⁵⁵See n 38 above.

⁵⁶See n 18 above.

⁵⁷See n 23 above.

the Bureau of Police Research and Development, capturing the number of community service orders imposed, completion rates and subsequent recidivism, would supply the evidentiary foundation that has driven programme refinement in both comparator jurisdictions.^{58, 59, 60}

- 8. Calibrated, floor-protected decentralisation.** The American experience commends encouraging States and District Legal Services Authorities to pilot varied delivery models suited to local capacity and NGO partnership; the same experience's caution against resulting geographic unevenness counsels that such experimentation proceed within the national minimum standards proposed in recommendation 1, rather than as a substitute for them.^{61, 62}

IX. Conclusion

The recognition of community service as an independent mode of punishment under the Bharatiya Nyaya Sanhita, 2023 marks the belated legislative acceptance of a reform that the Law Commission and successive expert committees debated, and largely resisted, for more than four decades.^{63, 64, 65} That acceptance is a genuine achievement, but this article has argued that it remains, in its present form, principally a legislative achievement rather than an institutional one. Definitional vagueness, the absence of duration guidance, the lack of any designated supervising authority, a blunt default mechanism, and the near-total absence of victim participation together mean that the sentence, as presently constituted, borrows the language of restorative justice without yet possessing its institutional substance.

The comparative evidence from the United Kingdom and the United States does not point to a single model for emulation. The UK demonstrates that a mature, centrally designed statutory architecture — hour bands, a dedicated delivery service, an independent inspectorate, and a distinct restorative justice track — nonetheless requires sustained institutional promotion to translate legislative possibility into everyday practice, as the persistent under-use of its deferred-sentence restorative justice power illustrates.⁶⁶ The United States demonstrates that decentralised, victim-centred, rigorously evaluated practice can achieve measurable reductions

⁵⁸See n 2 above.

⁵⁹See n 37 above.

⁶⁰See n 48 above.

⁶¹See n 43 above.

⁶²See n 47 above.

⁶³See n 12 above.

⁶⁴See n 13 above.

⁶⁵See n 14 above.

⁶⁶See n 41 above.

in reoffending at a fraction of custodial or standard-supervision cost, even without a unifying federal framework, though not without its own risk of uneven access.^{67, 68} For India, the lesson is neither wholesale adoption of the British model nor of the American one, but recognition that penal reform is an institutional undertaking as much as a legislative one. Legislative text creates the possibility of restorative, decarceral sentencing; probation infrastructure, supervisory bodies, judicial guidance, victim-participation mechanisms and outcome-evaluation systems determine whether that possibility is realised. Absent sustained investment in that institutional apparatus, community service under the Bharatiya Nyaya Sanhita risks remaining what one commentator has aptly termed a sentence without a bridle — a promising reform running loose, without the structures needed to guide it toward its restorative and decarceral ends.



⁶⁷See n 48 above.

⁶⁸See n 49 above.