
COMMUNITY SERVICE AS PUNISHMENT FOR PETTY OFFENCES UNDER BHARATIYA NYAYA SANHITA, 2023: A STEP TOWARDS RESTORATIVE JUSTICE IN INDIA

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"The purpose of punishment is not to torment a sensible being, but to prevent the repetition of crime and to reform the offender for the benefit of society."

— Cesare Beccaria, On Crimes and Punishments (1764)

ABSTRACT

The Bharatiya Nyaya Sanhita (BNS) 2023 introduces “Community Service” as a groundbreaking punishment for minor offences, replacing the Indian Penal Code, 1860. Effective from 1st July 2024, this reform prioritizes rehabilitation and restorative justice over traditional punitive measures. This paper examines the legal framework of Community Service under Section 4(f) of the BNS, its potential to alleviate prison overcrowding and the challenges in its implementation. By analyzing judicial precedents, global practices and socio-legal implications, it argues that while Community Service is a progressive step, its success depends on legislative clarity, effective monitoring and public acceptance.

Introduction

India's criminal justice system, historically rooted in the retributive framework of the Indian Penal Code, 1860 (IPC) has struggled with prison overcrowding and recidivism. The Bharatiya Nyaya Sanhita, 2023 (BNS), effective from 1st July 2024 marks a paradigm shift by introducing Community Service as a punishment for minor offences.¹ This reform aligns with global trends towards restorative justice, emphasizing rehabilitation and societal reintegration over incarceration.² Community Service, as a non-custodial sanction, reflects the reformatory theory of punishment aiming to benefit both offenders and communities.³

This paper critically evaluates the scope of Community Service under the BNS, its objectives and its potential to transform India's penal landscape. It addresses key questions:

1. What is the legal framework for Community Service? How does it compare with international models?
2. What challenges hinder its implementation and how can they be addressed? Through legal analysis, case laws and comparative perspectives.

Legal Framework of Community Service Under BNS

Section 4(f) of the BNS lists Community Service as one of six forms of punishment, alongside death, life imprisonment, rigorous imprisonment, simple imprisonment and fines.⁴ The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 defines Community Service as “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.”⁵ The BNS prescribes Community Service for six specific offences:

- Public servant unlawfully engaging in trade (Section 202).

¹ Bharatiya Nyaya Sanhita, 2023, s. 4(f).

² Vishnu Sharma, *Shifting Contours of Criminal Laws: Analysing the Viability of Community Service as a Punitive Measure in India*, 18 NUALS L.J. 123 (2024).

³ Md. Imran Wahab, *Analysing Community Service as a Mode of Punishment in Bharatiya Nyaya Sanhita, 2023*, Legal Service India (2024), www.legalserviceindia.com.

⁴ Bharatiya Nyaya Sanhita, 2023, s. 4.

⁵ Bharatiya Nagarik Suraksha Sanhita, 2023, s. 23, Explanation.

- Non-appearance in response to a proclamation under Section 84, BNSS (Section 209).
- Attempt to commit suicide to compel or restrain lawful power (Section 226).
- Theft of property worth less than ₹5,000 by first-time offenders, upon restitution (Section 303(2), proviso).
- Misconduct in public by a drunken person (Section 355).
- Defamation (Section 356(2)).⁶

These offences, characterized by their non-violent nature, are suitable for restorative sanctions. The inclusion of Community Service reflects legislative intent to prioritize rehabilitation, particularly for first-time and petty offenders, reducing reliance on imprisonment.⁷

Rationale and Objectives

The introduction of Community Service under the BNS serves multiple objectives rooted in restorative and reformatory principles:

- **Rehabilitation and Reintegration:** Community Service encourages offenders to take responsibility through constructive contributions, fostering personal growth and societal reintegration.⁸ For instance, tasks like environmental cleanup or community welfare activities can instill a sense of civic duty.
- **Prison Decongestion:** With India's prisons operating at 130% capacity in 2021, Community Service offers a viable alternative for minor offenders, easing the burden on correctional facilities.⁹
- **Restorative Justice:** By repairing harm through community benefit, this sanction balances the needs of offenders, victims and society, aligning with global restorative

⁶ Bharatiya Nyaya Sanhita, 2023, ss. 202, 209, 226, 303(2), 355, 356(2).

⁷ *Community Service in BNS*, Drishti Judiciary (Jul. 10, 2024), www.drishtijudiciary.com.

⁸ *Community Service: An Incomplete Yet Promising Penological Advancement*, LiveLaw (Jul. 5, 2024), www.livelaw.in.

⁹ Naveed Mehmood Ahmad, quoted in *Community Service for Minor Crimes under Bharatiya Nyaya Sanhita*, Times of India (Jul. 4, 2024).

justice models.

- **Cost-Effectiveness:** Unlike imprisonment, Community Service incurs minimal costs, allowing the state to allocate resources to serious offences.¹⁰
- **Social Impact:** Community Service can address local needs, such as sanitation or education, creating tangible benefits for society.

This reform responds to judicial calls for alternative sentencing. In *Gudikanti Narasimhulu v. Public Prosecutor* (1977), the Supreme Court advocated for measures promoting “social defense and individual correction,” laying the groundwork for sanctions like Community Service.¹¹

Comparative Perspectives

Community Service is a well-established sanction in several jurisdictions, offering valuable lessons for India. In the United Kingdom, “community orders” combine unpaid work (e.g., 40-300 hours) with rehabilitation programs, achieving lower recidivism rates for non-violent offenders.¹² The United States employs Community Service for offences like vandalism or drunk driving, with structured programs ensuring compliance. Australia’s Community Corrections Orders tailor conditions like counseling or community work to individual needs, enhancing rehabilitation.¹³

In India, Community Service was previously limited to juvenile justice under Section 18(1)(c) of the Juvenile Justice Act, 2015, where courts could order tasks like cleaning public spaces.¹⁴ The *Pune Porsche Case* (2024) involving a juvenile offender sentenced to Community Service for a fatal accident, sparked debate on its appropriateness for serious offences, highlighting the need for clear guidelines.¹⁵ Unlike Western systems, the BNS lacks a detailed implementation framework, leaving discretion to Judges, which risks inconsistency.

¹⁰ *Community Service as a Bail Condition*, Drishti Judiciary (May 22, 2024), www.drishtijudiciary.com.

¹¹ *Gudikanti Narasimhulu v. Public Prosecutor*, (1977) 1 SCC 441.

¹² Sharma, *supra* note 2.

¹³ Wahab, *supra* note 3.

¹⁴ *Parvez Jilani Shaikh v. State of Maharashtra*, (2015) SCC OnLine Bom 347.

¹⁵ *Community Service*, LiveLaw (Jun. 19, 2024), www.livelaw.in.

Implementation Challenges

Despite its progressive intent, Community Service under the BNS faces several challenges:

1. **Lack of Definition:** The BNS does not specify the nature, duration or types of Community Service, potentially leading to arbitrary application. For example, tasks like park maintenance or teaching may vary widely across Courts.
2. **Monitoring and Compliance:** Ensuring offenders complete assigned tasks requires robust oversight. Without dedicated agencies, Courts may struggle to enforce compliance, unlike U.K. systems with specialized monitoring bodies.
3. **Public Perception:** Community Service is often viewed as a “soft” punishment, undermining public trust. The *Pune Porsche Case* illustrated public skepticism about its adequacy for offences with significant social impact.
4. **Resource Constraints:** Implementing Community Service demands coordination between Courts, local administrations and NGOs which may strain India’s judicial infrastructure, particularly in rural areas.
5. **Ethical Concerns:** Assigning tasks unrelated to the offence may fail to address the harm caused, raising questions about the sanction’s restorative value. For instance, defamation offenders performing environmental work may not directly remedy victim harm.

These challenges underscore the need for a structured framework to ensure uniformity and effectiveness.

Judicial Precedents and Interpretations

Indian Courts have occasionally explored Community Service, providing insights into its application. In *Parvez Jilani Shaikh v. State of Maharashtra* (2015), the Bombay High Court directed the accused to render Community Service at a hospital, signalling judicial openness to reformative measures. Similarly, in *Sunita Gandharva v. State of Madhya Pradesh* (2020), the Madhya Pradesh High Court upheld Community Service as a bail condition, emphasizing its rehabilitative potential.

However, the *Pune Porsche Case* (2024) exposed risks of misapplication. The initial imposition of Community Service for a juvenile involved in a fatal accident was criticized as inadequate, leading to bail cancellation. This case highlights the judiciary's role in balancing public sentiment with reformatory goals, necessitating guidelines to ensure appropriate use of Community Service.

Socio-Legal Implications

The introduction of Community Service under the BNS has broader implications for India's criminal justice system. Firstly, it challenges the punitive mindset entrenched in colonial-era laws, promoting a culture of rehabilitation. Secondly, it addresses socio-economic disparities by offering an alternative to fines, which disproportionately burden the poor. Thirdly, it empowers communities by involving them in the justice process, fostering civic engagement.

However, socio-cultural factors, such as caste dynamics, may complicate implementation. Assigning manual tasks like cleaning to certain offenders could reinforce social stigmas, requiring sensitivity in task allocation. Additionally, urban-rural disparities in infrastructure may lead to uneven application, with rural Courts facing greater resource constraints.

Recommendations

To maximize the efficacy of Community Service under the BNS, the following measures are proposed:

1. **Legislative Clarity:** Amend the BNS or BNSS to elaborately define Community Service, specifying eligible tasks (e.g., environmental conservation, public welfare activities) and duration based on offence severity. A maximum of 100 hours for minor offences could be standardized.
2. **Monitoring Mechanisms:** Establish dedicated agencies or leverage existing probation departments to oversee compliance, drawing from U.K. and U.S. models.
3. **Judicial Training:** Train Judges to assess the suitability of Community Service, ensuring tasks align with the offence and offender's capacity.
4. **Public Awareness:** Launch campaigns to educate the public on the rehabilitative and

societal benefits of Community Service, addressing perceptions of leniency.

5. **Pilot Programs:** Implement pilot programs in select districts to test feasibility, refine task allocation and address local challenges.
6. **Cultural Sensitivity:** Ensure task assignments respect socio-cultural dynamics, avoiding stigmatizing manual work or caste-based biases.

Conclusion

Community Service under the Bharatiya Nyaya Sanhita, 2023, represents a transformative step towards a rehabilitative and inclusive criminal justice system in India. By offering a non-custodial alternative for minor offences, it addresses prison overcrowding, promotes restorative justice and aligns with global penological trends. However, its success hinges on overcoming implementation challenges through legislative clarity, robust monitoring and public acceptance. With judicial innovation and policy support, Community Service can redefine India's approach to minor offences, fostering a justice system that heals rather than punishes.

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