



# ***A Study on The Legal Framework of Community Service in India- Effectiveness and Challenges***

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## **ABSTRACT**

### **A Study on The Legal Framework of Community Service in India- Effectiveness and Challenges**

The study of penology deals with the different types of crimes and punishments that are imposed depending upon the nature of the crime, as well as the management of prisons. We cannot consider every offender to be a hardened criminal and sentence him to harsh penalties prescribed under the Indian Penal Code 1860. Historically, it is seen that if a court finds a person guilty of committing a crime and is convicted, he may be penalized under any one of the punishments prescribed under the IPC 1860, which are either death penalty, imprisonment for life, simple and rigorous imprisonment, forfeiture of property, fines, or solitary confinement. The main objective of modern penology is 'Reformation' but the above set of penalties fails to meet this objective, as in the Indian jails, there still languish a considerable number of undertrial prisoners who are waiting for their release. This indicates the requirement of an alternate mode of punishment that not only meets the goal of reforming the suspect or convict but also gives them justice as fairness by not violating their fundamental right guaranteed under Art 21 of the Indian Constitution i.e., 'Right to Life and Personal Liberty'. The legislators of the criminal justice system very recently introduced a new form of punishment in the Bharatiya Nyaya Sanhita 2023 under Section 4 (f) as 'Community Service'. Although the BNS 2023 do not define 'Community Service', the Bharatiya Nagarik Suraksha Sanhita 2023 defines 'Community Service' under *Explanation* of Section 23 as 'the 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'. Community Service has evolved in the Indian criminal justice system as an

essential means of replacement for traditional sanctions. The main objective of the present research is to analyse the legal framework that regulates 'Community Service' in our country, examine how effectively it is utilized to accomplish the goals of rehabilitation and deterrence and determine the challenges that emerge while applying the law in operation. The study will assess key statutes, policy documents, and case laws by applying a doctrinal research method. It will evaluate the extent to which 'Community Service' succeeds in mitigating the rate of recidivism while facilitating prisoners' reintegration back into society. Further, an endeavour shall also be made to identify the challenges involved in supervising, monitoring, and successfully involving the offenders in community service. The study will try to make recommendations to enhance community service's effectiveness in India after examining the pros and cons of the current framework.

*Keywords: Community service, reformation, sanction, challenges, framework*

## Introduction

The technique of rehabilitating offenders within the wider society is certainly not of recent origin and its roots can be traced back to the English Common Law. Judges during the Medieval period used their discretionary power to award clemency and stays of execution to safeguard deserving convicts against the harsh sentences prevalent at that time. This practice of judicial respite enabled judges to forego imprisonment while sentenced prisoners sought pardons or accumulated fresh evidence that they had transformed into reformed individuals.<sup>1</sup>

Programs promoting community-based corrections were also present throughout the earliest stages of American history. As a means to enforce their stringent Puritan rules, the Puritan rulers in New England strove to punish whoever violated the laws. A vast majority of citizens were found to be undeterred by informal community pressures such as ostracism, disdain, and gossip. Few of the offenders were imprisoned in public cages and stocks while few others who were involved in heinous crimes were whipped, branded, exiled, or hanged to death.<sup>2</sup>

The development of the American penitentiary undermined the relevance of the community-based element of corrections. Nevertheless, 'Probation' originated in Massachusetts in the middle of the nineteenth century due to the initiative of John Augustus' voluntary work. He acquired membership in the Washington Total Abstinence Society, a group whose members completely abstained from consuming alcohol themselves and had a belief that empathy and compassion rather than punishment would assist in the rehabilitation of alcohol abusers.<sup>3</sup>

In reality, Augustus was willing to cooperate with all kinds of offenders be they be held for petty theft, drunkard, felons or prostitutes provided that they possessed a contrite heart. He worked with women and children in addition to male offenders. Over a span of eighteen years Augustus bailed out and supervised 2000 probationers and assisted them in securing occupations and integrating them back to society. He promoted services such as

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<sup>1</sup> Larry Seigel & Clemens Bartollas, *Chapter 4 Community Corrections Part III How do we Correct in the Community?* in *Corrections Today* 74–75 (Wadsworth Cengage Learning, 2011).

<sup>2</sup> Ibid

<sup>3</sup> Ibid

investigation and screening, supervision of probationers, interviewing and setting of relief, employment, and education.<sup>4</sup>

Currently, in India Community Service is gaining a lot of prominence as an alternative to traditional punishment. However, the contemporary concept of community service as an organized and supervised form of rehabilitation is nevertheless relatively fresh in our country. The BNS and BNSS outline the legal framework for community service which comprises specific sections for its enforcement. Through this research paper an attempt shall be made to provide an in-depth analysis of the legal provisions, how they are implemented and the challenges encountered in integrating community service in the Penal System of India.<sup>5</sup>

## Research Problem

In India, the concept of Community Service as a punishment is currently in its early stages regardless of its immense potential. The present law's efficiency is undermined due to vague legal provisions, unbalanced judicial utilization, and lack of adequate implementation mechanisms. Further, these challenges can be considered as critical grey areas that are yet to be completely resolved and addressed through the latest BNS and BNSS statutes. The present research examines the efficiency of these freshly introduced laws to tackle the hurdles encountered in effectively embedding community service within the legal framework of the criminal justice system.

## Emergence of Community Services

The Indian Correctional System operates on the skeletal structures of prisons and jails. A number of purposes are being served after a perpetrator is subjected to a period of imprisonment that includes incapacitation, deterrence, retribution and rehabilitation. Due to the multiple contradictory purpose, it is usually seen that, many legal systems have integrated community-centred programs into their spectrum of correctional alternatives. Such programs, known as **community corrections**, have been defined as “any correctional- related activity purposively aimed at directly assisting and supporting the efforts of the offender to establish meaningful ties or relationships with the community for the specific purpose of becoming reestablished and functional in legitimate roles in the community”<sup>6</sup>

With a particular focus on punishing the offender, institutional and community corrections, have emerged in tandem with society's needs and expectations. Ideas of punishments have often mirrored the progress of developed society and the societal challenges that its citizens encounter. In the 1960s, when the introduction of **community services** as an alternative to punitive sentences gained substantial approval, the concept of **community corrections** first initially grew and was widely embraced.<sup>7</sup> Prior to this time, these kinds of initiatives

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<sup>4</sup> Ibid

<sup>5</sup> Supra 1

<sup>6</sup> Thomas Ellsworth (ed.), *Contemporary Community Corrections* 3 (Waveland Press, Inc. Prospect Heights, Illinois, USA, 2nd edn., 1996).

<sup>7</sup> Supra P4

that were placed under the framework of community corrections were simply a somewhat interconnected network of both private and public agencies that were created for supporting the offender.<sup>8</sup>

Community service has been considered as a social service in various countries since time immemorial making it challenging to identify its accurate origin. In 1953, it was initially introduced in the House of Corrections of Bridewell Palace in London as a method of resolving the issues of vagrancy and idleness by assigning the homeless jobs. Even before the second world war and throughout the war, community service was a requirement, and in 1949, the Alaska State Statute was integrated into the state's regulations permitting judges to levy incarceration conditions as an aspect of probation for those convicted of crimes. Informally recognized as the "Wootton Report", this document proposes towards the implementation of non- custodial or semi-custodial measures by asserting that part time job in community service would be suitable and a better alternative to incarceration. In England and Wales this heralded the emergence of community service as an alternative form of penalty.<sup>9</sup>

### Introduction of Community Service in India

In India for the first time ever, Community Service has been incorporated as an alternative mode of punishment in lieu of imprisonment in the BNS 2023. This is an encouraging move that reflects a significant shift in the discipline of penology within the realm of Criminal justice system in India.<sup>10</sup>

Amongst the several objectives, that punishment strives to accomplish are retribution, deterrence, justice, reformation etc. Contemporary guidelines for sentencing reflect a merging of most or even all of these targets. "Let the punishment fit the Crime" was written by Cicero in 106 B.C. This concept remains to be in use till date as an integral criminal justice principle in legal structures across the world.<sup>11</sup>

In England, in 1970, Barbara Wootton, a renowned English social scientist drafted a report titled 'Non-Custodial and Semi- custodial penalties.'<sup>12</sup> This report suggested 'Community Service' as a possible replacement to imprisonment. Following that these recommendations culminated in the passing of 'The Criminal Justice Act of 1972' in the United Kingdom which has since been referred to as 'The Powers of Criminal Courts Act, 1973.' This Act outlines the requirements for adopting and executing community service directives in the UK.<sup>13</sup>

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<sup>8</sup> Ibid

<sup>9</sup>Naveen Talawar, *Revolutionising justice: Emergence of Community Service Punishment in The Indian Criminal Justice System* (2024), <https://www.verdictum.in/columns/revolutionising-justice-emergence-of-community-service-punishment-in-the-indian-criminal-justice-system-1526844> (last visited Jan 10, 2025).

<sup>10</sup> Fauzia Shakil, "Community Service" Under the BNS – An Incomplete Yet Promising Penological advancement (2024), <https://www.livelaw.in/articles/community-service-under-bhartiya-nyaya-sanhita-262322?fromIpLogin=70448.04375546206> (last visited Jan 10, 2025).

<sup>11</sup> Supra 10

<sup>12</sup> Ibid

<sup>13</sup> Ibid

In the USA, lawful community service program started in 1966 with the formation of the Alameda County California Program. Municipal Courts magistrates condemned traffic violators to labour without pay or community service and a particular agency was set up for managing these types of penalties. Subsequently ‘**community service**’ has emerged as a regular utilization to punish in America for minor offences, for instance, minor-theft, shoplifting, vandalism, and drunk driving. Countries in Africa, Europe, Middle East and several other jurisdictions have also started to recognize community service as a substitute to prison term.<sup>14</sup>

India has for the first time adopted Community service under the new Bharatiya Nyaya Sanhita 2023, as an alternative to incarceration although it has been effective in other foreign nations and almost after 50 years of its adoption in UK in 1973, India has introduced it. It is crucial to take into account that the **156<sup>th</sup> Law Commission Report**, which first appeared in 1997 proposed amending **Section 53** of the Indian Penal Code 1860, to incorporate “**community service**” as a substitute for imprisonment, but this proposal was never adopted.<sup>15</sup>

There are multiple reasons why community service can be regarded as a more preferable mode of punishment or alternative to imprisoning a criminal. As our prisons are already overcrowded, it tackles the issue of further increasing the prison population from the standpoint of the State-resource perspective. The latest data regarding overcrowding of Indian Prisons goes back to the year 2021. In 2020 the prison population was 4.8 lakh, which abruptly increased to 5.5 lakh in 2021, resulting in the rise of inmate population in 1319 jails by 13 percent, further raising the national average by 130 percent.<sup>16</sup>

Directed by the Reformatory theory of Punishment and to alleviate the issue of overcrowding in prisons, the BNS has introduced ‘Community Service’ as an alternative mode of punishment for few of the following offences: **Section 202-** Engagement in Illegal trade by Public Servants, **Section 209-** Failure to appear in response to a proclamation made under Section 84 of BNS, 2023, **Section 226-** Anyone who attempts to commit suicide with the aim of compelling or restraining the employment of legal power, **Section 303(2)** proviso: Theft in which the items stolen is below Rupees five thousand and a first time offender returns or refunds the cost of the property, **Section 355-** Drunken person getting involved in misconduct while in public place, **Section 356(2)-** Defamation.<sup>17</sup>

**Criticism of Section 202-** According to this section, if a public servant is held liable and found guilty in engaging in unlawful trade, he may be sentenced to **simple imprisonment for a term that can extend up to one year**, depending on the severity of the offense and any conflict of interest involved. In addition to this he may also be **fined**. Alternatively, **based on the discretion of the court**, he may be sentenced to **Community service as a punishment**.

The phrase ‘**based on the discretion of the court**’ is problematic, and is **an area of concern as the judge can be biased and use his discretionary power to favor one party or he may not favor another party**.

<sup>14</sup> Ibid

<sup>15</sup> Ibid

<sup>16</sup> Supra 10

<sup>17</sup> Ibid



Without a doubt, this signifies an evolutionary shift in India's strategy towards punishment from a focus on deterrence to reformatory approach. Like many other countries of the world such as Canada, Netherlands, Norway, UK and the USA, with this adoption of 'Community Service', India too have joined the list of the nations that already had Community service as an alternate means of penalty. This addresses two objective at one go: First, those behind the bars are reformed and they get a sense of direction, Secondly, it minimizes the burden on taxpayers and prison facilities that are overcrowded.<sup>18</sup>

### Vague Definition of Community Service in BNSS 2023

Community Service has been introduced under Section 4(f) of the Bharatiya Nyaya Sanhita 2023 as a new form of punishment. This regulatory shift tries to provide an alternative to traditional forms of punishment through targeting challenges like overcrowding and facilitating rehabilitation for offenders. But the efficiency of this new form of penalty depends on the precise definition and how well it is implemented.<sup>19</sup>

Explanation of **Section 23 of Bharatiya Nagarik Suraksha Sanhita 2023** states, *"Community Service" shall mean the 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.*"<sup>20</sup>

The given definition is swarming with a bunch of flaws and drawbacks which makes is legally ambiguous and uncertain regarding the implementation of community service. It fails to specifically indicate those category of offenders as to who can be awarded community service as a penalty. It also did not elucidate and gave a clear explanation of the term 'benefits the community'

Further, we observe that neither of the newly introduced BNS 2023 or BNSS 2023 comprehensively and exhaustively defines what would constitute 'Community Services', whether it would involve plantation of trees and saplings, cleaning public places like parks, bus stands or public toilets, getting involved in social-service and serving the orphans or the old aged elderly section of the society.

### Community Service Model in England and Wales

The history of community punishment in England and Wales have been shaped by **probation orders**, typically mandating that an offender be kept under the supervision of a probation officer, and **community service orders** that calls for unpaid labor to be carried out under inspection as a type of redress to the community. These familiar

<sup>18</sup> Kritika Malik, Navigating the New Criminal Laws, Part 2, Community Service wordpress.com (2024), <https://bharatchugh.wordpress.com/2024/06/05/navigating-the-new-criminal-laws-part-2-community-service/#:~:text=It%20prescribes%20community%20service%20as,a%20drunken%20person%2C%20defamation%20and> (last visited Jan 11, 2025).

<sup>19</sup> Anurag Mishra & Yash Raj, *Community Service: A Progressive Shift Introduced by Bharatiya Nyaya Sanhita* livelaw.in (2024), <https://www.livelaw.in/lawschool/articles/community-service-bharatiya-nyaya-sanhita-indian-penal-code-juvenile-justice-act-national-crime-records-bureau-260813?fromlpLogin=62601.42524973349> (last visited Jan 11, 2025).

<sup>20</sup> Bharatiya Nagarik Suraksha Sanhita (BNSS)- Section 23. Available at: <<https://lawlegal.in>> (last visited Jan11, 2025)

names were however replaced in the year 2000 by ‘**Community rehabilitation orders**’ and ‘**community punishment orders**’ respectively, in England and Wales and together they were combined to be known as ‘**Community Punishment and Rehabilitation Order**’. Again, under the 2003 Criminal Justice Act, a new ‘*generic community service*’ was introduced in lieu of these ponderous not so popular redesignations. The duration of these sentences can last as long as three years, though a shorter period may be prescribed. To this order can be attached any of (and most combinations of) 12 different requirements relating to unpaid work, specified activities, accredited programs, prohibited activities, curfews, exclusions from specified places, residence in specified places, mental health treatment, drug rehabilitation, alcohol treatment, supervision by a responsible officer, and attendance centers for younger offenders.<sup>21</sup> With several of these, electronic monitoring can also be included. Some of these are derivatives of earlier familiar orders (for example, unpaid work in community service, and drug treatment requirements resemble the earlier Drug Treatment and Testing Orders.)<sup>22</sup>

**Probation Service-** Since a long period of time, the probation service has been assigned with the task of supervising adult convicts on parole and (since the Criminal Justice Act of 1991) on automatic conditional release, in addition to some young offenders on license subsequent to their release from correctional institutions. During the period of late 1990s, the increasingly widespread sequence involving an imprisonment period preceded by a period of conditional liberty under supervision was regarded as a single “seamless” sentence that was planned as a single ongoing process.<sup>23</sup>

Two sectors namely **a public- the National Probation Service (NPS) and a private-Community Rehabilitation Companies** have divided the probation services of England and Wales since June 2014. Supervision of offenders 18 years and above are undertaken by the probation service. Youth Offending teams are mainly accountable for handling juveniles in respect to the Youth Justice Board. 21 CRCs supervises medium to low-risk offenders, while high risk criminals are supervised by the NPS. In addition to monitoring offenders who have been granted community or suspended sentences, probation service was also responsible for the time frame following their release from jail. (supervision pre and post release). The Ministry of Justice declared in June 2021, that probation services were going to be centralized under the NPS, ending operations through CRCs effective from June 26<sup>th</sup> in a bid to streamline the administration of probation services. Overall, twelve probation areas will be operated in England and Wales, eleven new probation areas will be set up in England and governed by Regional Probation Directors in each area, while in Wales, the operating framework will remain unaltered but will be administered by a sole NPS Director.<sup>24</sup>

<sup>21</sup> Peter Raynor. *et al.* (2012) ‘Chapter 31 Community Penalties, Probation, And Offender Management, Part V- Reactions to Crime’, in *The Oxford Handbook of Criminology*. 5th edn. Oxford University Press, pp. 929–930.

<sup>22</sup> Supra21

<sup>23</sup> Ibid P930

<sup>24</sup> Sabrina S. Rapisarda, (2021) ‘*Community Corrections in the UK: England & Wales Narrative Summary*’. Available at <<https://globcci.org>> (last visited Jan12, 2025)

## Community Supervision order by Court

In certain less serious cases, community orders are issued as they are not serious enough to be imposed with custodial sanctions and hence executed in the community, but not that severe to be charged with conditional discharge or a fine. Depending on the magnitude of the offense, community orders may extend ranging from six months to three years. At least one court-ordered obligation (e.g., treatment or unpaid job) if not a combination of several duties must be accomplished. **The three forms of community orders- community sentences, suspended sentences and deferred sentences** are detailed below.<sup>25</sup>

**a). Community Sentence-** A community based non-custodial penalty is granted which comprises of an array of demands that must be met and upheld as well as community supervision by NPS. The conditions to be met includes domicile/ residency constraints, treatment of mental health and drug/alcohol treatment, curfews, enrollment in accredited programs, unpaid labor (community payback), forbid from joining in particular events and more.<sup>26</sup>

**b). Suspended Sentence-** Although the defendant is deemed guilty and awarded a custodial sentence, it remains suspended for a specific timespan. As long as the offender adheres to the guidelines and refrains from getting involved in any new crime, he gets the benefit of no additional punishment. In simple words, if the accused is successful in following the rules, he is refrained from serving a jail term.<sup>27</sup>

**c). Deferred Sentence-** Though identical to suspended sentence, the main distinguishing feature is that any incarceration penalty is halted (maximum six months' time period), and depends on whether the accused is following the rules or conditions specified by the judge at the time when the sanction was deferred. Compliance to the rules will not make the guilty liable to custodial sentence but if he fails to do the same, he shall be imposed with custodial punishment.<sup>28</sup>

## Community Service in UK

In the United Kingdom if anyone is convicted without an imprisonment sentence, then he is awarded 'Community Service' as a sentence. "Community Payback" implies to the act of carrying out an unpaid labor to the community, in UK, when being monitored by a Community Payback supervisor. Community Payback initiatives encompass activities like decoration of public places and buildings, wasteland clearance and removal of graffiti. The period of community service generally varies from 40 to 300 hours and hinges on the gravity of the crime. Community payback work is usually planned during evenings and weekends as these hours are typically non-working hours, to facilitate non-disruption or clash with one's personal or professional life.<sup>29</sup>

<sup>25</sup> Supra 23

<sup>26</sup> Ibid

<sup>27</sup> Ibid

<sup>28</sup> Ibid

<sup>29</sup> Vishnu Sharma, Shifting Contours of Criminal Laws: Analysing the Viability of Community Service as a Punitive Measure in India (2024), <https://nualslawjournal.com/2024/09/20/shifting-contours-of-criminal-laws-analysing-the-viability-of-community-service-as-a-punitive-measure-in-india/> (last visited Jan 12, 2025).



## Community Service in Malaysia

In Malaysia Community Service is utilised as an alternative to imprisonment or fines to penalize youthful offenders. **Section 2** of the Criminal Procedure Code of Malaysia specifically defines “youthful offenders” as any person who is over eighteen years of age but under twenty-one years old. **Section 293(1)(e) of Criminal Procedure Code of Malaysia**<sup>30</sup> states that-

*“Community Service means any work, service or course of instruction for the betterment of the public at large and includes, any work performed which involves payment to the prison or local authority.”*<sup>31</sup>

In compliance with Malaysia’s ‘**Offenders Compulsory Attendance Act of 1954**’ offenders who are involved in particular crimes are sentenced to imprisonment through a Compulsory Attendance Order, which calls for them to perform mandated work outside the prison, to serve their prison term. This type of penalty is typically awarded to first time offenders for their involvement in petty crimes like shoplifting, riding a bike without wearing a helmet etc. In addition, to supervise the offenders, officers of the Community Service Centre of the Malaysian Prison Department are assigned, to assure successful enforcement and mandatory attendance.<sup>32</sup>

## Ideology of Community Correction

The philosophy of community corrections is to enhance the personal skills and abilities of an offender and to provide them an adequate rehabilitative and reintegrative environment, which can facilitate in the integration of these offenders back to the society. This goal can be accomplished by community-based programs such as halfway houses, outreach centres, furlough monitoring facilities for parolees and halfway-in houses which promotes a beneficial atmosphere. In an attempt to foster community justice, these programs strive to increase offender accountability through effective community networking.<sup>33</sup>

## Functions of Community Corrections.

The functions of community corrections are as follows-

1. Monitoring and Supervising clients
2. Employment Assistance
3. Alleviating Prison and jail overcrowding
4. Vocational and educational training
5. Public Safety

1. **Monitoring and Supervising clients-** One or more agencies needs to take on the task of monitoring prisoners prior to being placed back to the community. As probation and parole programs generally involve prerequisites for services or treatments this monitoring is essentially severe. Besides regular in-

<sup>30</sup> Ibid

<sup>31</sup> Ibid

<sup>32</sup> Ibid

<sup>33</sup> Dean John Champion, (2005) ‘Chapter4- Community Corrections’, in *Corrections in the United States -A Contemporary Perspective*. 4th Edn. New Jersey: Pearson Prentice Hall, p. 168.

person meetings with POs supervision might include home confinement or electronic monitoring. Offenders who undergo close surveillance are more inclined to comply to program conditions.<sup>34</sup>

2. **Employment Assistance-** Offender-clients gain job assistance from community corrections. These clients usually do not have the competencies for filling a basic job application form. In 1974, Pennsylvania introduced an effective program for female captives to receive employment assistance. This program was known as the 'Program for female offenders', Inc., it primarily had two objectives- to create financially independent women and reformation of female captives. A job placement service was provided at the very start of the program. Eventually, various countries established and operated training centres on a nonprofit basis. Training centre initiatives have incorporated clerical classes such as data entry, word processing and telecommunication skill training, in addition to remedial math instruction and English learning. Those women with a variety of problems has also been provided with psychological counselling.<sup>35</sup>
3. **Alleviating and Prison Overcrowding-** The primary objective of community-based corrections is to minimize the overcrowding in prison facilities. One immediate benefit is the decreased size of prison population by means of diversion of a significant percentage of offenders to community-based surveillance. One of the lasting benefits of community-based supervision is that, offenders usually have lower recidivism rates compared to the perpetrators who have undergone a parole sentence and have served a prison term.<sup>36</sup>
4. **Vocational and Educational Training-** Community Correction groups offer offender-clients with several useful services. Offenders who have dropped out of school previously or who have a language impediment are offered educational programs by many of these correctional organizations. Many of the offenders do not even have the skill to fill the form or application to apply for a job placement. Staff of correctional agencies offer a helping hand to assist such offenders. Additionally, offender-clients are allowed to take part in study-release initiatives provided by local schools. More than 400, 000 Arizonans were functionally illiterate as determined by a task force that assessed the State's literacy rate. Further, 500,000 lacked a high school diploma. About 60 percent of Arizona's prison inmates had a reading level at about the sixth grade. Arizona has made an effort to tackle this matter, by developing L.E.A.R.N, labs., or Literacy, Education, and Reading Network. The long-term objective of the program is to raise the reading and educational proficiency of offender-client, with the intention of making them more employable.<sup>37</sup>
5. **Public Safety-** One of the top priorities for administrators of community corrections is crime control. An apparent worry of the community residents is about their personal safety and security relating to the fact

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<sup>34</sup> Ibid P170

<sup>35</sup> Ibid P171

<sup>36</sup> Supra 33 P171

<sup>37</sup> Ibid

that recently convicted felons are wandering around their neighbourhoods more or less freely and in comparatively large numbers. Although holding fairly high rates of recidivism, probationers and parolees encounter recidivism in the form of program violations as opposed to a new crime. The two main causes of high recidivism rates among parolees are easy availability of drugs and relapses among those suffering from chronic drug dependence. Furthermore, numerous probation and parole department's inadequate planning, or uneven non-existent services to meet the growing needs of the expanding population of the probationers and parolees threaten public safety. Services are particularly required for female parolees, mostly in the realm of family counselling and drug treatment.<sup>38</sup>

### Community Correction Programs in USA

The most common types of community correction programs are as follows:

1. Electronic Monitoring
2. Home confinement or house arrest
3. Day reporting centres.

Few additional conditions include fines, community service orders and restitution.

1. **Electronic Monitoring-** The use of telemetry devices for verifying that offenders are actually present at particular geographical locations at certain hours is known as electronic monitoring. Offenders are made to wear electronic devices such as, anklets or wristlets during the entire period of their parole or probation. In the United States, 800 offenders had been placed under electronic monitoring programs in 1987. By the year 2000, that number had increased to 90,000. But this is merely an estimate. The real number of clients under electronic monitoring across various U.S. jurisdiction is unknown, as stated by a few analysts.<sup>39</sup>

Although there are serious punishments for tampering with electronic monitoring devices, it can be removed by the clients and these equipment's are tamper-resistant. Tampering can be easily detected and the two possible punishments are program termination and incarceration. Since the 1960s electronic monitoring has been employed and is the main technique for mapping out and verifying the location of an offender. It is not possible to control the conduct of a client through electronic monitoring. However, such provisions as curfew are more easily enforced, as probation officers may conduct drive-bys of one's residence at all hours and verify that the offender is on the premises. If offenders have telephones, some electronic monitoring devices are connected to telephone systems. Random dialling is accomplished from Central headquarters and the offender must be at home during specific times and validate his or her identity by using sensor equipment provided by the probation department. Other types of electronic monitoring use global positioning satellite tracking, to track down the whereabouts of an offender within the community.<sup>40</sup>

<sup>38</sup> Supra 33 P 171-172

<sup>39</sup> Ibid P172

<sup>40</sup> Supra33 P196

2. **Home Confinement or house arrest-** Home confinement is often paired with electronic monitoring which is another option. The client's own residence is the cite for confinement during specific hours under curfew conditions. Home confinement is far more serious for offenders, than it seems contradicting the misconception expressed by some that it isn't a very serious punishment. Offender reintegration, reducing jail and prison population and enabling offenders to maximize their prospects for rehabilitation and reintegration are some of the key goals of home confinement. Programs involving home confinement are not available to everyone. A number of restrictions have been set, once the stringent eligibility requirements are accomplished. Any client who is under home confinement, must permit probation officers to carry out warrantless searches of their residences at any time or for any cause whatsoever.<sup>41</sup>
3. **Day reporting centres-** Day reporting centres are located in central points in neighbourhoods. During the day, clients may report to these centres where they can get meaningful assistance for job applications, educational or vocational training, individual or group counselling and /or referrals to necessary community treatments or services. These facilities are often referred to as 'invisible jails', and they monitor offenders by randomly conducting drug and alcohol tests. Restitution, community service orders, and payment of fines are instances of other conditional punishments. The aim of these conditions is to raise the accountability of the offenders. Moreover, the offenders perform community services free of charge. Hence, if they fail to pay the fine financially, community services can be utilised as an alternative means for punishment.<sup>42</sup>

### Challenges for implementing Community Services in Indian Scenario

Community Service is one form of post-conviction punishment that the Bharatiya Nyaya Sanhita 2023 has introduced. From the viewpoint of criminal justice, its adoption is an important development and an essential provision. However, community service is unavailable as a bail condition.<sup>43</sup>

The advantages of community services transcend beyond lowering the captives send to jails and jail overcrowding. From the point of view of a prisoner, community service may provide a first-time offender a genuine opportunity for reformation by restricting their proximity to more hardened and rebellious offenders. In 1771, John Howard expressed in his book, "The State of the Prisons in England and Wales", that "Prisons are the schools of Crime". Convicts would be adequately safeguarded and transformed by this new kind of alternative sentencing.<sup>44</sup>

**The lack of sentencing guidelines in our legal system has been an area of concern regardless of the positive aspects of community services. The launch of a new type of detailed punishment mechanism such as 'community service' is likely to heighten these concerns especially since the statute contains no guidelines**

<sup>41</sup> Ibid

<sup>42</sup> Ibid

<sup>43</sup> Supra 10

<sup>44</sup> Supra 10

**for its implementation or compliance. The balance of the penalty is bound to swing in the absence of any form of statutory guidance.<sup>45</sup>**

The Parliament had a fresh start with the introduction of the BNS 2023, and the substitution of the IPC 1860. Although the rule book, currently covers 'Community Service' the law is vague and deficient in clarity and details. Even a brief review would reveal that the legislation is silent on the definition as to what would comprise of 'Community Service'. There is no adequate framework that has been clearly laid down to enforce and implement it. The law should not only lay down general guidelines for community service but must also define community service, specify the hours of community service, default sentencing or fine, repercussions of infringing the community service orders, the process for administering, monitoring and governing the community service program etc. It should also ensure that the penalty levied is symmetric and balanced with the offence that the accused was involved in.<sup>46</sup> If these challenges are not addressed than there is a probability that application of community service as a punishment shall be full of risk and there might be chances of its misuse<sup>47</sup> as the judge can be biased while delivering the judgement and use his discretionary power to favour an influential rich party alleged of committing a crime and may not award 'community service' to a person held for committing a petty crime. This would lead to the delivery of a faulty, biased and erroneous judgement thereby not meeting the objective of 'community service' i.e., reformation and rehabilitation.

### **Luxury Sports car Porsche- Accident case in Pune-**

On the unfortunate evening of 19<sup>th</sup> May 2024, two IT professionals met with an accident and expired as their bike was hit by a young 17-year-old young boy who was driving a Porsche car. He was a son of a builder and there was a national uproar when a member of the Juvenile justice board, Danwade awarded him bail. He was given a mere punishment of framing an essay on 'Road Safety' within three hundred words.<sup>48</sup>

In this case, community service was awarded as a punishment. A major public and legal debate questioning the viability and effectiveness of community service as a form of correction was triggered by this decision. After cancelling the bail order, the accused minor was transferred to an observation home by the Juvenile Justice Board. This case very well highlighted the weaknesses and gaps in India's juvenile laws and how they are implemented.<sup>49</sup>

This case uncovers an array of critical challenges including the requirement of specific guidelines regarding when community service is suitable, the significance of supervision and inspecting as to whether the offender is complying the court order and the prospect for community service to influence the behaviour of the offender in a positive way. The public's consensus on this ruling was mixed, while one section approved the rehabilitative

<sup>45</sup> Ibid

<sup>46</sup> Ibid

<sup>47</sup> Supra 19

<sup>48</sup> *The Hindu* (2024) 'Pune Porsche car accident: Bail to minor accused: two members of Juvenile Justice Board removed', 10 October. available at: <https://www.thehindu.com> (Accessed on Jan.24, 2025).

<sup>49</sup> Supra 19



strategy a significant majority of the population queried about its efficacy for tackling the grave nature of the offence.<sup>50</sup>

This case underlines the requirement of a robust and clearly defined framework for community service in India for guaranteeing its adequate and efficient implementation. It also underscores how community service may aid in rehabilitation and lowering recidivism rates while it is executed under close and strict surveillance and rigorous guidelines.<sup>51</sup>

### **Approach for effective implementation of Community Service in India**

In the contemporary Indian context, a variety of techniques are needed to assure that community service is carried out effectively. First of all, considering that India do not have a uniform framework governing community service, that needs to be developed at the earliest taking reference from the existing models of England and Wales, UK and USA, which would facilitate in the framing of clear guidelines for its effective implementation. In these standards, care should be taken to clearly define what comprises of 'community service', there should be clear classification of eligible offences and clear detailing for the procedures regarding supervision, assigning and performance of community service that has been assigned. Moreover, it is essential that community service activities be tailored, rather than being simply generic, they should be designed to correspond with the offender's rehabilitation needs and skills, thus assuring valuable and beneficial services to the community. Another key strategy is partnership with community organizations, collaborations with NGOs, and local government bodies that may enable the successful organizing, implementation and monitoring of community service ventures.<sup>52</sup>

It is essential to provide the offenders necessary vocational training, counselling and mentoring for enabling them to upgrade their skills and aiding them to complete their assigned task for community service. Use of technology can systematically organize the program management and boost participant involvement by assessing the efficacy of community service programs. To assure accountability and maintain the importance of community service as a type of correction, meticulous oversight and compliance confirmation are needed. Campaigns to spread awareness about the positive effects of community service using case studies and instances where community service has successfully reformed an offender are needed to promote support and acceptance of this method of punishment. Lastly fostering community engagement and involvement can help in establishing an optimistic view on offenders' rehabilitation. By adopting these techniques into execution, India can effectively incorporate community service within its legal framework and foster a more empathetic and improved view towards justice.<sup>53</sup>

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<sup>50</sup> Ibid

<sup>51</sup> Ibid

<sup>52</sup> Supra 19

<sup>53</sup> Ibid

## Recommendations-

### Additional Sections that can be included within the framework of offences punishable by ‘Community Service’

1. **Section 122(1)**- Anyone who instigates another person under grave and sudden provocation to cause hurt to a third person, the person who initiated the provocation is liable to be punished with 1 month imprisonment or a fine of Rupees 5000 or both.<sup>54</sup>
2. **Section 186**- Any stamp which is a false replica of a stamp which claims to have been issued by the Government for the purpose of denoting a rate of postage, or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp is considered as a “fictitious stamp” under section 186 (3). Anyone who deals, makes, sells, has in his possession any such fictitious stamp or has in his possession any die, plate, instrument or materials to design any fictitious stamp shall be liable to be punished with a fine of Rs 200.<sup>55</sup>
3. **Section 194 (2)**- If the public peace is disturbed due to the outbreak of a fight between two or more individuals in a public place, they are considered to have committed an affray and shall be punishable by one month imprisonment or fine of Rupees 1000 or both.<sup>56</sup>
4. **Section 221**- Anyone who deliberately prevents or hinders towards the execution of public functions by public servants shall be liable to be punished with 3 months imprisonment or a fine of Rupees 2500 or both.<sup>57</sup>
5. **Section 285**- This section states that whoever is involved in any act which causes danger or obstruction in public way or line of navigation, shall be liable to pay a fine of Rs 5000.<sup>58</sup>
6. **Section 291**- Under this section, a penalty for six months imprisonment or a fine of Rupees 5000 or both is prescribed for those involved in negligent conduct with respect to animal.<sup>59</sup>
7. **Section 296**- This section states that anyone who tries to annoy another by getting involved in an obscene act in any public place or sings, recites or utters any obscene song, ballad or words, in or near any public place shall attract the penalty of three months’ imprisonment or a fine of Rupees 1000 or both.<sup>60</sup>
8. **Section 297(1)**- This section states that if anyone keeps a lottery office but if it is not a State lottery which is authorized by State Government, then he shall be liable to 6 months imprisonment or fine or both.<sup>61</sup>
9. **Section 297(2)**- This section states that whoever publishes proposals relating to lotteries, shall be liable to pay a fine of Rupees 5000.<sup>62</sup>
10. **Section 324 (2)**- ‘Mischief’ is being dealt with under this proviso that recommends a period of six months imprisonment or fine or both as penalty.<sup>63</sup>
11. **Section 326 (e)**- Anyone who destroys or moves etc a landmark fixed by public authority that would lead to ‘Mischief’ and shall be penalized with imprisonment for a duration of one year or fine or both under this section.<sup>64</sup>

<sup>54</sup> Guide to punishment for Offences under Bharatiya Nyaya Sanhita, 2023, 1–177 in *Bharatiya Nyaya Sanhita 2023 with Comparative Study of Bharatiya Nyaya Sanhita 2023 & Indian Penal Code 1860* P76 (2024), New Delhi, Taxmann Publications (P) Ltd.

<sup>55</sup> Ibid P95

<sup>56</sup> Ibid P101

<sup>57</sup> Ibid P109

<sup>58</sup> Ibid P127

<sup>59</sup> P128

<sup>60</sup> P130

<sup>61</sup> Supra<sup>54</sup> P130

<sup>62</sup> Ibid

<sup>63</sup> Ibid P145

<sup>64</sup> Ibid P147

12. **Section 329(4)**- Under this section of the BNS, a penalty of one year imprisonment or fine of Rs 5000 or both is laid down for the offence of 'house-trespass.'<sup>65</sup>
13. **Section 346**- This section of the BNS prescribes a penalty for one year or fine or both to anyone who removes, destroys or defaces property mark with the intent to cause injury.<sup>66</sup>

### The need for the introduction of 'Community Services' in few other statutes-

Community Services can also be introduced in few other statutes for crimes with short prison sentences. For instance-

1. **The Motor Vehicle Act, 1988- Section 3** of this Act makes a mandate that an individual needs to hold a valid and authorised driving licence to be allowed to drive.<sup>67</sup> Under **Section 184** of this Act, penalties are prescribed for **driving dangerously** up to Rupees 5000 and one year of imprisonment.<sup>68</sup> Further **Section 185** of this Act deals with 'drunken driving' or someone who drives under drug influence, who is liable to be punished with six months' imprisonment or a fine of Rupees 2000.<sup>69</sup>
2. **The Narcotic Drugs and Psychotropic Substances Act 1985- Section 27** of the NDPS Act prescribes for 1 year imprisonment to whoever is found **consuming specified narcotic drugs** or psychotropic substances and six months imprisonment to those who **consumes non-specified narcotic drugs** or psychotropic substances.<sup>70</sup>
3. **The Probation of Offenders Act 1958- Under Section 3** of this Act the court has been authorised to release the offender after admonition. In simple words, 'Admonition' means a 'warning'.<sup>71</sup>  
**Section 4** discusses about release of offenders based on '**good conduct**'.<sup>72</sup>  
**Section 5** states that even if an offender is released under Section 3 or Section 4, still the court may order him to pay for the loss incurred by the victim as compensation or bear the court proceedings cost whichever the court thinks to be deemed fit and reasonable.<sup>73</sup>  
**Section 6** discusses about the law against incarcerating offenders less than 21 years of age. It specifies that in cases where a crime is not sufficiently grave to call for imprisonment for life or death, offenders below 21 years of age are not sent to prisons.<sup>74</sup>

### Conclusion

India's disposition towards justice has undergone an important shift following the introduction of community service as an alternative mode of punishment. Even though there are barriers to its execution, this form of punishment can demonstrate to be a successful tool for tackling the core causes of unlawful conduct, reducing

<sup>65</sup> Ibid P148

<sup>66</sup> Ibid P157

<sup>67</sup> Section 3 in The Motor Vehicles Act, 1988, available at <https://indiankanoon.org> (last visited Feb 25, 2025).

<sup>68</sup> Section 184: Driving Dangerously, The Motor Vehicles Act 1988, available at <https://kanoongpt.in> (last visited Feb 25, 2025).

<sup>69</sup> Section 185 in The Motor Vehicles Act, 1988, available at <https://indiankanoon.org> (last visited Feb 25, 2025)

<sup>70</sup> Duvva Pawan Kumar, Consumption of Narcotics: Bailable or Non-Bailable (2022), <https://www.livelaw.in/> (last visited Feb 26, 2025).

<sup>71</sup> Khyati Basant, Probation of Offenders Act 1958 (2020), <https://blog.ipleaders.in/> (last visited Feb 26, 2025).

<sup>72</sup> Ibid

<sup>73</sup> Ibid

<sup>74</sup> Ibid

jail congestion and reforming captives with diligent planning, properly framed guidelines and widespread support from the public. A more humanitarian and constructive approach to deal with justice is offered by community service which focuses on rehabilitation rather than retribution and acknowledges that every person possesses the potential to improve and change. We can aspire towards building a society that is more inclusive and equitable wherein criminals are offered another chance to compensate for their wrongdoing and make positive improvements to their communities through the integration of community service in the criminal justice system of India.

