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## REFORMATIVE JUSTICE IN INDIA: THE INTRODUCTION OF COMMUNITY SERVICE UNDER THE BHARATIYA NYAYA SANHITA, 2023

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### **Abstract**

Community service as a penal sanction is finally introduced into the Indian criminal justice philosophy with the Bharatiya Nyaya Sanhita, 2023 (BNS). This change is symptomatic of a larger shift towards retributive to more of a reformatory and humanistic approach to justice and a more social approach to construction. The BNS is expected to decrease prison congestion, encourage rehabilitation of the offender and bring proportionality in punishments by allowing community service as an alternative to short term imprisonment and fining individuals with select offences. Community service also allows the offenders to become productive members of the society and internalize responsibility and ideas on the impacts of their actions in a non-custodial set-up. Adoption of community service also places India at par with the rest of the world where restorative and community-based sanctions have been shown to be effective in terms of prevention of recidivism and fostering social reintegration. This, however, will only be successful with well established implementation structures such as detailed instructions on how to administer sentences, supervision methods, how to select suitable work and how to protect against abuse or even arbitrary enforcement. Issues like institutional capacity, acceptance of the society and coordination between agencies will also have to be dealt with. All in all, the proposal of community service under the BNS, 2023 can be considered the positive step towards the development of criminal justice in India that will accommodate the interests of society, the concerns of victims, and the rehabilitation of offenders. It is a possibility to turn punitive jurisprudence into more restorative and community-based understanding of justice.

**Keywords:** Reformatory Justice, Community Service, Bharatiya Nyaya Sanhita, 2023, Restorative Punishment, Criminal Justice Reform, Non-Custodial Sentencing.

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## Evolution of Reformative Justice in India: From Retribution to Rehabilitation

Reformative justice in India did not begin yesterday and this is because it is a continuation of the philosophical, cultural and institutional evolution that has been going on over centuries. Indian traditional legal philosophy, which was expressed in the form of Dharmashastras, came to understand punishment as a means of restoring the moral order (rita) instead of taking revenge.<sup>1</sup> According to the scholars, Manusmriti regarded punishment (danda) as a reformative method that raised moral awareness of the criminal and at the same time preserved social harmony. Punishment was not simply a response to the vice but a method of restoring the moral order showing a primitive understanding of rehabilitative objectives. With the introduction of the British colonial rule, the transition to a more punitive model occurred. Modernization of criminal law by the Indian Penal Code,<sup>2</sup> 1860 brought about a Western legal system that was based on deterring, retaliating, and standardization of punishment making imprisonment the most common punishment method. The disciplinary institution provided by the British prison system which, according to legal historians, had a role of incapacitating and not reforming, and was indifferent to indigenous traditions of restorative and conciliatory justice formed the central pillars of colonial penology, in which rehabilitative approaches were marginal.<sup>3</sup>

The constitutional vision of the Indians after gaining independence was a radical reform of criminal jurisprudence. The values of the Articles 14, 19, and 21 of the Constitution required fairness, human dignity, and safeguarding personal liberty, thus obligating the paradigm shift of the sentencing philosophy toward reformative justice.<sup>4</sup> In *Mohd. Giasuddin v. State of A.P.*,<sup>5</sup> Justice Krishna Iyer made a declaration that the criminal justice system should strive to restore and not alienate the offender by stating that restoration and reintegration of the offender is the prime objective of punishment. In addition to the judicial declarations, the expert committees were the important part of the conceptualization of non-custodial and community-based sanctions. According to a damning evaluation of the prison system in India by the Mulla Committee (1983),<sup>6</sup> which found that overcrowding, dehumanizing conditions, and criminalizing nature of short-term incarceration, the Committee recommended imprisonment

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<sup>1</sup> ROBERT LINGAT, *THE CLASSICAL LAW OF INDIA* 87–92 (1973).

<sup>2</sup> K.D. GAUR, *TEXTBOOK ON THE INDIAN PENAL CODE* 12–15 (7th ed. 2013).

<sup>3</sup> N.V. PARANJAPE, *CRIMINOLOGY & PENOLOGY* 240–48 (17th ed. 2017).

<sup>4</sup> *Constitution of India*, arts. 14, 19, 21.

<sup>5</sup> *Mohd. Giasuddin v. State of A.P.*, (1977) 3 S.C.C. 287.

<sup>6</sup> Government of India, Report of the All India Committee on Jail Reforms (Mulla Committee) (1983).

as the last resort, with probation, parole, and structured community-based options being adopted. Krishna Iyer Committee (1987) also criticized the over dependency on confinement by India and proposed the development of a humane system of sentencing which depended on social justice and rehabilitation especially in the case of the economically and socially marginalized offenders who would be defeating the deterrent and protective purposes of prisons.<sup>7</sup> Meanwhile, the world situation also affected the changing attitude of India. Nations like United Kingdom and United States have extended community service order, probation and restorative justice conferences in the later twentieth century and have shown an empirical linkage of non-custodial measures to reduce recidivism and foster reintegration more effectively than temporary imprisonment.<sup>8</sup> International norms, especially Tokyo Rules of the UN Standard Minimum Rules of Non-Custodial Measures have encouraged the states to use alternatives to imprisonment in their efforts to reduce the social and economic costs of prison systems.

These historical, judicial and policy-based changes are capped by the enactment of the Bharatiya Nyaya Sanhita, 2023. Community service has been recognized, in its legislative history, as a penal sanction in India, the first occasion on which the concept has been given legal recognition, a turning point in the transformation of the justice model to a modern, reformative one. The service to the community recommends the values of dignity and fairness inherent in the constitution since it allows offenders to preserve social connection, prevents the psychological damages of imprisonment, and enables them to contribute to the community. It is a modern reaffirmation of the ancient Indian ideals which did not aim to alienate the offenders but rather to bring them back into the moral and social life of the society. Such a legislative evolution therefore fills the historical roots of India with contemporary criminological thought and accords to the world, a well-developed and scaled penal philosophy that stresses on humanization, recovery, and the welfare of the society.<sup>9</sup>

### **Community Service according to Bharatiya Nyaya Sanhita, 2023: Scope, Nature and Legal Framework.**

One of the most significant changes in the Indian criminal justice context is the introduction of a new form of penal sanction the Bharatiya Nyaya Sanhita, 2023 (BNS) community service. It

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<sup>7</sup> Government of India, Report on Legal Aid: Processes and Problems (Krishna Iyer Committee) (1987).

<sup>8</sup> See ANDREW ASHWORTH & LUCIA ZEDNER, PREVENTIVE JUSTICE 112–18 (2014).

<sup>9</sup> United Nations Office on Drugs and Crime (UNODC), Handbook of Restorative Justice Programmes 45–52 (2d ed. 2020).

is a break with the long-standing punitive paradigm of colonial codification and an adoption of a more humanitarian and revitalizing approach to punishment. Indian criminal law has over decades been based on custodial sentences, even of minor and non-violent offences, which have led to endemic overcrowding, strain on resources and criminogenic prison conditions.<sup>10</sup> Various scholars and reform committees have severally stressed that the temporary incarceration is not just disruptive when it comes to destabilization of the family structure and employment; it is also likely to lead to recidivation as a result of the destructive influences that are found within the prison systems. The systemic deficiencies are directly addressed through community service which is now by statute, provision of an alternative that is punitive, constructive and rehabilitative. In the BNS context, community service is envisaged as a non-custodial requirement of the court as an alternative or supplement to other penalties based on the type of crime and the conditions of the offender. The punishment involves the offender to take socially useful work under supervision during a given duration. This approach is solely based on the philosophy, that not all offences should justify loss of liberty. Prison may be disproportionate and counterproductive in the situations of minor injury, breach of public order and low level property crime.<sup>11</sup> Community service put the legal system in a position to subject the offender to some level of accountability without putting him out of the social setting where he must eventually redeemed the society. This adds proportionality in sentencing, which has been consistently upheld by the Supreme Court in its demands that sentencing be done on an individual and rational basis based on constitutional morality.<sup>12</sup>

The legislators choose a flexible and enabling framework in the BNS by giving the courts the right to sentence to community service where it is suitable but without any catalogue of exhaustive items that may be included in the sentence. Such flexibility is intentional and makes courts and local authorities to be able to allocate work which is contextually significant. Activities can be municipal sanitation, involvement in the restoration of the environment or support in the process of conducting the welfare endorsed health drives. The most important condition is that the work that is assigned must be of benefit to the populace and must not be contrary to the dignity of the individual.<sup>13</sup> Flexible experience also testifies to the usefulness of this flexibility. The examples provided have demonstrated that statutory flexibility together

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<sup>10</sup> N.V. PARANJAPÉ, *CRIMINOLOGY & PENOLOGY* 243–48 (17th ed. 2017).

<sup>11</sup> See Ministry of Justice (UK), *Community Payback Annual Report* (2020).

<sup>12</sup> K. Chua, *Community Sentences in Singapore*, 35 *Singapore L. Rev.* 112, 118–19 (2017).

<sup>13</sup> United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules), U.N. Doc. A/RES/45/110 (1990).

with administrative structure makes community service both effective and humane in jurisdiction like Canada where community corrections services play a role in integrating community work and structured supervision programs.

The success of the community service under the BNS, though, is predetermined by the establishment of a proper institutional structure. India does not have a cohesive system of community corrections. Where it is available, probation services are characterized by shortage of trained staff and lack of resources. To make community service working, the states need to create supervisory systems that could assign work, control compliance, and report the progress to the courts. In the absence of such mechanisms community service may turn out to be either symbolic or inconsistent. The development of the European jurisdictions demonstrates that the community service can be effective only when governments invest in trained supervisors, collaborate with the municipal authorities, and have in place time tracking and monitoring technologies.<sup>14</sup> Besides the procedural and administrative aspects of the issue, community service reflects the dynamic Indian interest in restorative justice. Restorative justice aims at mending harm, as opposed to simply punishing, and focuses on personal responsibility of offenders, their role to the victim, and the community.<sup>15</sup> These principles are enacted under the community service as offenders are empowered to give back to the same society that they have wronged. The sanction also promotes reintegration and social responsibility, and behavioural change by placing the offender on the one hand in a custodial facility, which in turn isolates him or her. Community-based sanctions are directly associated with counselling, skills development and social reintegration in most jurisdictions including Norway which is why the BNS is an opportunity to create a rehabilitative ecosystem in India.<sup>16</sup>

### **Comparative Perspectives: Community Service as a Penal Measure in Global Jurisdictions**

The implementation of community service under the Bharatiya Nyaya Sanhita, 2023 could be viewed more in the context of the world experience, where this sanction has become a plausible and generally accepted alternative to imprisonment. Community service is a manifestation in a change to restorative justice in many jurisdictions, balancing the requirement of accountability by the people and opportunity to rehabilitate. Making community service institutionalised in

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<sup>14</sup> Correctional Services of Norway, Community Sanctions and Reintegration Programs (2020).

<sup>15</sup> Ministry of Justice (EU), Community Payback Reports (2020).

<sup>16</sup> United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules), U.N. Doc. A/RES/45/110 (1990).

various countries such as United Kingdom, United States, Singapore, and South Africa, the provisions of clear legislations, guided sentencing, and well organised supervisory mechanisms have given significant knowledge to India as it embarks on this new field of reform. Community service in the United Kingdom Community service In the United Kingdom, the community service became established in the 1970s by the Criminal Justice Act, 1972, which expressly authorised courts to issue Community Service Orders in place of short sentences.<sup>17</sup> As time went on, the orders were developed under Community Payback under the Criminal Justice Act 2003 and under this order, offenders are expected to complete unpaid work such as environmental clean-ups or to help the charitable organisations. The UK experience demonstrates that the use of structured sentencing guidelines (implemented by the Probation Service) has diminished the use of custodial sentences by magistrates (or by a considerably significant margin), as well as increased the reintegration of offenders by a significant margin. The empirical investigations undertaken on behalf of the Home Office have shown that offenders who received a sentence of community service had lower recidivism rates than those who received short-term imprisonment, which underlines the rehabilitative benefits of the former type of sanction over the punitive one. The model implemented in the United Kingdom reveals that the lack of statutory provisions, trained supervisory officers, and judicial consistency is needed to convert the promise of the BNS into the actual reformation results in India.

The history of community service is more decentralised in the United States, and it differs significantly on the federal and state levels. In the U.S., courts had started to impose community service in large numbers in the 1960s and 1970s especially in cases that concerned traffic offences, environmental crimes, juvenile crimes and petty misdemeanours. However, this is not the case in the U.S., but the country does not use a comprehensive national model; individual states also are enacting their own. As an example, the state of Texas and California permit community service instead of fines and other minor jail sentences, but some states mandate community service on probation.<sup>18</sup> As the experience of deployment of community service in the U.S. indicates, it can inculcate a certain level of civic responsibility and decongest the system, but the lack of uniformity of the application can lead to inconsistent practices. On the one hand, flexibility enables the courts to customise orders to fit the needs of the community, on the other hand, the absence of procedural safeguards could lead to the

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<sup>17</sup> *Home Office Research Study on Community Service Orders*, UK Ministry of Justice (2003).

<sup>18</sup> American Probation & Parole Association, *Community Service as a Sanction*, Policy Report (2012).

inequality, which India cannot afford by setting standardised standards and monitoring the procedures and ethical limits of using community labour.

The case of Singapore is particularly relevant to India as the nation has a well-organized legal framework, has a high level of institutional control and focus on deterrence-rehabilitation balance. The Criminal Procedure Code (Amendment) Act, 2010 introduced community service in Singapore and established the Community Service Order (CSO) order to be used on those offenders whose age is between 16 and 21 years old, and nowadays to adults with specified minor offences.<sup>19</sup> The Singaporean judicial system uses community service whereby a suitability report is obligatory to be compiled by probation officers to ensure the order is actually beneficial to both the community and the offender. The common placements are tasks in the eldercare homes, helping agencies, or local outreach initiatives: Singapore has a rigorous screening procedure, robust community relationships, and professional oversight that gives India a tangible model of how community service can co-exist with a hard-law culture and an impressive rule-of-law apparatus. The pre-sentence evaluation area is especially applicable in the case of India, where the standard screening procedures are not developed yet, and the judicial discretion is rather spread all over.

A case in point is the South African embrace of community service, which offers a strong comparative optic because of the diversity of the socio-economic structure and the structural issues faced by the country. The first sentencing option to be recognised was the community service by the Criminal Procedure Act, 1977 and then extended to Correctional Services Act, 1998. Community service is used in South Africa to deal with non-violent and socio-economically oriented crimes, which provides an effective alternative to incarceration in a strained and already overstretched system. The research studies carried out at the Institute of Security Studies demonstrate that community service in South Africa receives a high degree of judicial approval and popular support because of the tangible effect it has on the communities such as renovating schools, cleaning and social welfare projects.<sup>20</sup> On the larger international scope, other organisations like the United Nations and the Council of Europe have on several occasions advocated community service as a viable restorative justice action. The United Nations Standard Minimum Rules on Non-Custodial Measures (Tokyo Rules) specifically support the incorporation of community service as one of the ways to curb over-incarceration

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<sup>19</sup> Singapore Ministry of Law, *Community Service Orders: Framework and Implementation*, Government White Paper (2015).

<sup>20</sup> Institute for Security Studies (South Africa), *Alternatives to Imprisonment in South Africa*, Policy Brief No. 89 (2019).

and encourage social reintegration. In the same way, the Council of Europe in its Recommendation No. R(92)16 on Community Sanctions and Measures, opines that imprisonment must represent a sanction to be employed as a last resort and that other sanctions such as community service should serve as a reflection of human rights commitment and curtail recidivism and proportionality in sentencing. A comparative evaluation of these jurisdictions indicates that there are a number of similarities which can be learnt by India as it implements community service by the Bharatiya Nyaya Sanhita.<sup>21</sup>

### **Advantages and Challenges of Implementing Community Service in India**

With the community service presented in the Bharatiya Nyaya Sanhita, 2023, the penal philosophy in India is significantly changed to focus on the restorative and reformative approach as opposed to the continued dependence on overcrowded custodial facilities. International experience, especially related to United Kingdom, Singapore, and South Africa, shows that community service may alleviate the pressure in the prisons and encourage healthy relationships between offenders and communities. The implementation of this sanction in India should alleviate the pressure on the already overcrowded prison system that already records occupancy rates that are well above the legal limit.<sup>22</sup> The other significant benefit is the rehabilitative benefit of the sanction. Community service not only provides a chance to build skills but also to be responsible and act as a change agent unlike imprisonment that usually subjects an offender to the harsh criminal atmosphere. When offenders are employed in the government institutions, local communities or welfare organisations, they get to engage in the society constructively leading to accountability. Evidence on community service, backed by the United Nations, indicates that, reintegration is increased with community service provided that the service is effectively supervised and that the social stigmas of incarceration are eliminated or minimised in offenders.<sup>23</sup> Community service in India, where social-economic vulnerability is often conflated with criminal behaviour, can prevent the offender entering the cycle of repeat offending.

Community service has the systemic benefit of decreasing the judicial and administrative burden that comes with incarceration as well. Reduced number of short-term prisoners will

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<sup>21</sup> Council of Europe, *Recommendation No. R(92)16 on Community Sanctions and Measures* (1992); United Nations, *Tokyo Rules: Standard Minimum Rules for Non-Custodial Measures* (1990).

<sup>22</sup> National Crime Records Bureau, *Prison Statistics India* (2022).

<sup>23</sup> United Nations Office on Drugs and Crime, *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment* (2010).

result in less spending on prison administration, security, food, medical and transportation. This gives the state a chance to divert the resources into capacity building, rehabilitation programmes and probation services. Innovation in sentencing with community service also increases the flexibility of judges with finer options that are responsive to proportionality, offender history and community demands. When the broader society is starting to see the value of restorative justice and alternative to imprisonment, community service aids in aligning the Indian criminal law with those of the world through human rights as espoused by the Council of Europe and other international civil bodies. These benefits notwithstanding, there are a number of operational challenges. India does not have a national probation or community corrections system that could manage large populations of offenders that are mandated to community service. In comparison with the situation in Singapore or the UK, India lacks a standardized procedure of pre-sentence testing, aptness assessment or tracking adherence. This is because judicial discretion can result in differences in application between states, districts and courts. In addition to this, the local institutions, the municipal bodies, panchayats, government hospitals and welfare organisations, may not at the moment have the administrative structures necessary to accept, educate, and monitor the offenders. Unless properly planned, community service can easily become either underused or abused with the arbitrary or improper allocation.<sup>24</sup>

### **Towards a Restorative Future: Policy Recommendation and Way Forward.**

The implementation of community service as prescriptive of the Bharatiya Nyaya Sanhita, 2023 is an indication that India is moving towards a more humane, rehabilitative and socially responsive justice system. Nevertheless, in order to convert this piece of legislation into a useful sentencing instrument, a carefully elaborated framework based on the institutional capacity, ethical protection and community cooperation is required.<sup>25</sup> The experience of many countries, especially United Kingdom, Singapore and South Africa, proved that the community service can be successful only in case the systematic supervision system and definite standards of procedure are introduced. One of the initiatives that India must have in place is an effective nationwide supervision infrastructure. The introduction of a special community corrections wing in the state probation departments may provide uniform and regular monitoring, pre-sentence and post-completion evaluation. The UK probation experience and the experience in Singapore with pre-sentence suitability reports demonstrates that the professional control

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<sup>24</sup> Council of Europe, *Recommendation No. R(92)16 on Community Sanctions and Measures* (1992).

<sup>25</sup> Ministry of Justice (UK), *Community Payback and Probation Performance Report* (2021).

would avert the abuse, increase the judicial confidence and make the community service a rehabilitative tool instead of a punishment liability.

It is equally important that there should be standard national guidelines. The Ministry of Home Affairs ought to establish elaborate regulations in the form of prohibition and allowable work, the number of working hours, safety-related measures and regulations and gender-related and non-gender related provisions and repercussions of defiance. The absence of such clarity may make judicial application inconsistent between states. The guidelines should also avoid net-widening where community service is not applied as a supplementary or stricter punishment over minor crimes. Consistent sentencing guidelines will assist in proportionality and the creation of consistency in judicial sentences.<sup>26</sup>

Relationships with local governments, state agencies, social welfare organisations and civil society should be institutionalised so as to secure significant opportunities of placement. Such a success in the community service programmes witnessed in South Africa shows that effective community partnerships can produce a sense of trust and provide concrete social returns in the community. India needs to facilitate the cooperation of municipal corporations, panchayats, public hospitals, government schools and registered NGOs with each other on a structured basis through Memorandums of Understanding. Such alliances would guarantee sufficient placement opportunities, as well as social acceptance.<sup>27</sup>

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<sup>26</sup> United Nations Office on Drugs and Crime, *Alternatives to Imprisonment: Handbook for Policymakers* (2007)

<sup>27</sup> United Nations Development Programme, *Restorative Justice Programmes: Community Engagement Models* (2018).

## References-

- American Probation and Parole Association, *Community Service as a Sanction* (Lexington: APPA, 2012).
- Amnesty International, *Alternatives to Imprisonment: Global Trends Report* (London: Amnesty, 2018).
- Bureau of Justice Assistance, *Community-Based Sanctions and Offender Supervision* (Washington, D.C.: DOJ, 2016).
- Council of Europe, *Recommendation No. R(92)16 on Community Sanctions and Measures* (Strasbourg: Council of Europe Publishing, 1992).
- Correctional Service Canada, *Community Service Orders: Policy Framework* (Ottawa: CSC, 2014).
- Home Office (UK), *Research Study on Community Service Orders* (London: Home Office Research Directorate, 2003).
- Institute for Security Studies, *Alternatives to Imprisonment in South Africa: Policy Brief No. 89* (Pretoria: ISS, 2019).
- International Criminal Justice Institute, *Restorative Justice and Non-Custodial Sentencing* (2019).
- Ministry of Justice (UK), *Community Payback and Probation Performance Report* (London: Ministry of Justice, 2021).
- Ministry of Justice (New Zealand), *Community Work Sentences: Evaluation and Monitoring Report* (Wellington: NZ Govt., 2017).
- National Crime Records Bureau, *Prison Statistics India 2022* (New Delhi: Ministry of Home Affairs, 2023).
- National Institute of Justice, *Community Supervision and Alternative Sentencing Practices* (Washington, D.C.: NIJ, 2015).
- Office of the High Commissioner for Human Rights, *Human Rights and Alternatives to Detention* (Geneva: OHCHR, 2015).
- Singapore Ministry of Law, *Community Service Orders: Framework and Implementation Report* (Singapore: Government Printer, 2015).
- Scottish Government, *Community Payback Orders: Annual Report* (Edinburgh: Scottish Government, 2020).
- United Nations, *United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules)* (New York: UN Publications, 1990).
- United Nations Asia and Far East Institute, *Community-Based Treatment and Alternatives to Imprisonment: Conference Proceedings* (Tokyo: UNAFEI, 2019).
- United Nations Development Programme, *Restorative Justice Programmes: Community Engagement Models* (New York: UNDP, 2018).
- United Nations Office on Drugs and Crime, *Alternatives to Imprisonment: Handbook for Policymakers* (Vienna: UNODC Publications, 2007).
- World Prison Brief, *Comparative Prison Data and Global Alternatives to Custody* (2022).
- Youth Justice Board for England and Wales, *Community-Based Sentencing for Young Offenders* (London: YJB, 2018).