
COMMUNITY SERVICE AS AN ALTERNATIVE TO IMPRISONMENT

Lalit Anjana, B.com (D.U), LL.B (D.U), LLM (NALSAR)

ABSTRACT

Community service helps in the reformation of the offender and it is beneficial for society. The concept of community service is not present in the Indian penal code because IPC was enacted in 1860 and at that time there was no such thing as community service in India. But with the change in time, circumstances, and society in which we live there is a dire need for the inclusion of community service as an alternative form of punishment. The need of the hour is the proper legal framework to monitor and implement community service as an alternative form of punishment.

Keywords: community service, reformatory theory, probation

INTRODUCTION

"Every saint has a past, every sinner has a future."¹

"An eye for an eye will turn the whole world blind" ²

Community service has the impact of reformation and protection of the first time offenders or person who have done some petty offense from the contaminating effect of prisons and it also acts as a better alternative to imprisonment in-country facing problem of overcrowded jails. Several Hollywood Celebrities have gone through community service sentences as a mode of punishment for offenses committed by them which has drawn the attention of people all around the globe towards community service as a form of punishment.

WHAT IS COMMUNITY SERVICE

Community service is unpaid work done by the offender for a civic or non-profit organization. Recipients of community service include the public library, conservation programs, and senior citizen centers, etc. In short, it can be termed as "action by the offender to make good the loss suffered by the victim"³

LITERATURE REVIEW

"An Eye for an Eye Will Turn the Whole World Blind - In Special Context to Reformative Theory Of Punishment" Author: Mr. Rustam Singh Thakur⁴. The focus of this article is on the reformative theory of punishment for rehabilitating the offender according to the changing nature of modern society and making them law-abiding citizens. There is a possibility that this theory may be ineffective against hardened criminals and its scope is limited only towards first-time offenders or juveniles. The ultimate aim of reformists is to try to bring about a change

¹ V. R. Krishna Iyer, J

² Mahatma Gandhi used the phrase "An eye for an eye, and soon the whole world is blind", about his Satyagraha philosophy of non-violent resistance

³ Centre for justice and reconciliation, "Restorative Justice, About Restorative Justice, Tutorial: Intro to Restorative Justice, Lesson 3:Community Service", available at: <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-3-programs/community-service/#sthash.6eQfGGDM.wIPCHEdN.dpbs> (last accessed on 13-05-2020)

⁴ Rustam Singh Thakur. "An eye for an eye will turn the whole world blind", available at: <https://www.manupatrafast.com/articles/PopOpenArticle.aspx?ID=d4648720-96bb-4fab-8eca-32b16ce2dae1&txtsearch=Subject:%20Criminal> (last accessed on 29-05-2020)

in the personality and character of the offender, to make him a useful member of society.

RESEARCH METHOD

The present research work is of doctrinal and Analytical; comparative and critical methods had been adopted. Authoritative judgments of the Supreme Court, High Courts, and the Law Commission reports, statutory, and authenticated textbooks have been referred. Further, various legal research articles of national and international journals have been referred to find out, analyze and compare the community service programs all around the globe. The relevant information has also been collected through Internet sources.

RESEARCH QUESTIONS

1. What constitutes community service?
2. Whether there is a need for introducing community service as a specific legal punishment?
3. What are the benefits of community service as an alternative mode of punishment?

AIM OF THE STUDY

Analyzing Community service as a potential learning practice that occurs outside of prison and which provides a second chance to offender to become a better person and prevents him from going to prison which usually puts a tag of criminal on that person and leads to reformation of the offender. Exploring what kind of change community service brings in the individual and community and examining the scope of community service in India.

HISTORY OF COMMUNITY SERVICE

In the year 1966 in the USA community service began as an alternative form of short punishment for female offenders guilty of traffic-related offenses. By legislation, in the early 1970s UK courts were the specific power of giving community service as an alternative to imprisonment.⁵

BENEFITS OF COMMUNITY SERVICE

⁵ Supra n. 4

Community service is a flexible, personalized, and humane sanction that provides an opportunity for the offender to see what indirect injuries are caused by the offense and also provides a constructive, proactive means of repairing the injuries caused by the offense committed by him/her. Service provided by offenders can also act as a great resource to government and non-profit organizations.⁶ It is a practical, cost-effective, and win-win proposition for everyone involved. It gives the offender a sanction that is less restrictive than prison; the chance to give something back to society, the opportunity to get work experience and job skills, boost their self-esteem. It also provides satisfaction to the victim that the offender did not evade responsibility for their crime.⁷ Community service serves the goals of punishment, restitution, reparation, and even rehabilitation .it is beneficial to the community, the victim, the court, and to the offender.⁸ Imprisonments as a punishment have proved to be ineffective in their objective of reforming the criminals. The practice of locking up human beings in the condition of captivity challenges some of the basic principles of humanity. The major problem of prison administration in most countries including India is related to prison overcrowding, lack of resources for providing proper accommodation, and health care for the prisoner.⁹

The whole concept of community service revolves around the idea of motivating the offender to actively participate in the process of becoming a law-abiding citizen and rather than making the offender a passive receiver of punishment.

In several cases, it may not be feasible for the offender to pay penalty in form of a fine due to financial constraints therefore in such a situation community service serves as an alternative to the punishment of imprisonment instead of a fine.¹⁰

⁶ *Ibid*

⁷ *Supra* n. 3

⁸ Professor Kathleen Daly, "Reparation and Restoration", available at: <https://pdfs.semanticscholar.org/25a3/9dd8c1d8d10caea78d089802afdabb1ad20a.pdf> (last accessed on 02-06-2020)

⁹ Bureau of police research and development, National POLICY ON PRISON REFORM AND CORRECTIONAL ADMINISTRATION", available at: <http://www.bprd.nic.in/WriteReadData/userfiles/file/6515844528-Part%20V.pdf> (last accessed on 02-06-2020)

¹⁰ Ronald Mpuru Ntuli, Sonwabo Victor Dlula, "Enhancement of Community-Based Alternatives to Incarceration at All Stages of the Criminal Justice Process in South Africa", available at:

DEVELOPMENTS IN INDIA

Community service was not prevalent at the time when Lord Macaulay drafted the Indian penal code. In the 42nd report of the law commission, it emerged for the first time. The law commission in its 156th report made a provision for community service in the Indian penal code as a mode of punishment under sub-clause iv of section 53 and insertion of new section 74A to deal exclusively with community service as a specific form of punishment under IPC.

As per section 74A (1) “where any person not under eighteen years of age is convicted of an offense punishable with imprisonment of either description for a term not exceeding three years or with fine, or with both, the court may, instead of punishing him as aforesaid or dealing with him in any other manner make an order (hereinafter in this section referred to as the Community Service Order) requiring him to perform, without any remuneration, whether in cash or kind, such work and for a such number of hours and subject to such terms and conditions, as may be specified in the said Order”.¹¹ The scheme of Community service has been started in Gujarat and Andhra Pradesh and it is an alternative for an offense under the Bombay Probation Act. The legislation regarding community service is pending with the union government for their concurrence.¹²

At present ordering community service as an alternative to imprisonment is at the sole discretion of the court because there is no sanction in legislative for it. The court can impose conditions upon the release of the offender on probation under section 4 of the probation of offenders act, closer look at this section provides for imposing conditions for a proper check on the offender and preventing the repetition of offense by the probation officer.¹³

https://www.unafei.or.jp/publications/pdf/RS_No61/No61_21PA_Dlula.pdf (last accessed on 12-06-2020)

¹¹ Law Commission of India, One hundred Fifty- SIXTH report on the Indian penal (Volume I) August 1997, available at: <http://lawcommissionofindia.nic.in/101-169/Report156Vol1.pdf> (last accessed on 12-06-2020).

¹² Keira, “Community Service as Punishment Under the IPC”, available at: <https://www.scribd.com/document/365821935/Community-Service-as-Punishment-Under-the-Ipc-Criminology-Essay>

(last accessed on 13-06-2020)

¹³ Section 4, Probation of Offenders Act, 1958

CASES AND PRONOUNCEMENTS

There are several instances in India where offenders were made to do community service as an alternative of punishment for petty offenses committed. It has been made clear that in case of heinous crimes like rape, murder, robbery, etc. there can be no community service as a mode of punishment. The objective of the reformatory theory is to reform and not to destroy the offender.¹⁴

In many of the developed countries, the concept of community service as an alternative form of punishment is well developed with proper machinery and legal procedure. In India, judges have in few cases granted community service instead of imposing jail sentences to first-time offenders who have been convicted of petty offenses.¹⁵

TARANDEEP NAGRA Vs. STATE NCT OF DELHI

Delhi High Court directed community service at Gurudwara for a year and quashed a police case registered against Tarandeep Nagar and Gaurav Grover for allegedly misbehaving, and pulling her clothes on the road. The case was registered against the duo under section 509(word, gesture, or act intended to insult the modesty of the women) and section 354B (Assault or criminal force with intent to outrage her modesty) of IPC. Justice Hima Kohli accepted the apologies of both the accused and FIR against both of them were quashed but they were ordered to clean shoes and utensils in Bangla sahib Gurudwara. The court not only directed both the accused to pay Rs 10,000 each to the victim but also suspended their driving license for one year.

The court further directed that one of the accused provide Rs 10,000 to Bangla Sahib Gurudwara and the other to provide Rs. 10,000 to schools for the blind and in this case there was out of court settlement.¹⁶

STATE Vs. SANJEEV NANDA (BMW hit and run case)

¹⁴ Sri Mithu Kalita Alias Mitu Kalita v State Of Assam, 2006 CriLJ 2570; State of H.P. v Ishwar Dass and Ors, 1999 CriLJ 393; Bishnu Deo Shaw @Bishnu Dayal v State Of West Bengal, 1979 AIR 964.

¹⁵ Ayesha Arvind, "Delhi's petty criminals work off their debt to society as courts catch on to community service", available at: <https://www.dailymail.co.uk/indiahome/indianews/article-2447171/Delhis-petty-criminals-work-debt-society-courts-catch-community-service.html> (last accessed on 14-06-2020)

¹⁶ Tarandeep Nagra vs. state NCT of Delhi

In August 2012, Sanjeev Nanda convicted in the BMW hit and run case, got a reprieve from the Supreme court that refused to enhance the quantum of punishment of two years already undergone by him and directed him to do community service for two years. The Supreme Court held him guilty of 'culpable homicide not amounting to murder' as against causing death by 'rash and negligent act for mowing down six persons.

A bench comprising Justice Deepak Verma and Justice K.S. Radhakrishnan showed leniency to Nanda but criticized his conduct of running away from the spot leaving the victims to die and not taking injured to hospital. The court ordered community service for 2 years and in addition to this ordered payment of Rs 50 lakh as a fine for the welfare of victims of road accidents.¹⁷ In a recent case quashed by the Bombay High Court, five youth accused of sexual assault were ordered to sweep the streets of Mumbai for a month. Reactions to this ideology of doing community service instead of any other punishment brought forth mixed perspectives. Justices Abhay Oka and Amjad Sayed agreed to quash the case saying the youths showed "remorse". They had deposited Rs. 50,000 each with the court registrar as asked, and the alleged offense "cannot be said to be against society at large", the court said. The amount in quashing cases, deposited by the accused, usually goes into the legal aid kitty.¹⁸

COMPARATIVE ANALYSIS

In 1977 probation department in the USA started community service with 150 government and charitable agencies. Decisions regarding the hours of community work and duration of work completion were to be specified by the judge ordering the sentencing. Community service Orders differ as to the conditions and situations of different countries. Probation services officer supervision is obligatory for community service order and offender both in Canada and Korea charges these services officer with responsibility and duty for proper implementation and fulfillment of the obligation of community service orders. The probation officer for the minor gives generally a warning for first-time violations of the conditions that are imposed by the court but in case of a serious breach of conditions more serious penalties to be imposed. In South Africa in certain cases, there is an independent supervising agency that performs the task of supervising the offender and making sure that community service orders are carried out without any delay but as per the reports, the work done by independent

¹⁷ State v. Sanjeev Nanda, (2012) 8 SCC 450

¹⁸ Bhavesh Keshav mhatre and Ors vs the state of Maharashtra and Ors on 25 October 2016, in the high court of judicature at Bombay, criminal appellate jurisdiction writ petition no.3534 of 2016.

agencies is not satisfactory. These independent agencies are different from the department of correctional services. In countries like Canada, Korea and South Africa warrants for the arrest is issued, if offender breach probation or community service order, but if reasonable cause is shown as an excuse for not complying with the order and the court is satisfied with the reason given by the offender the court may not issue a warrant or commit him/her to jail. In Canada, probation services that manage the community services have proved to be successful with proper implementation and a working community service order system. As compared to simple probation services, community service order programs are more concentrated and intensive because they are more cost-effective. "Fine option Program" is the source or origin of community service orders in Canada, this program was introduced to reduce the help the offenders who were in custody because they were unable to pay or made default in paying the amount of fine imposed on them for the offense done by them. There are many Nations in which there is no provision for community service orders in the legal system but there is an agreement that they would welcome such a concept in addition to their current legal system. In countries like India, which already have the probation of offender act, it would be easier to introduce a community service order. It is essential that before community service programs are introduced country should ensure that it has all the necessary resources required for its proper implementation. In general and as learned from the analysis of community service programs in different countries it can be said that it has proved to be cost-beneficial and reduced the over-reliance on imprisonment. Each country needs to examine its current situation and analyze its pros and cons to see whether it is ready for the effective implementation of such programs. There is a duty placed upon the court to explain the objective and impact of community service to the offender, consequence it may ensue in case of breach of condition, and to timely review its order whenever there is a change in circumstances. As compared to simple probation supervision the disadvantages of community service order include amongst other things: the court may impose a custodial sentence if offenders do not satisfactorily comply with this order; the administration of community service orders require administrative oversight that may exceed the capacity of non-governmental organizations to provide and public exposure may result in stigmatization¹⁹

¹⁹ Annual report for 2002 and resource material series No. 61, UNAFEI Fuchu, Tokyo, Japan September 2003, Available at https://www.unafei.or.jp/publications/pdf/RS_No61/No61_00All.pdf (last accessed on 28-06-2020)

CONCLUSION

"A hundred criminals can be escaped, but one innocent should not be punished" is the motto, which is followed by the Indian Criminal Justice System.²⁰ The present Penal code still has traditional punishments in its list which need to change and to be made suitable to control the offense as this age-old colonial punishment system is not suitable. Imposing proper punishment and implementing them without delay is the only way to control the crimes and to diminish their bad effect on society. Community service as a mode of punishment should be introduced in IPC,

To make a community service program a successful way for reformation of the offender, then its process and mechanism should be clearly defined and delineated, if it's used without any special provision for it, then there are chances that restorative purpose may not be achieved.

There are very high chances that first time offender may be turned into hardened criminals even if they have committed petty offenses when a harsh decision is taken by the court, which harm professional and personal life the offender.

The need of the hour is to make specific laws regarding community service, which will bring more certainty and uniformity and it will ensure that such punishment is not dependent entirely on the sole discretion of the judge. By performing community service the young person/adult offender not only repays the community for the harm done but also has the opportunity to find outlets in the community for developing skills, new interests, and abilities.

SUGGESTIONS

Instead of Imposing fines or short sentencing imprisonment for petty offenses, ordering to do community service must punish the offender. The scope of the Indian penal code is to be extended by inserting community service as punishment through central legislation. Community service also seems appropriate where the crime is victimless; it still has to be

This volume contains the Annual Report for 2002 and the work produced in the 121st International Training Course that was conducted from 20 May to 12 July 2002. The main theme of this Course was, "Enhancement of Community-Based Alternatives to Incarceration at all Stages of the Criminal Justice Process."

²⁰ Committee on Reforms of the criminal justice system, Government of India, Ministry of Home Affairs, Report Volume I, available at: https://mha.gov.in/sites/default/files/criminal_justice_system.pdf (last accessed on 16-06-2020)

acknowledged that it has limited potential to address the victim's needs for reparation. The success of community service depends on how well organized the program is and how it is implemented with proper supervision therefore merely cleaning roads or doing community service does not guarantee any change or teaching the offender certain values. Reforms in our legal system are necessary for a well-organized process through which community service is to be given as an alternative form of punishment to the offender. Recognizing serving community service as a responsible way of giving punishment is the first step of dealing with the offender. There is no way a person can lead a normal life once the criminal tag is put on a person because our society see that person from a different perspective and consider that person as a bad person only and in rare cases, any second chance or support is provided by society to improve and become a better person, therefore, the implementation of community service as a form of punishment for first-time offenders of petty crimes should be introduced in Indian penal code.

IPC should be amended in such a way that it incorporates the rehabilitative and reformatory ideology.²¹The offender who has been directed community service may be ordered to work with disabled, senior citizen groups or provide service in hospitals, provide service to victims, such as repairing vandalized property or providing maintenance work for nonprofit organizations. Awarding of community service as a punishment rests entirely on the discretion of the judge, which leads to the possibility of prejudice while ordering punishment, if the law regarding Community service is crystallized or made as a form of punishment under IPC then it will become easier to administer for and don't leave much of grey area in that case under criminal law system.

²¹ Bureau of police research and development ministry of home affairs, New Delhi, 2003, "Implementation of the recommendation of All-India Committee on Jail reform (1980-83) Volume I", available at: https://www.thehinducentre.com/multimedia/archive/03191/Mulla_Committee_-i_3191900a.pdf (last accessed on 21-06-2020).