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Community Service as a Correctional Measure in Indian Penal System

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ABSTRACT

Eradicating sinner to eliminate the sin is one of the most criticized matter in human history. Punishment as a remedy for the mischief committed by offenders may not be an effective formula to suppress crimes in an evolving society. It merely invokes the feeling of revenge among the convicts and creates probability of post-traumatic stress to the convicts of petty offences. Correcting offenders is more of a philosophical concept which deals with wide range of variable factors revolving around a human being rather than a Legal concept which is limited to prescribing substantial remedies and mechanism for enforcing the same. Community service is one of the most effective techniques which aims to reform the offender by indulging them into social work. Community service refers to an unpaid social work, generally carried out to support the social welfare activities which serves as an alternative to prison punishment. These include sanitation activities, serving at old age homes, maintaining public facilities, educational or awareness programs, charity work etc. The primary aim of restoration is to promote development in the personality and the character of the offender, in order to make him a sensible member of society. Apart from correcting Offenders Community Service serves multiple valuable benefits to the society as well. Such benefits validates Community Service to be one of the most effective method for reformation therefore aligning with global trends in restorative justice and a step away from purely punitive methods.

Keywords: *Reformative theory, Deterrent theory, Community Service, Rehabilitation, Restorative Justice.*

I. INTRODUCTION

The idea of reforming offenders was first laid down in the 18th century however the idea of using community service as one of the correctional measure was first introduced in 1966 in the United States. Reforming offenders' aims to identify and address underlying cause behind such criminal activity and attempts to reform them mentally with least aggravated and advanced form of punishments in form of providing for education, training in the workplace, drug or alcohol rehab, mental health services including counselling, and other treatment methods

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necessary for the purpose of reformation. Community service, not only promotes reformation of offenders but also let the community to be benefited by such productive conduct. The primary aim of reformative approach is to bring a change in the attitude of offenders therefore rehabilitate them as law-abiding citizens.²

According to the Sociological theories of crime, it is well established that deviant behaviour is usually an outcome of variations in mental processes of human beings. The theory focuses over thoughts and feelings of individual that decide their future potential actions. A person's thought is administered and manipulated by his or her surroundings rather than their evil thoughts. A person who constantly familiarise and indulges himself in the surroundings of abusive and violent nature eventually accept it as a common norm. The method of reformation identifies such factors to understand the underlying reasons which caused and promoted the deviant behaviour in the offender and further it attempts to provide for the best reformative technique to enable the offender to regain the access to the society as a reformed prudent man.

According to **Social disorganisation theory** of 1930s it is observed that juveniles convicted of offences are usually a victim of poor survival neighbourhood, inadequate medical facilities and socio-economic instability. The theory suggests that crime is linked with external factors and is an outcome of neighbourhood dynamics such as their social relationships and their physical environment rather than their personal trait. The theory argues that crime exists and expands when there is high residential turnover rates because the resources are limited to provide for survival of all³.

According to **The psychological theory** of crime, it is argued that deviant behaviour is an outcome of differences in the thinking processes of individuals⁴. There are several psychological factors that determines person's thoughts and feelings hence manipulating their actions. Community service as a reformative measure attempts to familiarise the offenders with the positive aspects of society as it involves active participation of offenders in social activities to serve for humane purposes thereby enabling them to change their perception and attitude towards themselves and the society they live in. An enhanced mentality leads to prevention of recidivism.

² Dr. N.V Paranjape, *Criminology & Penology with Victimology* p.no 298(Central Law Publications, Allahabad).

³ Social disorganisation theory in criminology available at:<https://study.com/academy/lesson/the-chicago-schools-social-disorganization-theory.html> (Visited on April 10, 2024)

⁴ Psychological theories of crime available at:<https://www.studysmarter.co.uk/explanations/psychology/forensic-psychology/psychological-theories-of-crime/> (Visited on April 10, 2024)

II. GLOBAL RECOGNITION OF REFORMATION THEORY

The Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) was adopted by the United Nations General Assembly on December 15, 1989 which aimed at abolishing the death penalty within the jurisdiction of signatory countries. 172 countries, including India, are signatory to it. States adhering to the convention are required to take all necessary steps to prohibit the death penalty in their respective jurisdictions. It prohibits the application of the death sentence for any offense and mandates that states make sure their internal legislation complies with this requirement. The concept of reformation was globally recognised. The Second Optional Protocol reflects a growing international consensus against the use of the harsh measures to prevent crime and adopting more humane measures to deal with it gently.

The Declaration of the Eleventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders 2005 recognised and urged the member states to promote and develop restorative justice policies, guidelines and initiatives that offers alternatives to prosecution therefore promoting international cooperation and coordination to prevent and combat crime.

The Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice, was adopted by the Eleventh United Nations Congress on 25 April 2005, Member States reaffirmed their commitment to the development and maintenance of efficient and fair criminal justice institutions, including the humane treatment of all those in pre-trial and correctional facilities.⁵

The Global Programme for the Implementation of the Doha Declaration which is linked to the 2030 Agenda for Sustainable Development was adopted in 2015. The programme focuses on promoting prison-based rehabilitation programmes and post-release support to encourage prisoners and facilitating their reintegration into society. In this programme Reintegration is achieved through various constructive activities such as education, vocational training and work programmes in prison.

Jeremy Bentham an English philosopher, jurist, and a social reformer who laid the foundation of the deterrent theory later confirmed the ideology behind the reformatory theory which extends to rehabilitate the Offenders and attempts to prevent recidivism⁶. However Critics

⁵ United Nations rules for the treatment of women prisoners and non-custodial measures for women offenders available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-rules-treatment-women-prisoners-and-non-custodial> (Visited on April 10,2024)

⁶ Transforming criminals: An ideal of reformatory theory available

believed that such rehabilitation may be manipulated and abused by offenders by not actually participating in rehabilitation process thus failing to fulfil its sole purpose.

(A) Recognition in India:

The concept of punishment in the field of criminal justice has evolved over time in India. Based upon numerous instances, The Supreme Court of India adopted the humane doctrine of “*rarest of rare*” in the landmark case of **Bacchan Singh v. State of Punjab**⁷ and highlighted the importance and need of reforming offenders rather than merely adopting punitive measures. **Justice Krishna Iyer** in the case of **Md. Giasuddin v. State of Arunachal Pradesh**,⁸ laid down in his words “*Every saint has a past and every sinner has a future*”, therefore highlighting the need for reforming Offenders in order to render them a future with prospects further maintained that criminals are not born but are made.

In the case of **State of Gujarat v. Hon’ble High Court of Gujarat**⁹ the court noted that the primary goal of punishment ought to be reformation and that every attempt should be made to restore the good man out of a man who is a convicted prisoner.

In the case of **Mohd. Hanif Quareshi vs. State of Bihar**¹⁰ the Supreme Court noted that the reformatory philosophy of punishment is based on the idea that people may change and that instead of seeking revenge, the purpose of punishment has to be transform the Offender. The court decided that the ultimate goal of punishment is to make the criminal a productive member of society and that, when determining the appropriate sentence, the reformatory approach should be taken into account¹¹. Moreover, in the case of **Narotam Singh v. State of Punjab**¹² the Supreme Court stated that the goal of criminal law should be to promote rehabilitation through a reformatory approach to punishment.

(B) Existing legislations in India:

In India, **The Juvenile Justice Act** of 2015 was the only statute that outlined and set forth the provision of Community Service for juveniles under Section 18(1)-(c) which states that if a Board (Juvenile Justice Board) determines after an inquiry that a child regardless of his age has

at:<https://www.samvidhi.org/post/transforming-criminals-an-ideal-of-reformative-theory> (Last Modified July 26, 2020)

⁷ AIR 1980 SC 898

⁸ AIR 1977 SC 1926

⁹ State of Gujarat vs. Hon’ble High Court of Gujarat available at:<https://indiankanoon.org/doc/199405/> (Visited on April 10, 2024)

¹⁰ AIR 1958 SC 731

¹¹ Reformatory theory of punishment available at:<https://lawbhoomi.com/reformative-theory-of-punishment-in-india/> (Last Modified April 7, 2023)

¹² A.I.R. 1978 S.C. 1542

committed a petty offence, or an offence of serious nature, or a child below the age of sixteen years has committed a heinous offence then the Board may, if it so thinks fit after considering the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board.

As mentioned above, In India the concept of community service was earlier limited to corrections of juveniles only however, in present context **The Bharatiya Nyaya Sanhita** (2023) (BNSS) specifically provides for community service for comparatively wider range of offences viz. Small theft, Defamation, Attempting to commit suicide, Public intoxication, Theft of property less than Rs 5000, Public servants unlawfully engaged in trade. The BNSS 2023 was the first to propose the community service as a technique of punishment in India thereby intending to serve restorative justice and confirming the ideology behind reformation of Offenders who have committed minor offences.

III. JUDICIAL ASPECT REGARDING COMMUNITY SERVICE

Judiciary performs vital role to ensure a fair trial of offenders. Conviction and sentencing of offenders are among the major functions of courts which also includes post-conviction services which aims to promote restorative justice in society. It is now commonly accepted principle that harsh punishments only leads to degradation and not reformation.

In numerous cases the apex court of India pronounced a unique kinds of punishments to reform the offenders and to minimise punitive severity. In the interest of justice, the Supreme Court of India has determined community service to be a need. In the case of **Babu Singh and Ors vs. The State of Uttar Pradesh**¹³ the court considered it appropriate to impose community service on the accused or offender as reformatory measure and observed Public justice is central to the whole scheme of bail law, *"Fleeing justice must be forbidden but punitive harshness should be minimised."* Restorative devices to redeem the man, even through community service, meditative drill, study classes or other resources should be innovated.

While rendering a decision in the **Sunita Gandharva v. State of Madhya Pradesh 2020**¹⁴, The Madhya Pradesh High Court addressed the range and extent of bail requirements under Section 437(3) of the CrPC. It stated that the provisions are not to be construed as "excessive,

¹³ (1978) 1 SCC 579

¹⁴ Smt. Sunita Gandharva vs State of Madhya Pradesh available at: <https://indiankanoon.org/doc/68297532/#:~:text=1759%2F2020.,2.> (Visited on April 10, 2024)

freakish, and onerous," but rather as having a wider scope that includes community service and other reformative measures.

Pros of Implementing Community Service in India:

Implementing community service in India can serve multiple benefits not only to Offenders but also to the Society and State. Such as:

1. Cost-Saving: Adopting reformative measures over punitive measures not only serves wide range of benefits to offenders and the society however also to the Government by minimising the financial cost assigned for maintaining state prisons. Community service as a reformative measure serves as a cost saving method since it usually does not provides for the payment to the offenders for their engagement in work which benefits community hence accomplishing multiple purposes at a time. While considering the cost of imprisonment one must consider not only the actual cost spent, but also include the indirect expenses incurred on the account of social, economic and medical facilities related cost¹⁵

2. Prevention of Psychological Distress: Spending time in prison could be stressful and shameful for most of the convicts. After experiencing a prison imprisonment, Offenders are likely to be drawn towards Post-traumatic stress disorder i.e. a mental health disorder brought on by witnessing or experiencing traumatic incident. Flashbacks, nightmares, anxiety and irrational thoughts about the incident are possible symptoms of such disorder. Post-traumatic stress disorder disturbs their long-standing mental stability therefore effecting their lifestyle adversely. Opting community service will not only reduce the probability of experiencing the post-traumatic stress disorder among the offenders however it will also assist offenders to successfully reintegrate into the society as a peace-loving members.

3. Contribution to Society: In India, Depending on the type of offense and court's discretion community service for offenders can take many different forms. Community service aims to rehabilitate offenders by encouraging them to engage themselves in social work for a good cause which positively impacts the morale of the society thus encouraging others to contribute for the same by their productive means. Such Contribution is served in different forms ranging from Environmental Clean-up or Public Health Initiatives or Education and Literacy Programs or Elderly Care programs to Community Infrastructure Projects. Participating in community service encourages offenders to become active and responsible members of society.

¹⁵ Poonam Rawat & Avnish Bhatt, "The Shades of Legal Mechanism of Human rights and prisoners with special reference to National Human Rights Commission, India", p.no 3 DLR (2016)

4. Prevention of Recidivism: Reformation techniques such as Community Service also deals with enlightening mental perspective of Offenders. When executed properly, Community Service is said to foster emotional growth in offenders, preventing them from relapsing into criminal activity. Long-term safety for society is ensured by criminals who possess an enhanced-progressive mind set. Community Service programs address the root causes of criminal behaviour and assist offenders in reintegrating into society by offering a chance for personal development, skill enhancement, and community involvement however the critics argues that punishment involves no form of pain is no punishment at all¹⁶.

5. Development of Interpersonal Skills: Community Service involves wide range of services requiring to be completed responsibly which can assist offenders in developing work related skills and gaining valuable experience in a particular field of work, with these skills they can earn a livelihood therefore enhancing their productivity along with their employability.

IV. CONCLUSION AND SUGGESTION

In India, the concept of community service for offenders is constantly growing through legislations and precedents. The society have witnessed numerous instances where the apex court have granted unique kinds punishments for correction of offenders extending to planting of trees or cleaning public areas, maintaining parks or roads. Since community service offers wide range of benefits the courts expected to implement the same in substitute of civil imprisonment. However it would be noteworthy to consider if the community service could be availed at the choice of offenders where imposing no-monetary penalty will not defeat the ends of justice.

It is pertinent to note that the specific types of community service and the duration of the services were determined by the courts on a case by case basis, by taking into account factors such as the severity of the offense committed, background of the offender, and their willingness to participate in rehabilitation efforts. Even though Reformative Methods are the best alternatives yet it is important to determine its suitability and compatibility with offenders and the nature of offence they have committed.

Reformative techniques have proved to be useful and highly effective in the administration of criminal justice system. As we overview The New **Bharatiya Nyaya Sanhita (2023)**, it can be observed that it evolves and widens the scope of Community Service as an alternate technique

¹⁶ Dr. N.V Paranjape, Criminology & Penology with Victimology p.no 299(Central Law Publications, Allahabad).

to punitive severity. Now in Indian scenario, Community service is expected to be witnessed more commonly as it overall, offers offenders a chance for redemption, personal growth, and positive reintegration into society while also benefiting the communities in which they reside. By recognizing the value of community service as part of the justice system, societies can promote rehabilitation, reduce recidivism, and build safer and more inclusive communities. It reduces burden on State's treasury and promotes an out-of-court settlement therefore developing a liberal criminal justice system.

The role of judiciary is noteworthy in the implementation of community service in the Indian criminal judicial system. By imposing unique punishments to the offenders, it can be observed that judiciary encourages the application of community service and various other forms of reformation methods therefore ensuring restorative justice.

There may be multiple challenges when implementing reformative techniques in Indian criminal judicial system however, if implemented, would cause a great outcome. In the present context, it is a need to introduce appropriate legislation and model schemes regarding implementation and control of the same as it will align our system with global trends in the reformation of offenders.
