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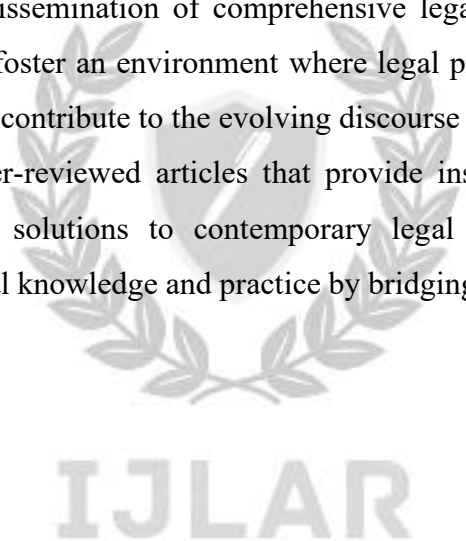
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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.



Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

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Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

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COMMUNITY SERVICE UNDER BNS: ALIGNING CRIMINAL JUSTICE WITH THE REFORMATIVE THEORY

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Punishment is the foremost feature of any criminal justice system. Each Society has its own ways of handling the situations of crime by setting up legislations. Any illegal act which is done by a human being calls for a punishment. The predominant object is to offer some sort of relief to the wronged party and awarding the unbecoming party some sort of reprimand and deprivation. The agenda being the reduction of crime and conflict which do not have any place in a civilized society.

Order and Justice:

The two basic purposes which any civilised state strives for are order and justice. The term Order as such talks about the structure of the legal system. Security is a material value which justice aims to promote. Security relates to the protection of human beings against acts of aggression, spoliation and depredation.¹ The chief function of the law is to adjust the various conflicting interests, for the same it may wish to impose curbs and restrictions on, individual interests for security and order purposes. The concept of Modern state had adopted the Punishment of the offenders as a means to establish order and offering respite to the erring ones. Many forms of punishments have been devised for the same including the Retributive theory, deterrent theory, preventive theory and retributive theory.

REHABILITATIVE THEORY:

As per this theory the aim of the political system should be to rehabilitate the erring person and not simply penalising him or her. The reformatory theory of punishment is a concept in criminal justice which puts stress on the rehabilitation of offenders to transform them, to build such

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1 *Bodenheimer Edgar*, "Jurisprudence", Harvard University Press, p-194

human beings who can be productive and contribute to the society rather than adopting punitive strategy. This theory of punishment staunchly believes that crime has close linkage with the physical or emotional wellbeing of the offender, which is basically the product of the criminal's society and his circumstances. This theory is aimed at treating the criminal rather than outcasting him.

LAWS WITH REGARD TO THE REFORMATIVE THEORY:

INDIAN CONSTITUTION: The main intention behind creation of Articles 72 and 161 is to provide a humanistic approach to the judicial process. The power of the President to allow pardons and give reprieves in certain cases is mentioned in Article 72. Likewise, article 161 empowers the Governor to exercise Mercy Jurisdiction.

Juvenile Justice Care and Protection of Children Act, 2015:

This Act is also restorative in nature. This aim of the Act is vivid in the fact that it stratifies wrongdoers under the age of 18 into delinquents and criminals. Even the children who are found guilty of a non bailable offences are freed on bail and is kept under proctorship of a Probation officer. Furthermore, as per the Act, children in conflict with the law are to be presented before the Juvenile Justice Board, which is to deal with them with empathy and send them to Children's Homes and Special Homes.²

Former Cr.PC and now BNSS under Section 473 empowers the Government to hold back the execution of a sentence or even the remittance of the punishment wholly or in part. Also as per sec 437 Cr.PC and now sec. 480 BNSS the court is empowered to grant bail in case of non bailable offences after putting certain conditions. The Probation Of Offenders Act, 1958 also talks about this thing that an offender may be set free if he poses good behaviour and conduct. It is vivid thus our entire law process seeks to be soft towards the offender who is not the perpetrator of the crime and victimises people generally rather he himself is a victim of conditions and circumstances.

INDIAN PENAL CODE: Now it has been repealed earlier the Substantive criminal law of India provided for the punishments in the form of capital punishment, imprisonment for life, imprisonment which is rigorous (imprisonment with hard labour), simple imprisonment, confiscation of property and fine.

² Sec 18(1) (c) Juvenile Justice Act, 2015.

COMMUNITY SERVICE AS A PENAL SANCTION: Community service is distinct from other forms of punishment. As per it the offenders are mandated to perform gratuitous work for the welfare of the community.

As a means of penalty it has been freshly incorporated under the Bharatiya Nyaya Sanhita, 2023 (BNS) in sec.4. The 156th Law Commission Report submitted in August 1997 addressed upon the need and scope of administering the punishment of Community Service in the Indian Penal System. Justice Malimath Committie also recommended in the year 2002 that it's the time that community service is introduced as a penal sanction.³

This addition of Community Service as a type of penal measure in BNS speaks aloud about the paradigm shift of the legal system towards restorative justice, which focusses on rehabilitation and of criminals into the community rather than only focussing on the merely punitive actions.

NEED FOR COMMUNITY SERVICE: The Western countries use Community Service as a punishment. It is prevalent as a form of punishment in USA, Sweden and UK. Community service is employed as a way of imposing penalty routinely in the Western judicial system, particularly in the United States. This form of punishment which is non-custodial in nature is imposed as a substitute to imprisonment. It is used as a tool to harness labour. Court-ordered community service may be of multifarious types as per the crime committed.

The need for community service has been long realised by the courts in India, it is just that a formal recognition of Community Service as a punishment has been taken now.

In the famous case of *Giassudin vs State of Andhra Pradesh*⁴ the Supreme Court averred that the imposition of harsh and savage punishment is a story of past and regressive times. Today's opinion views sentencing as a process of reconstructing a person who has gone astray from the right path, and the modern community has a major interest in the rehabilitation of the offender as a measure of social defense. The Court stressed upon the implementation of curative means to curb the crime, rather than adopting a hard attitude.

The Apex Court reiterated George Bernard Shaw 's statement: "If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries".⁵

Going by these observations the court lowered down the punishment of the culprit from three years to eighteen months months. The orders of the Court explicitly aimed at the offender's

³ *Smt.Sunita Gandharva Vs State of MP, Misc Cr.Case No.22615/2020*

⁴1977 AIR 1926

⁵ 1977 AIR 1926

moral and social rehabilitation.

In *Babu Singh vs State of Uttar Pradesh*⁶ the Apex Court emphasized on the employing reformatory measures to curb crime in the society.

Hon'ble Mr. Justice VR Krishna Iyer are restated here,

“Restorative devices to redeem the man, even through community service, meditative drill, study classes or other resources should be innovated and playing foul with public peace by tampering with evidence, intimidating witnesses, or committing offences while on judicially sanctioned “free enterprise” should be provided against. No seeker of justice shall play confidence tricks on the Court or community. Conditions may be hung around bail orders, not to cripple but to protect. Such is the holistic jurisdiction and humanistic orientation invoked by the judicial discretion correlated to the values of our Constitution.”

Meaning of Community Service:

The theory behind Community Service is thus loosely based on the reformatory theory.

The admission of community service as a new penal sanction in the Bharatiya Nyaya Sanhita 2023 reveals that now the Indian Criminal Justice System is oriented towards a more balanced and employs rehabilitative approach. By focusing on restorative justice, the BNS 2023's main object is to develop a system where offenders can bring positive contribution to the community, thereby nurturing them by focussing on their rehabilitation and limiting the burden on the prison system. This attitude of the authorities is beneficial to the criminals as well as to the community at large, advancing a more productive slant to justice.

Section 4 (6) of the BNS clearly mentions Community Service as one of the punishments as is to be awarded to a criminal under BNS.

The term as such has not been elucidated in BNS, however its meaning is limited to the Explanation of Section 23 BNSS,

“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 .”⁷

This incorporation of Community Service as a penal measure in BNS speaks a lot about the revolutionary transition of the Indian legal system towards restorative justice, which focusses on rehabilitation and reassimilation of offenders into society rather than only focussing on the

⁶ AIR 1978 SC527

⁷ Sec 23 BNSS

merely punitive actions.

PURPOSE:

The recent inclusion of Community Service as a mode of punishment is a reflection of slow culmination of the legal system towards establishment of Restorative Justice. The traditional outlook where penalising the offender was the object is being shunned and a reformatory approach is being espoused. The idea behind Community Service is not letting the offender go scot free. It serves multifarious functions:

- 1) It does nail the offender for their misdeeds.
- 2) The offenders are afforded an opportunity to give a positive contribution to the society.
- 3) It reduces the burden of already burdened prison system.
- 4) It elevates the rehabilitation of offenders.

It is also mentioned in BNS that for which offences this punishment is permitted. As of fact the Community Service as a penalty is awarded only in the case of first time offenders and that too of minor offences and not the violent ones. Other than that it is left on the judicial discretion, it is upto the Courts to decide that Community Service should be imposed as a punishment or not and this is decide as per the facts and background of each case.

MENTION OF THE SAME AS PUNISHMENT IN THE BNS:

It is specifically provided in the Act under which sections it is allowed generally to award this as a punishment, the list though is not exhaustive as the courts have the power to decide where to award this sentence after having a proper realisation of the circumstances that forced to commit the wrong.

SECTION 202: It is expressly mentioned in the BNS that if a public servant engages in a trade which as a public servant he should not engage in then he may be awarded with some amount of fine and imprisonment and fine or Community service.⁸

SECTION 209: This section says who fails to make an appearance before the court as is required under Sec. 84 of the BNSS then he can be provided Community Service can be granted as a punishment as an alternate to fine and imprisonment.⁹

⁸ Sec 202, BNS

⁹ Sec 209 BNS

SECTION 226: Whoever attempts to commit suicide with the intent to restrain a public servant from performing an official duty may be awarded either fine or imprisonment or Community service as a punishment.¹⁰

SECTION 303(2): In this section it is mentioned that if the offender is a first time accused and he returns either the value of the property to the original owner or restores the property itself to the owner and the property's value was less than five thousand rs.be awarded Community Service.¹¹

SECTION 355: This section deals with the comportment of a person who in state of Inebriation. If such a person appears in public or trespasses in another person's property and causes annoyance to others may be awarded this punishment.¹²

SECTION 356: This section deals with the punishment for defamation which can be imprisonment, fine or community service.

Judicial Approach:

There are many case in which this provision of the statute has been utilised by the Courts. The Bombay High Court's Goa Bench ordered two engineering students to perform community service for a period of two months, for atleast two hours everyday at an old age home located in Goa. In this case the accused were guilty of stealing at a conference. The things which were stolen were which potato chips, pens, chocolates, etc. The court refused to accept the decision of BITS Pilani, Goa Campus. It had ordered to debar the students from appearing for their semester examination and it said that they should perform Community Service.¹³

The Delhi High Court in New Delhi Nature Society vs Shri Vinay Sheel Saxena ¹⁴ gave an order that the accused Delhi Police cops to plant a total of hundred trees. In the case it was brought to the court's notice that a tree was being cut by some workmen, just outside Gate No. 7 of Pragati Maidan. Before the Court photographs of a tree were presented which was granted

¹⁰ Sec 226, BNS

¹¹ Sec 303(2) BNS

¹² Sec 355

¹³ The Hindu, 17 Jan 2024

¹⁴ New Delhi Nature Society vs Shri Vinay Sheel Saxena and others, Co NT ,CAS(C) CM APPLI.26551/2020

protection under the Delhi Preservation of Trees Act, 1994. The two cops were accused of engaging in an altercation with a lawyer who was opposing the felling of the trees.

In *Sagar vs State of NCT Delhi*,¹⁵ The Delhi High Court ordered that both the parties involving the twenty four persons accused under NDPS should do basic cleaning and sweeping work at four Police Stations situated at Mehrauli, Fatehpur Beri, Maidan Garhi, and Neb Sarai. This was set as a condition to their bail.

In the infamous Porsche case of Pune where a teen in inebriated state rammed his vehicle into a two wheeler and caused the death of two software engineers, the teen was granted bail by a Juvenile Court but it was conditioned as the Court while granting bail put certain impositions on the minor. As per the conditions for the bail he was to:

- 1) Work alongside traffic police for 15 days.
- 2) Undergo a proper psychiatric evaluation and treatment.
- 3) He was supposed to frame a 300-word essay on the "effect of road accidents and their solution".
- 4) He was ordered to seek rehabilitation at a de-addiction centre.
- 5) He was to comprehend traffic rules and further asked to give a presentation on the same to the Juvenile Justice Board.
- 6) He was asked to assist accident victims in the future, if he happens to be present at the site of the accident.¹⁶

It is to be noted that in many of the above cases Community Service as a punishment has generally been used under Sec 480 BNSS¹⁷ wherein it has been discussed that the accused may be granted bail in case of Non-Bailable offences on certain conditions. It can be witnessed that though Community Punishment it has been awarded in the form of a condition for granting bail. Whatsoever the way it is used, whether it is used as a part of a plea bargain, a condition of bail or a condition as to probation, or in the coming years as a freelance punishment, community service attempts to develop civicism apart from propitiation.

¹⁵ *Bail Application no. 2396/2023*

¹⁶ *India Today, 20 May 2024*

¹⁷ *Sec 480 BNSS.*

In *Parvez Jilani Shaikh v. State of Maharashtra*¹⁸ it was the Bombay high Court ordered that the accused is supposed to perform the penal sanction of community service at BARC hospital for a period of three months once in a week, in addition to this it was said by the court that the accused must procure a certificate from the Hospital Authorities regarding the services rendered by them and present them before the Court.

It was directed by the Bombay High Court to a group of twenty youngsters to perform community service as a precondition for quashing an FIR. The matter under discussion was a case of altercation between two groups. The Court instructed one group to clean and mop the Mira Road Railway Station periodically every Sunday for continuous period of three months. The other group was directed to clean Thane's Municipal School for the same duration, i.e., every Sunday for 3 months.¹⁹ This happened in the year 2016.

In *Smt.Sunita Gandharva Vs State of MP*²⁰, it was mentioned by the court that, "Community service gives a chance at times to melt the ego of an accused who is facing trial of those offences which gave psychic gains or peevish pleasure to the accused while committing such crime. Some times to purge his misdeeds and to come out of the guilt (if the individual has been falsely implicated) community service can play important role. Through this effort, accused can again be assimilated into mainstream of society and would be accepted peacefully."

The Court further observed,

"Action by the offenders affects the individual as well as community and therefore, the concept of punishment has evolved from Preventive to Deterrent to culminate into Reparative or Reformatory theory. The emphasis of Community Service is not on punishment nor on rehabilitation at times, rather, it is on accountability. Anatomy of Crime and Violence can be addressed by rekindling innately ingrained human attributes of Compassion, Mercy, Love and Service."²¹

In this case the court the accused got one opportunity to come back to conventional society because there was one precondition enumerated in his bail, he was supposed to perform community service alongwith other conditions mentioned in Sec. 437(3) Cr.P.C. He was

¹⁸ *Writ Petition No. 4260 of 2015*

¹⁹ *Indian Express, February 24, 2016*

²⁰ *Misc Cr.Case No.22615/2020*

²¹ *Ibid.*

supposed to offer give services as a driver of Ambulance in Emergency Service, 108.

In *Manoj Kumar vs State (Govt. of NCT of Delhi)*²²

The Court passed an order as per that the accused was asked to perform community service at Lok Nayak Jai Prakash Narayan Hospital on every Saturday and Sunday for one month period. The Delhi High Court has recently directed a man, who was culpable of forcibly kissing a woman and outraging her modesty, to do one month community service. Justice Subramaniam Prasad was trying a petition seeking quashing of an FIR registered against the man under Sections 354, 506 and 342 of IPC, on the basis that the parties had amicably settled the dispute. He notably said, “Do Community Service to atone for sins.”²³

Challenges and Shortcomings

As every rose compulsorily has certain thorns so has the flower of Community Service certain issues that need to be redressed. One of the major challenges that is faced by the Courts is that there is no clear cut measure to determine that what would Community Service actually mean. Moreover the judicial officers are equipped with varied discretionary powers to determine whether or not to grant community service as punishment. This can bring incongruity in sentencing, as an identical offence could be punished with different sentences based on the judge's opinion.

The BNS lacks agency which would monitor the execution of community service. There is no law with regard to establishment of any such authority which would measure the effectiveness of this punishment.

Another concern is that it presents the concept of Community Service a negative view. It projects community work as a reprehensible activity to be avoided, a forced burden. Though Community Service was introduced as having a positive impact it is essential that it is judiciously used as a punishment, and it should be seen that individuals are not allowed to use it as an easy way out to eschew appropriate punishment for their wrongful actions.

²² *Bail Application no. 1141/2024*

²³ [www.livelaw](https://www.livelaw.in) as on 19 march 2025

Conclusion

It thus can be comfortably concluded that the incorporation of community service as a penal measure to curb crime under the BNS depicts an inclination of the legislature towards reformatory justice. However, its success as a form of punishment remains to be seen which would mean its proper implementation would need clear recommendations, efficient monitoring setup, and public awareness.

