

A Conceptual Analysis of Community Service as A Form of Punishment in Bhartiya Nyaya (Second) Sanhita

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Abstract

The present article explores community service as a form of punishment in Indian criminal laws. Historically, punishments included various cruel and harsh methods, but the focus has now shifted towards the reformative approach. Community service orders aim to reintegrate offenders into the community and require them to contribute to its improvement. The article discusses the lack of attention given to community service in Indian criminal laws and the need for its inclusion as an alternative to traditional incarceration. The current study therefore tries to highlight it as an emerging dimension in Indian criminal as a punishment. Community service has been introduced under the Juvenile Justice Act, and recently The Bharatiya Nyaya Sanhita, 2023 made provision of community service as punishment for certain petty offenses. However, it requires extensive research and model schemes to be prepared to determine its suitability in the Indian social context. It also highlights various recommendations and suggestions to incorporate community service as a sentence under the Indian Penal Code. The article mentions the potential benefits of community service in terms of punishment, restitution, and rehabilitation for both the offenders and the society. However, it acknowledges that introducing community service as a sentence requires extensive research, public acceptance, effective implementation, and the creation of a new system. Overall, community service sentencing is seen as a step forward in innovation and reform in the Indian criminal justice system.

Keywords

Community Service, Reformative approach, Indian Criminal Laws, Dimension of Punishment, Bhartiya Nyaya Sahita (Second).

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Introduction

The institution of punishment is perhaps as old as society itself. Though we are used today to the idea of prison as punishment, prisons were not originally intended for punishment and were simply meant for holding people awaiting trial or for detaining debtors until they paid off their debts. In the past, punishments including fines, property confiscation, exile, lashing, branding, mutilation, beheading, burial alive, burning at the stake, feeding to animals, and imprisonment in dungeons were meant to terrorise bystanders and inflict agony and dread on offenders. Torture was often used as a form of punishment during trials. By treating offenses as acts of disobedience, indiscipline, and an insult to authority coming from religious or secular sources, the underlying goal of punishment was the exercise of power over the subject or subjugated category of people.¹ The reports of the V. S. Malimath committee on reforms of the criminal justice system and the N. R. Madhava Menon committee to draft a national policy on criminal justice, both recommended measures to improve fairness and consistency in sentencing to be adopted in the penal policy drafted by the legislature. While the Malimath committee was criticized for making penalties harsher alongside recommending uniformity, the Menon committee had a balanced approach, which insisted on rethinking the objectives of punishment and called for a greater role for Parliament in determining the nature of punishment.²

Community service is a form of sentence and the current study therefore tries to highlight it as an emerging dimension in Indian criminal law as a form of punishment. It is an order of the Court under which an offender is required to perform unpaid work of benefit to the community under the supervision of the Probation Officer, who shall also provide rehabilitative counseling and appropriate guidance to the offender. Community service orders are designed to reintegrate offenders into their communities, seek to reform them, and require them to contribute to the improvement of the same communities they have hurt.³ It is described as a non-custodial sentence given by the Court following a conviction in which the offender must perform unpaid service for the good of the community. Such a sentence allows for dealing with criminals who, absent it, would be imprisoned even for infractions that are small, nonviolent, impractical to imprison, or for which other punishments would serve the interest of justice.⁴ Therefore, in whichever jurisdictions it is preferred, the grave offenses and heinous offenses have been excluded from its application. Kenneth D. Miller defines it to be a form of symbolic restitution where the participant gives of himself and his time for the betterment of the community.

The reformatory approach to criminal law is responsible for the development of this type of punishment. The idea behind community service as a corrective action

is quite similar to that of probation. Both of these penalties are often implemented after a person has been found guilty or after their guilt has been established (via a trial or a guilty plea).⁵ Both serve as alternatives to jail and propose that rather than placing the accused inside a prison cell, a chance be given to the individual who is found guilty to get reformed and rehabilitated as a member of society. Both sentences aim to prevent the offender from having a regular social life while they are serving their sentences and to allow them to continue living it.

Emerging Dimension of Community Service as A Form Punishment in India

Over a period of time and in the name of reforms, various alternatives to prison time have been introduced in the Indian criminal laws, including open prisons, parole, probation, rehabilitation centers, and others, but the community sentence has not received much attention. Although the issues of overcrowding, horrible conditions within prisons, and expensive incarceration are afflicting India as well, there is a dearth of literature accessible and research that examines the impact of community service as an alternative. The Statutory provision that is traced in India is under the Juvenile Justice Act, 2015 under section 18 (1)(c)⁶, which provides that the juvenile offenders can be awarded community service if the Juvenile Justice Board considers it appropriate.⁷ However, there has been little effort made by policymakers to incorporate community service into the system. However, numerous recommendations and suggestions have been made time and time again to include community service as a sentence under the IPC.

The 156th Law Commission of India Report⁸ addressed the change proposed by the 1978 bill that would have required community service under section 53. It was argued that punishment of community service is not practicable in addition, it was stated that community service was a relatively new concept and closely connected with the reformatory theory, but the Commission was more persuaded by the idea of open-air prison systems and had hailed them as a more humane alternative.

In the Indian Penal Code Amendment Bill of 1978, clause 18 proposed new forms of punishment under section 53 of the code, such as community service, disqualification from holding office, order for payment of compensation, and public censure. As per the bill, the offender should be above 18 years of age to be eligible for community service to work for a certain number of hours without any remuneration but with consent, work hours ranging from 40-1000 hours, and it can be awarded only for offenses punishable with less than 3 years.⁹

Recently The Bharatiya Nyaya Sanhita, 2023 was introduced in Lok Sabha on August 11, 2023.¹⁰ The Bill repeals the Indian Penal Code, 1860 (IPC). The Bill

retains several parts of the IPC. Changes include the introduction of offenses of organized crime and terrorism, enhancement in penalties for certain existing offenses, and introduction of community service as a punishment for certain petty offenses. In the proposed bill Section 4 sub-clause (f) of Chapter No. 2(Of Punishment) prescribed Community Service as a form of punishment.

Need & Benefits of Community Service

The need and Benefits of imprisonment and sentencing procedures such as Community Sentencing have both social as well as cognitive benefits. Community service serves as a medium of punishment, restitution, rehabilitation, etc. This medium is beneficial for the offenders, the victims, the community, and as a result of the society as well.¹¹

In the current situation, both the lives of inmates and the mental health of the criminal are worsening.¹² One may say that the essence of prisons is contamination. Prisons are required to maintain an inhumane and monotonous existence. Therefore, the introduction of community service as a substitute for traditional incarceration can demonstrate an offender's true skills in a useful way and enable him to emerge from the cramped confines of his cell to respect and enjoy his remaining prospects. They will realize the value of their work and try to start over once they are released, which will not only help to reduce the crime rate but also help to set a true example of reformatory justice. Not only will they experience personal growth through this method of performing community service.

Nature of Work & Duration: Community Service in Forms of Punishment

The goal of a community Service in the form of Punishment is to provide services that benefit and reform of the Society and, to the greatest degree feasible, right the wrongs the offender has caused. Therefore, the nature of the job should be such that it not only benefits society but also aids in the offender's rehabilitation by enabling the development of new skill sets. It is suggested that tasks such as clearing public spaces of trash, collecting recyclables, planting trees, gardening, helping the elderly, painting and beautifying public spaces, participating in road traffic as a volunteer, and working to improve the lives of at-risk youth could all be ordered.

According to each offender's unique requirements and abilities, the type of work that is prescribed should be evaluated. The type of job assigned, for instance, should take into account the offender's unique needs if she is pregnant or weak, i.e., unable to perform manual Labour. Activities that capitalize on the relative capabilities of the offenders should be included in the punishment to benefit society; for example, if an offender has aptitude for a certain profession, this potential should be leveraged as much as possible in the job that is assigned.

In accordance with the proportionality in sentencing concept, the length of community service required should be commensurate with the seriousness of the offense to guarantee that the orders are taken seriously. Several countries have established a range of the minimum and maximum number of hours that can be granted, with judges having the discretion to determine the appropriate number of hours based on the specific facts of a case. But in India there is no duration of work prescribed yet. Although it is reflected in various court judgments. *In Babu Singh V/s State of Uttar Pradesh*¹³, the Supreme Court held that restorative devices through means of community service, meditative drills, or study classes should be innovated upon to help redeem the offender.

*In Prahladbhai Jagabhai Patel V/s The State of Gujarat*¹⁴ The court held that punitive harshness should be minimized and restorative devices to redeem the man, even through community service, meditative drills, etc. should be innovated.

Conclusion

Reforming offenders and rehabilitating them into productive members of society is one of the fundamental goals of punishment. One of the finest methods to attain the same results without using punishment is through community service, subject to its execution and ongoing supervision. Introducing community service as a sentence under the Indian system is a step forward in innovation, and reform, but it requires extensive research and model schemes to be prepared to determine its suitability in the Indian social context. These hurdles include public acceptance, effective implementation, and disagreements among judges, continuous monitoring, and the creation of a completely new system. However, progress has been made by introducing it under the Juvenile Justice Act, and recently The Bharatiya Nyaya Sanhita, 2023 made provision of community service as a punishment for certain petty offenses. In the proposed bill Section 4 sub-clause (f) of Chapter No. 2(of Punishment) prescribed Community Service as a form of punishment. Community service sentencing has a long way to go but has the potential to be a better option; nonetheless, it requires careful preparation and model plans must be submitted.

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