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COMMUNITY SERVICE AS A FORM OF PUNISHMENT **UNDER THE BHARATIYA NYAYA SANHITA, 2023: A** **CRITICAL AND COMPARATIVE STUDY**

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ABSTRACT

In Indian criminal law, community service is first introduced as a legislative form of punishment in the Bharatiya Nyaya Sanhita, 2023 (BNS), which supersedes the Indian Penal Code, 1860. This legislative change represents a substantial shift away from the conventional retributive concept of punishment and toward a framework of restorative and reformative justice.

This research aims to investigate the notion, extent, and importance of community service as a penalty under the BNS, analyze its legal basis, and assess its possible influence on the Indian criminal justice system. The study also investigates the connection between community service and related laws like the Juvenile Justice Act of 2015, the Probation of Offenders Act of 1958, and the Code of Criminal Procedure of 1973. Additionally, the study examines crucial and the Juvenile Justice Act, 2015.

Further, the paper analyses relevant judicial pronouncements and undertakes a comparative study of community service models in the United Kingdom, the United States, and Australia. The paper concludes that while the introduction of community service is a progressive and humane reform, its success depends upon the formulation of uniform guidelines, effective supervision mechanisms, and judicial sensitivity in sentencing.

However, the paper also identifies significant concerns relating to the absence of uniform national guidelines, monitoring mechanisms, and safeguards against arbitrary sentencing. The study concludes that while community service under the BNS is a commendable and forward-looking reform, its success ultimately depends on effective implementation, institutional coordination, and judicial sensitivity, thereby determining whether it emerges as a meaningful tool of restorative justice or remains a symbolic legislative innovation.

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Keywords: Community Service, Bharatiya Nyaya Sanhita, Punishment, Restorative Justice, Sentencing Reform

I. INTRODUCTION

Punishment is an essential component of any criminal justice system, aimed at maintaining social order and deterring unlawful conduct. Traditionally, Indian criminal law has relied heavily on imprisonment and fines as primary forms of punishment. However, excessive dependence on incarceration has resulted in overcrowded prisons, increased recidivism, and limited scope for offender reformation.² Recognizing these limitations, the Bharatiya Nyaya Sanhita, 2023 introduces community service as a formal punishment, signaling a paradigm shift in sentencing philosophy.

Community service seeks to balance societal interests with offender rehabilitation by enabling offenders to contribute positively to society instead of undergoing short-term imprisonment. This reform aligns Indian criminal law with contemporary global trends that favour non-custodial and restorative forms of punishment.

A paradigm shift in sentencing philosophy is represented by the use of community service as a form of punishment. Community service requires the criminal to stay in the community and carry out unpaid labor for the benefit of the public, in contrast to incarceration, which separates the offender from society. The fundamental idea is to promote a sense of accountability, regret, and societal involvement in addition to punishment. Community service aims to repair societal harm while also encouraging rehabilitation and reintegration by forcing criminals to give back to society.³

The BNS's implementation of community service is involving the offender, the victim, and the community in the process of justice. Community service aligns closely with this philosophy by offering a constructive response to crime that benefits society and reduces the adversarial nature of traditional punishment.

Articles 14 and 21 of the Constitution, which mandate fairness, proportionality, and respect for

² Statement of Objects and Reasons, Bharatiya Nyaya Sanhita Bill, 2023

³ Law Commission of India, 42nd Report on the Indian Penal Code (1971)

human dignity in the administration of criminal justice, are in line with this strategy.⁴

Even before the BNS, Indian courts had occasionally implemented reformatory remedies including probation, reparation, and conditional release under the Probation of Offenders Act of 1958 and the Code of Criminal Procedure of 1973, but these procedures lacked consistency and statutory clarity. This gap is filled by the BNS's explicit inclusion of community service, which gives the judge structural discretion and legislative legitimacy. In situations where incarceration would be excessive and detrimental to society, it gives judges the authority to administer equitable punishment.

However, the practical application of community service is just as important to its efficacy as its legal acceptance. Through this analysis, the paper aims to evaluate whether community service under the BNS can serve as an effective instrument of restorative justice.⁵

II. Research Methodology

The present study adopts a doctrinal and analytical research methodology. Primary sources include statutory provisions of the Bharathiya Nyaya Sanhita, 2023, Code of Criminal Procedure, 1973, Probation of Offenders Act, 1958, and Juvenile Justice Act, 2015. Secondary sources comprise textbooks, journal articles, law commission reports, judicial decisions, and comparative foreign statutes. The research also employs a comparative method to analyse community service models in selected foreign jurisdictions. Risks remaining an under-utilized and symbolic reform in Indian criminal law

III. For the purpose of research, the researcher formed the following Hypothesis

1. Community service under the BNS is more reformatory than short-term imprisonment for minor offences.
2. Community services reduce repeat offending by encouraging social responsibility.
3. Judicial use of community service ensures proportional and humane sentencing while easing prison overcrowding.

⁴ V.N. Shukla, Constitution of India 118–120 (13th ed. 2017).

⁵ Law Commission of India, 156th Report on the Code of Criminal Procedure (1997)

IV. The following research questions were formed to test the Hypothesis

1. What is the legal framework governing community service under the Bharatiya Nyaya Sanhita, 2023?
2. How does community service align with theories of punishment?
3. What role do allied legislations play in supporting non-custodial sentencing?
4. How have Indian courts approached alternative forms of punishment?
5. How does India's model of community service compare with other countries?

V. Community Service under the Bharatiya Nyaya Sanhita, 2023

A major and forward-thinking change to Indian criminal law, community service under the Bharatiya Nyaya Sanhita, 2023 clearly departs from the country's long-standing reliance on incarceration and fines as the main forms of punishment. The BNS specifically recognizes community service as a form of punishment under Section 4 for the first time in substantive criminal legislation, giving courts unambiguous statutory authority to impose non-custodial punishments in appropriate instances. In order to allow an offender to stay in society while yet being held accountable for their offense, community service requires them to undertake unpaid labor for the good of the community.⁶

This strategy reflects the knowledge that crime harms society as a whole as well as the state, and that such Reformative and restorative ideas of punishment form the foundation of the BNS's community service philosophy. Community service aims to rehabilitate the offender by cultivating a sense of duty, discipline, and social obligation, in contrast to incarceration, which frequently results in social estrangement, loss of livelihood, and exposure to hardened criminal influences.

It makes it possible for criminals especially first-time and minor offenders to own up to their mistakes and meaningfully atone to society. Community service turns punishment into a chance for both individual and societal improvement by requiring offenders to perform socially beneficial duties like cleaning public areas, helping public institutions, or taking part in welfare-related activities.⁷

⁶ Law Commission of India, 268th Report on Prison Reforms (2017)

⁷ National Crime Records Bureau, Prison Statistics India (latest ed)

Community service is statutorily recognized by the BNS, but its implementation is subject to judicial discretion and is not automatic. Courts are supposed to take into account elements like the type and gravity of the offense, the offender's history and antecedents, In the context of the criminal justice system, the implementation of community service also fulfills significant structural goals.

Due in great part to the detention of those guilty of petty and non-violent offenses Indian jails have long been severely overcrowded. In these situations, community service offers a practical substitute for brief incarceration, lessening the strain on correctional facilities and preserving public funds. Additionally, it encourages proportionality in sentencing by guaranteeing that the penalty is appropriate for the seriousness of the offense, avoiding the excessive severity that frequently accompanies incarceration.

Although the BNS provides statutory recognition to community service, its application is not automatic and depends upon judicial discretion. Courts are expected to consider factors such as the nature and seriousness of the offence, the background and antecedents of the offender, the likelihood of reformation, and the broader interests of society before imposing community service as a punishment.

It aligns Indian criminal law with contemporary global practices that emphasize rehabilitation and restorative justice over mere retribution. While challenges relating to implementation, monitoring, and uniformity remain, the recognition of community service as a statutory punishment has the potential to transform sentencing practices in India by making them more just, proportionate, and socially responsive.⁸

VI. Other Relevant Legislations Supporting Community Service

The concept of community service under the Bharatiya Nyaya Sanhita, 2023 finds strong support in existing Indian criminal justice legislations that emphasize reformatory and non-custodial punishment.

Section 360 of the Code of Criminal Procedure, 1973 empowers courts to release certain offenders on probation of good conduct instead of sentencing them to imprisonment,

⁸ United Nations Office on Drugs and Crime (UNODC), Handbook on Alternatives to Imprisonment (2010)

particularly in cases involving first-time and minor offenders. This provision reflects the principle that rehabilitation is often more effective than incarceration.

Further, Section 361 of the CrPC requires courts to record reasons when probation is not granted, highlighting the legislative preference for reformative alternatives.

Similarly, the **Probation of Offenders Act, 1958**, under Sections 3 and 4, enables courts to release offenders after admonition or on probation, with the objective of reforming the offender and preventing recidivism. The Act lays the foundation for modern non-custodial sentencing, and community service under the BNS can be viewed as a structured extension of these probationary principles by requiring offenders to actively contribute to society.

The **Juvenile Justice (Care and Protection of Children) Act, 2015** also adopts a reformative approach by emphasizing community-based rehabilitation and social reintegration rather than punitive detention. Provisions such as Sections 18 and 39 focus on corrective and rehabilitative measures for children in conflict with law. The incorporation of community service under the BNS reflects a similar reform-oriented philosophy in adult criminal justice, thereby strengthening the overall rehabilitative framework of Indian penal law.

VII. Judicial Approach

A. Mohd. Giasuddin v. State of Andhra Pradesh ⁹

Facts:

Under this instance, the Supreme Court addressed the accused's sentence while considering the larger goal of punishment under criminal law. The question on the Court's agenda was whether the goal of punishment should be to reform the offender and reintegrate him into society, or if it should just be used as a measure of retaliation.

Judgment:

The Supreme Court ruled that the goal of criminal punishment is to reform and rehabilitate the offender rather than exact revenge. The Court noted that undue dependence on incarceration undermines the goal of criminal justice and that a humanitarian approach to punishment is crucial. This strongly supports the community service philosophy, which prioritizes social reintegration and correction above punitive incarceration.

⁹ AIR 1977 SC 1926

B. State of Gujarat v. Hon'ble High Court of Gujarat ¹⁰

Facts:

The case arose in the context of judicial discretion in sentencing and the need to ensure that punishment imposed by courts is consistent with constitutional principles. The Supreme Court examined whether courts should mechanically impose imprisonment without considering alternative and proportionate forms of punishment.

Judgment:

The Supreme Court held that punishment must be just, humane, and proportionate to the offence committed. The Court cautioned against the mechanical imposition of imprisonment and stressed that sentencing should take into account the nature of the offence and the circumstances of the offender. The judgment recognised the importance of judicial discretion in adopting alternative forms of punishment where incarceration is unnecessary. This decision provides judicial support for alternatives such as community service, reinforcing the idea that imprisonment should be used only where absolutely necessary.

VIII. Comparative Analysis: Community Service in India and Other Countries

Community service as a form of punishment is not unique to India and has been successfully implemented in several foreign jurisdictions for decades. A comparative analysis helps in understanding the strengths and limitations of India's approach under the Bharatiya Nyaya Sanhita, 2023 and offers valuable lessons for effective implementation.¹¹

The Criminal Justice Act of 2003 in the **United Kingdom** mandates community work as "Community Payback." Offenders must conduct unpaid labor under rigorous supervision, such as cleaning public areas or helping charitable organizations. The UK system is well-organized, with precise legal regulations governing the type of labor, duration, and oversight. This lessens the possibility of arbitrariness by guaranteeing consistency and responsibility.¹²

In the **US**, community service is frequently utilized in situations including traffic infractions, misdemeanors, and juvenile misbehavior. Courts usually set a set amount of service hours, and noncompliance can lead to jail time or other sanctions. Although community service has a long

¹⁰ AIR 1998 SC 3164

¹¹ K.D. Gaur, Textbook on Indian Penal Code 45–47 (9th ed. 2020)

¹² Criminal Justice Act, 2003 (UK), Part 12

history in the US, its implementation differs by state, which causes disparities in sentencing guidelines.¹³

In **Australia**, community service forms part of Community Correction Orders, which combine unpaid community work with counseling, supervision, and rehabilitation programs. This holistic approach not only punishes the offender but also addresses behavioral issues and promotes long-term reform. The Australian model is regarded as balanced and offender-centric, with strong institutional support.¹⁴

In comparison, India's model under the Bharatiya Nyaya Sanhita, 2023 is at a nascent stage. Although community service has been statutorily recognized, there is currently a lack of uniform national guidelines governing its application, supervision, and enforcement. Unlike the UK and Australia, India does not yet have a fully institutionalized monitoring mechanism. However, the inclusion of community service in the BNS is a progressive step that aligns Indian criminal law with global trends emphasizing reformatory justice.

Overall, while foreign jurisdictions provide structured and mature models of community service, India's approach under the BNS holds significant promise. By adopting clear guidelines, strengthening probation services, and learning from comparative experiences, community service can emerge as an effective and humane alternative to imprisonment in the Indian criminal justice system.

IX. Illustrations of Problems and Suggestions in Community Service under BNS

Illustration 1: Problem – Lack of Uniform Guidelines

A Magistrate in District A orders an offender convicted of a minor public nuisance to clean roads for 10 days, while a Magistrate in District B orders a similar offender to clean a public hospital for 2 months. The absence of uniform standards leads to unequal and arbitrary sentencing for similar offences.

Suggestion:

The Central Government should frame uniform national guidelines prescribing standard durations and types of community service for specific categories of minor offences.

¹³ Wayne R. LaFare, *Substantive Criminal Law* 102–104 (3d ed. 2018)

¹⁴ Sentencing Act 1991 (Victoria, Australia), Part 3A

Illustration 2: Problem – Arbitrary Use of Judicial Discretion

In two similar cases of first-time petty theft, one offender is sentenced to community service while the other is sent to prison without any recorded reasons, leading to inconsistent application of punishment.

Suggestion:

Courts should be required to record reasons while choosing or rejecting community service, ensuring transparency and proportionality in sentencing.

Illustration 3: Problem – Inadequate Supervision

An offender ordered to perform community service at a public park fails to report regularly, and no authority monitors compliance, resulting in ineffective enforcement of the punishment.

Suggestion:

Probation officers or designated officials should be appointed to monitor compliance and submit periodic reports to the court.

Illustration 4: Problem – Non-Compliance by Offender

An offender intentionally fails to complete the assigned community service, knowing that the law does not clearly prescribe consequences for non-compliance.

Suggestion:

The law should clearly provide that non-compliance will result in conversion of community service into imprisonment or fine, ensuring deterrence.

Illustration 5: Problem – Risk of Degrading Labor

An offender is assigned humiliating tasks unrelated to public welfare, affecting their dignity and violating reformative objectives.

Suggestion:

Community service should be restricted to dignified, socially useful work, with clear safeguards against degrading or exploitative labour.

Illustration 6: Problem – Poor Institutional Coordination

The court orders community service, but the local authority refuses to accept the offender due to lack of coordination, delaying execution of the sentence.

Suggestion:

Formal coordination mechanisms should be established between courts, local bodies, NGOs,

and probation services.

Illustration 7: Problem – Lack of Awareness

Judicial officers avoid imposing community service due to unfamiliarity with its implementation, continuing to rely on imprisonment for minor offences.

Suggestion:

Regular training and sensitization programs should be conducted for judicial officers and enforcement agencies.

X. Conclusion

The Bharatiya Nyaya Sanhita, 2023's introduction of community service as a form of punishment represents a noteworthy and forward-thinking advancement in Indian criminal law. The BNS moves away from the long-standing incarceration-centric approach inherited from colonial criminal law and toward a more reformative, rehabilitative, and restorative model of justice by explicitly recognizing community service as a statutory punishment. This change reflects a contemporary understanding that punishment should aim to correct behavior, repair social harm, and reintegrate offenders into society rather than just cause suffering. Particularly in situations involving minor and non-violent offenses and first-time offenders, community service provides a positive substitute for brief incarceration.

The study also shows that the BNS's inclusion of community service is not a stand-alone change, but rather is backed by existing legal frameworks that prioritize rehabilitation over punishment, such as the Juvenile Justice (Care and Protection of Children) Act of 2015, the Probation of Offenders Act of 1958, and the Code of Criminal Procedure of 1973. This reformative philosophy is further reinforced by judicial pronouncements, which acknowledge that alternatives to incarceration should be considered. However, proper implementation is necessary for community service to be realized as a meaningful punishment. Serious obstacles include the lack of consistent guidelines, insufficient oversight procedures, and the possibility of uneven implementation.

Therefore, clear national standards, strong institutional support, and judicial sensitivity are essential. If these concerns are adequately addressed, community service has the potential to transform sentencing practices in India and emerge as a humane, effective, and socially responsive instrument of criminal justice under the Bharatiya Nyaya Sanhita, 2023.