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A Critical Study on Community Service Sentencing and its Significance in the Indian Criminal Justice System

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ABSTRACT

Community service punishment is a legal consequence where individuals convicted of certain crimes are required to complete unpaid community service as a form of restitution or rehabilitation. Instead of going to jail, offenders are given tasks like cleaning public areas, helping charitable organizations, or participating in community-centered activities. This type of punishment aims to teach responsibility, encourage accountability, and give offenders a chance to give back to society. Community service punishment is used in many countries around the world, including various European countries, the United States, Canada, the United Kingdom, and Australia. It is seen as effective in reducing prison overcrowding, supporting rehabilitation, and lowering incarceration rates, while allowing offenders to contribute positively to their communities. The shift towards using community service as a punishment in India, as outlined in the Bharatiya Nyaya Sanhita, signifies a move away from solely punitive measures towards a more comprehensive and rehabilitative approach to justice. This change recognizes the need to address the underlying causes of criminal behavior, promote rehabilitation, and encourage individuals to take responsibility for their actions, especially for minor offenses. However, there may be challenges in implementing community service punishment in India due to socioeconomic factors, cultural diversity, and existing legal structures.

Keywords: Community Service, Restorative Justice, BNS.

I. INTRODUCTION

“Without community service, we would not have a strong quality of life. It is important to the person who serves as well as the recipient. It is the way in which we ourselves grow and develop.” – Dorothy Height³

In recent years, there have been notable changes in the criminal justice system in India, particularly in terms of how offenders are sentenced for their crimes. Historically, India has

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³ Elizabeth Valenti, *The Power of Volunteering*, GCU Blogs, <https://www.gcu.edu/blog/criminal-justice-government-and-public-administration/power-volunteering> (Last Accessed on Aug 8, 2024)

relied heavily on punitive measures such as imprisonment, fines, and property forfeiture. However, there has been a shift towards recognizing the limitations of these approaches and moving towards a more holistic view of punishment. The introduction of community service as a form of punishment under the *Bhartiya Nyaya Sanhita* reforms reflects a departure from the traditional idea of punishment as mere retribution. Instead, it focuses on rehabilitation, reintegration, and restoring communal harmony.

Offenders convicted of certain offenses are now required to perform unpaid community service, which may include tasks like cleaning public areas or assisting charitable organizations. This type of punishment aims to instill a sense of responsibility and accountability in offenders while allowing them to make amends for their actions and contribute positively to society. Furthermore, community service aligns with the principles of restorative justice by emphasizing the repair of harm caused by criminal behavior and the integration of offenders back into society.

While community service punishment has been successfully implemented in several other countries, its adoption in India presents both opportunities and challenges. On one hand, it has the potential to alleviate overcrowding in prisons, reduce the social and economic costs of incarceration, and increase community involvement in the justice system. Additionally, it promotes the values of fairness, proportionality, and individualized justice by tailoring responses to offenses based on their severity.

However, there are significant challenges to implementing community service punishment in India, including socioeconomic disparities, cultural differences, and infrastructure issues. Policymakers and practitioners must address these challenges by ensuring equitable distribution of community service opportunities, navigating cultural norms around punishment, and carefully considering the scalability and long-term impact of this approach.

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.

II. ORIGIN OF COMMUNITY SERVICE AS A FORM OF PUNISHMENT

Community Service as a form of punishment has been in use for the past five decades and is widely utilized in various countries, particularly in the USA and UK. The concept of community service can be traced back to as early as 1553 in London, where it was used to deter

idleness and vagrancy.⁴ It was also utilized during and after World War II, with judges in Alaska ordering community service as part of probation.⁵ In England and Wales, the formal introduction of community service as a sentencing option stemmed from the 1970 "Wootton Report", which advocated for non-custodial measures and highlighted the benefits of community service as a constructive and cost-effective alternative. This recommendation led to the enactment of the Criminal Justice Act of 1972, which outlined the key features of community service sentencing. Formal Community Service programs began in the United States in 1966 with the establishment of Alameda County California program, where the Judges of the municipal court sentenced a large number of convicts of traffic offences to unpaid labor or community service as a punishment a special agency was established to administer it. Today, community service as a sentence is widely practiced in many countries, including Australia, Sri Lanka, and Germany.

III. PURPOSE OF COMMUNITY SERVICE AS A SENTENCE

Young notes that in the United Kingdom, prisons have long been viewed as harmful rather than effective deterrents, with concerns about overcrowding and the negative impact building new prisons would have on the economy. He argues that traditional non-custodial measures have failed to address the increase in crime rates, leading to a focus on new alternatives such as community service.⁶ Similar arguments have been made in the United States and New Zealand. Research has shown that community service is a cost-effective alternative to prison, with lower recidivism rates and benefits for both offenders and communities. Reports from the US Courts have emphasized the value of community service as a flexible, personalized, and humane sanction that benefits all stakeholders. Community service aligns with the goals of rehabilitation, deterrence, punishment, retribution, and justice. Well-conceived and well-managed community programs have proven effective in reducing reoffending.⁷

Hudson and Galaway have listed several advantages of community service:

- a) Reduces intrusion of the justice system, and reduce recidivism,
- b) Agencies are benefitted by the labor provided by the offender,

⁴ Ken Pease, *Community Service Orders: Crime and Justice*, CHICAGO JOURNALS, Volume 6, <https://www.journals.uchicago.edu/doi/abs/10.1086/449104?journalCode=cj> (Last Accessed on Aug 8, 2024)

⁵ Douglas McDonald, *Punishment without walls: Community service sentences in New York City*, Rutgers University Press, 1st Edition, 1986

⁶ W.A. Young, *Community Service Orders: The Development of a New Penal Measure*, <https://ojp.gov/ncjrs/virtual-library/abstracts/community-service-orders-development-and-use-new-penal-measure> (Last Accessed on Aug 8, 2024)

⁷ F. Allen, & H. Treger, *Community service orders in Federal Probation: Perceptions of probationers and host agencies*, FEDERAL PROBATION, Volume 54, Issue 3, p. 8 - 14

- c) Increases the community support within the criminal justice system,
- d) Reduces cost,
- e) Works as an alternative sentence for the courts
- f) Offenders can also experience the need of other.⁸

However, there are concerns that Community Service is not always awarded fairly and impartially, posing a risk to community safety and the lives of offenders. The determination of the period and type of service is often subjective and discretionary by the court, calling for the need to create a more ideal system. It is suggested that a separate department be established to oversee the management of community service sentences, apart from the courts and prison administration. Additionally, more research is needed to determine who should be eligible for community service sentences. Questions arise about which offenders should receive this punishment and how the court should decide; generally, it is only given for minor offenses, first-time offenders, property crimes, and traffic violations.

(A) As a restorative justice reform:

Various perspectives exist regarding the restorative approach to community service. The principle behind this punishment theory is to rehabilitate criminals. In the case of *State of Gujarat v. Hon'ble High Court of Gujarat*,⁹ the court emphasized that the main objective of punishment should be reformation, aiming to turn the offender into a better individual. Similarly, in *R.K Anand v Registrar High Court Delhi*,¹⁰ the court suggested that it would be beneficial to have offenders contribute to society in a utilitarian manner rather than simply sending them to jail.

A crime is seen as a wrongdoing that the state must address in order to maintain peace and order within society. Punishment is the state's responsibility, as crimes are viewed as offenses against the state. Supporters of this punishment theory believe that it can help transform offenders into better individuals by teaching them valuable skills during their time in prison. They see community service not as a punishment, but as a way for offenders to fulfill their duty to society and work towards rehabilitation. While society may not always appreciate this form of social service, it provides an opportunity for reform and positive change.

⁸ J. Hudson, & B. Galaway, *Community service: Toward program definition*, FEDERAL PROBATION, Volume 54, Issue 2, p. 3-9

⁹ AIR 1998 SC 3164

¹⁰ AIR 2013 SC 670

(B) As an alternative form of sentencing:

The severity of punishment for offenses is determined by the court based on the gravity of the crime committed. Community service has been recognized as a more effective and economical alternative, particularly for minor offenses, as it helps reduce the burden on prisons.

For many years, the traditional approach of imprisoning offenders for extended periods has proven to be both expensive and ineffective in reducing criminal activity. In fact, prolonged incarceration often leads to small-time offenders becoming more deeply involved in criminal activities. There is limited evidence to suggest that long prison sentences alone are successful in deterring crime.

Community service provides a more rehabilitative form of punishment, offering offenders a chance to make amends for their actions while also benefiting the community. It streamlines the judicial process, allowing for quicker resolution of cases and faster delivery of justice. This cost-effective and efficient approach not only benefits the offenders but also the legal system as a whole.¹¹

IV. COMMUNITY SERVICE AS A PUNISHMENT - PRIOR TO BNS

Over the period of time and in the name of reforms many alternatives to custodial sentences have been introduced in the Indian Criminal justice system over a period of time like – use of open prisons, parole, probation, rehabilitation centers and etc., but Community sentence has not been given much importance. Not much literature is available and not many studies have been conducted to study the impact of community service as an alternate in the Indian scenario, although the problems of over-crowding, inhumane conditions inside prison, costly custody are plaguing in India also.¹²

As of now, only legal recognition of community service is outlined in Section 18(1)(c) of the Juvenile Justice (Care and Protection of Children) Act, 2015.¹³ This provision provides for community service to juvenile offenders. However, there have been efforts to introduce community service as a form of punishment. Firstly, Indian Penal Code (Amendment) Bill 1978 proposed that community sentencing could be given for certain offences with work hours ranging from forty to one thousand hours. Also, the Malimath Committee in its 156th report¹⁴

¹¹ Riya Ranjan, *Community Sentencing in India: Remedies and Reforms*, Ipleaders, <https://blog.ipleaders.in/community-sentencing-india-remedies-reforms/> (Last Accessed on Aug 8, 2024)

¹² Priyanshi Gupta, *Community Service: As a Part of Sentence in India*, SSRN JOURNAL, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3850264 (Last Accessed on Aug 8, 2024)

¹³ The Juvenile Justice (Care and Protection of Children) Act, 2015, § 18, cl. 1, No. 2, Acts of Parliament, 2015 (India)

¹⁴ Law Commission of India, Report on Indian Penal Code (1997)

recommended to introduce community service, but these attempts have not been successful. Despite, Various High Courts have initiative to grant community service by invoking its inherent power under Section 482 of the Code of Criminal Procedure, 1973.¹⁵ For instance, under this discretionary provision, the High Court of Delhi has directed two young men who molested and tried to assault a girl, to clean shoes and rinse utensils at a Gurudwara.¹⁶ community sentencing eases the burden on the incarceration system and the state exchequer. Emphasising this issue, the Rajasthan High Court observed in the case of *Pappu Khan v State of Rajasthan*,¹⁷ that the welfare state cannot afford a sizeable non-productive prison population as it imposes a heavy burden on the state exchequer.

V. COMMUNITY SENTENCE AND INDIAN JUDICIARY

The judiciary's approach to sentencing offenders is shifting, leading to confusion due to a lack of consistent sentencing theory. Introducing community sentences without a proper framework could add to this ambiguity. Despite community service not being mentioned in penal laws, courts are increasingly using it as an alternative sentencing option, showing judicial discretion in action. In the case of *Sunita Gandharva vs. State of M.P. & Anr*,¹⁸ highlighted the importance of community service in the form 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 crimes...the C/WPPIL/108/ accused can again be assimilated into the mainstream society and would be accepted by the community...ingrained attributes of Love, Compassion Mercy and Service can berekindled through the concept of community service”. The court considered it fit to impose community service as “any other condition in the interest of justice” as per section 437(3) of CrPC over the accused or offender. In *Babu Singh vs. the State of U.P.*,¹⁹ the Apex court held that restorative devices through means of community service, meditative drill or study classes should be innovated upon to redeem the offender.

In the case of *Azad Khan vs. State of MP*,²⁰ the Madhya Pradesh High Court issued a community service order for the applicant convicted under section 304 IPC, who had also

¹⁵ The Code of Criminal Procedure, 1973, §482, No. 2, Acts of Parliament, 1974 (India)

¹⁶ 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 on Aug 8, 2024)

¹⁷ 2005 CRILJ 4732

¹⁸ 2020 SCC OnLine MP 2193

¹⁹ (1978) 1 SCC 579

²⁰ (2012) 8 SCC 450

requested a revision. In case of *State vs. Sanjeev Nanda*,²¹ the Supreme Court observed that convicts in different countries are willing to serve the community voluntarily, emphasizing that community service is not a true punishment but a way for the convict to give back to society. The court chose to sentence the convict to two years of community service rather than further incarceration, considering the severity of the crime in which six lives were taken. Similarly, in the case of *Vishal S Awtani vs. State of Gujarat*,²² the High Court of Gujarat deliberated on the nature of community service, determining it to be a form of reparation rather than punishment. The court highlighted the benefits of community service sentencing and directed the state to implement a policy requiring individuals caught violating COVID-19 guidelines to perform community service at a COVID care center. While this judgment was seen as progressive, it was halted by the Supreme Court. Despite not being officially incorporated into statutory law or sentencing policies, courts have the discretionary power to impose community service sentences within certain constraints.

VI. IMPACT OF COMMUNITY SERVICE ON OFFENDERS' MINDSET

The introduction of community service as a punishment for offenders represents a significant shift in traditional notions of justice. Rather than simply being punished, offenders are given the opportunity to make positive contributions to the community, challenging their previous understanding of the consequences of their actions. This can lead to a more holistic perspective on the impact of their behavior on society. Engaging in community service fosters personal accountability as offenders directly participate in actions that benefit the community. This hands-on experience helps them realize the consequences of their behavior on a larger scale, encouraging them to take responsibility for their actions. Additionally, participating in community service provides offenders with an opportunity for reflection and the development of empathy as they witness the positive impact of their contributions on others.

It serves as a tool for re-socialization by allowing offenders to reintegrate into society through positive actions. By actively participating in community projects, offenders can gain a sense of purpose and belonging, which can contribute to their rehabilitation and reduce the likelihood of reoffending. Additionally, community service focuses on restitution and restoring relationships through the concept of restorative justice. By actively working towards the betterment of the community, offenders can contribute to repairing any relationships that may have been strained as a result of their actions. This form of positive reinforcement can also help

²¹ AIR 2012 S.C. 3104

²²C/WPPIL/108/

offenders reinvent their self-identity as they receive acknowledgment and appreciation for their contributions. As they begin to see themselves as valuable members of society capable of positive change, offenders may be less likely to return to criminal behavior, ultimately leading to a safer and more inclusive society.²³

VII. CHALLENGES AND CONSIDERATIONS

Criticism towards using community service as a punishment for crime stems from its perceived leniency and inconsistent application by different judges. The lack of uniformity in sentencing offenders to community service leads to a sense of unfairness and inequality within the justice system. Additionally, the supervision and enforcement of community service orders are often lacking, allowing some offenders to evade their responsibilities, which undermines the effectiveness of community service as a rehabilitative and punitive measure. Research suggests that community service alone may not effectively reduce reoffending rates, indicating the need for additional rehabilitative interventions. Challenges in resource allocation and coordination among agencies further hinder the implementation of community service programs, leading to public skepticism about its effectiveness as a punishment. Ethical concerns also arise, particularly regarding concerns of forced labor when assigned tasks do not directly address the harm caused by the crime.²⁴

The followings must be taken into consideration while imposing community service as mode of punishment:

1. Ensuring Equality and Fairness:

It is important to ensure that individuals from all walks of life have equal access to community service opportunities when it is used as a form of punishment. This means taking into account factors like socioeconomic status to ensure a level playing field for all offenders.

2. Effectiveness of Supervision and Evaluation:

Proper monitoring and evaluation systems must be put in place to ensure that offenders complete their community service obligations properly. Keeping track of their contributions and assessing their progress is crucial for the success of this approach.

3. Addressing Potential Stigmatization:

²³ Khush Brahbhatt, *Transforming Justice: Community Service as Punishment in Bharatiya Nyaya Sanhita, 2023 and Its Impact on Offender Mindsets*, LINKEDIN, <https://www.linkedin.com/pulse/transforming-justice-community-service-punishment-nyaya-brahmbhatt-gd7df> (Last Accessed on Aug 8, 2024)

²⁴ Md. Imran Wahab, *Analysing Community Service as a Mode of Punishment in Bhartiya Nyaya Sanhita*, LEGAL SERVICE INDIA, <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 Aug 8, 2024))

There is a risk of social stigma attached to community service as a punishment. Efforts should be made to educate the public on the rehabilitative nature of this form of punishment, in order to reduce bias and judgments against offenders fulfilling their community service requirements.²⁵

²⁵ Supra Note at 20