

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES
[ISSN 2581-5369]

Volume 9 | Issue 3
2026

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Community Service and Reformatory Justice under the Bharatiya Nyaya Sanhita, 2023: A Paradigm Shift in Indian Sentencing Policy

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ABSTRACT

The Bharatiya Nyaya Sanhita, 2023 (BNS), is a milestone moment in the history of Indian criminal law as it came into force on the 1st of July 2024. The Bharatiya Nyaya Sanhita, 2023 (BNS) marked a revolutionary step in Indian criminal law, introducing community service as a valid form of punishment. This is a law which is not only a procedural adjustment, but a change in the way Indian sentencing works and in the mindset of Indian sentencing from retributive to rehabilitative and restorative. The BNS realizes that incarceration is not necessarily the best way to deal with criminal activity particularly minor, non-violent crimes and introduces community service as a sentence for six crimes. This paper looks to the principles of reformatory justice, reviews the provisions of the BNS which provide for community service as punishment, the implications of this for a paradigm shift of Indian criminal policy and explores the challenges to its implementation and the transformative potential it holds.

Keywords: *Bharatiya Nyaya Sanhita, Community Service, Reformatory Justice, Restorative Justice, Sentencing Policy, Criminal Law Reform, Non-Custodial Sentences, Prison Overcrowding, Rehabilitation, Indian Penal Code*

I. INTRODUCTION

The Bharatiya Nyaya Sanhita, 2023 is one of the biggest changes in the Indian criminal law since Independence. The BNS also replaces the colonial Indian Penal Code of 1860 - which it seeks to update and adds new sentencing options that reflect the current understanding of the purposes of justice, punishment and rehabilitation. Among these reforms, the formalisation of community service as an alternative punishment is noteworthy, which is the first time at a national level, community service has been codified as punishment alternative in India. Community service is no longer just symbolic for BNS Section 4(f)¹. It is a deliberate choice by the lawmakers to pursue reform, restitution, and other positive outcomes rather than just

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¹ Thomas, Renjith. "Bharatiya Nyaya Sanhita, 2023: A Critical Perspective." *Available at SSRN 4898463* (2024).

punishment, for certain kinds of offenses. This transformation comes in the wake of the increasing concern regarding prison overcrowding, the criminogenic environment of prison, and an awareness that many of the offenders particularly low-level and first-time offenders will do better in interaction with the society than behind prison walls. There is overcrowding in the Indian Jail System. The national occupancy rate was more than 112 per cent as of the last data with approximately 72 per cent comprised of undertrial prisoners.² In such situations, prisoners lose their dignity and rehabilitative power of the prison. In this context, “community service” unfolds as a viable solution that can diminish systemic pressures and help to progress offender reform and social reintegration.

Overview of Legal Punishments



Figure 1: Punishments under BNS³

This paper has several sections. Part II discusses the theoretical foundations of reformatory justice and situates community service within the larger theories of punishment. Part III provides a general introduction to BNS and its integration into the larger picture of the Indian criminal justice system. Part IV looks at specific statutory provisions related to community service in the BNS. Part V deals with the paradigm shift it represents in Indian Sentencing policy⁴. Comparative insights from international jurisdictions are provided in Part VI.

² Prison Statistics India 2024, National Crime Records Bureau (2023).

³ Aggarwal, A. "The Indian prison and apathy of prisoners in 21st century: A reformatory approach." *CPJ Law Journal* 14 (2023): 174.

⁴ Chowdhury, M. Jashim Ali, and Jubaer Ahmed. "Globalization of American Interpretation Debate: Originalists, Living Constitutionists, and the Drifters." In *The Asian Yearbook of Human Rights and Humanitarian Law*, pp.

Challenges for implementation in Part VII, and the proposed solution. Part VIII concludes. II. The theoretical framework of the reformative justice is explained. The theory of reformative justice is discussed.

II. THEORETICAL FRAMEWORK OF REFORMATIVE JUSTICE

A. Punishment Theories: From Retribution to Reformation

Punishment has served a variety of purposes in ancient times and some of them are conflicting. There are four classical theories of punishment: retributive, deterrent, preventive, and reformative. The retributive theory is that punishment occurs as a moral condemnation -- the wrongdoer deserves to be punished in accordance with the wrong done⁵. It is a principle of the oldest criminal law and has influenced contemporary sentencing, particularly in the case of harsh offences, to impose an eye for an eye.

The deterrent theory, on the other hand, regards punishment as a means for an individual and society to be dissuaded from reoffending. The preventive theory is based on incapacitation, that is, keeping dangerous people away from the public. These theories are still valid for some offences, but they all have one thing in common: they centre around the punitive aspects of criminal sanctions and view criminals as objects that can be controlled rather than people who can be changed. The reformative theory is a break from these punitive theories⁶. It assumes that criminals' conduct is often social, economic, psychological or environmental, and that a range of interventions can have an impact on this behaviour. The reformative approach does not consider the offender as evil but sees his potential for change and works on bringing him back into society as a law-abiding citizen. This philosophy became prominent in the 20th century and was backed up with evidence that rehabilitation programs could effectively decrease recidivism.

B. Community Service as Reformative Justice in Practice

For instance, community service is an example of reformative justice. According to the BNS, community service is "work which the Court may order a convict to perform as punishment for the benefit of the community for which he shall not be entitled to any remuneration" and includes several rehabilitative purposes. First, it is supposed to hold offenders accountable for their actions with positive work, rather than with negative incarceration. Secondly, it helps create a sense of social responsibility, because those doing the right thing have something to

199-236. Brill Nijhoff, 2024.

⁵ Jadon, Divyanshu Singh. "Delineating Juridical and Societal Shifts: An In-Depth Assessment of the Bharatiya Nyaya Sanhita, 2023." *Legal Lock J.* 4 (2024): 89.

⁶ Gupta, Amrita Das. "An Analysis of Community Service as a Form of Punishment in India: Findings from the Bharatiya Nyaya Sanhita, 2023." *Anusandhanvallari* (2024): 2950-2959.

give back to the community. Third, it maintains the continuity of connection of offenders to society, by maintaining work, family and social relationships, reducing stigmatisation and social exclusion within prison. It is well known that community service is a reformatory tool⁷, and it is recognized throughout the world. Community service orders are supported by the implementation of community service orders as alternatives to imprisonment, through the Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules) which emphasize the importance of community service to the promotion of rehabilitation and social reintegration of offenders with respect to their rights and dignity. Empirical findings from communities where community service programs are effective suggest that these programs are as effective if not more effective in the prevention of recidivism for first-time non-violent offenders as incarceration, while significantly reducing social and economic costs.

C. Indian Jurisprudence on Reformatory Justice

Though there was no statutory requirement to provide community service, reformatory principles have been cherished by the Indian courts. The Supreme Court has always maintained that a prisoner should be treated humanely and that imprisonment should be used for reform, rather than for punishment. In many cases it has been wisely decreed that an offender serves a portion of their bail in a hospital, for traffic, planting trees or some other socially useful undertaking or in lieu of imprisonment. In *Parvez Jilani Shaikh v State of Maharashtra* (2015)⁸, the Bombay High Court had issued a direction for the accused to perform community service in a hospital, recognizing the positive sentiments that may come from the service. Similarly, Madhya Pradesh High Court observed that Courts have inherent powers under Section 437(3) CRPC to impose the condition of community service as bail in *Sunita Gandharva v. State of Madhya Pradesh* (2020). These judicial initiatives were praiseworthy but were done in the absence of any law. The BNS provides the statutory underpinning for these orders today and is now accepted as a method of sentencing.

III. THE BHARATIYA NYAYA SANHITA, 2023: AN OVERVIEW

The BNS was presented in Parliament on 11 August 2023 and adopted on 25 December 2023 after being subject to long discussions by the Standing Committee on Home Affairs. The BNS has 20 chapters and 358 sections and mostly retains the features and content of IPC, but with

⁷ Cid, José. "Theories of desistance: A new framework for rehabilitation? 1." In *The Routledge Handbook of European Penology*, pp. 80-94. Routledge, 2025.

⁸ Negi Advocate, Dr Chitranjali. "Legal Evolution in India: Transitioning from Colonial Legacies to New Frontiers- An In-depth Analysis of Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Bill in 2023." *Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Bill in* (2023).

significant modifications. The bill is part of a wider overhaul of the Indian criminal justice system, which includes the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Bharatiya Sakshya Act, 2023 (BSA), both of which respectively replace the Code of Criminal Procedure, 1973, and Indian Evidence Act, 1872. The BNS is making some substantive changes. Adds new crimes such as terrorism, organised crime, mob lynching etc., while removing the colonial era offence of sedition and replacing it with crimes that could pose threats to 'sovereignty, unity and integrity. Importantly for present purposes, it broadens out the selection of punishments. Section 4 of the BNS provides for six types of punishment: (a) death, (b) imprisonment for life, (c) imprisonment (rigorous or simple); (d) forfeiture of property, (e) fine, and (f) community service. This has been the first time ever that community service has been incorporated as punishment in the primary criminal act in India. Community service was not mentioned in the Juvenile Justice⁹ (Care and Protection of Children) Act, 2015, before the BNS, which provides for community service for juvenile offenders. The increasing use of non-custodial sentences in juvenile sentencing is part of the broader trend of non-custodial sentences and shows that some of the principles of juvenile sentencing do apply to adults in some instances.

IV. COMMUNITY SERVICE UNDER THE BNS: SPECIFIC PROVISIONS

A. Applicable Offenses

Community service is available for six specific offenses under the BNS:

- Section 202: Public servant unlawfully engaging in trade;
- Section 209: Non-appearance in response to a proclamation under Section 84 of BNSS¹⁰;
- Section 226: Attempt to commit suicide to compel or restrain exercise of lawful power;
- Section 303(2): Theft where the value of stolen property is less than Rs. 5,000, committed by a first-time offender who returns or restores the value of the property;
- Section 355: Misconduct in public by a drunken person; and
- Section 356(2): Defamation.

This is a pedagogical and intentional list of crimes. The other provisions list community service

⁹ SHAIKH, ADV ARSHIYA ABDULKADIR, and RAJ SAYYED WAJAHAD SAYYED AHMED. "COMMUNITY SERVICE AS A PUNISHMENT UNDER BNS: A STEP TOWARDS REFORMATIVE JUSTICE IN INDIA."

¹⁰ Das, Namrata. "A Study on The Legal Framework of Community Service in India-Effectiveness and Challenges." *Journal Of Emerging Technologies and Innovative Research* 12, no. 3 (2025): 12-28.

as an alternative to imprisonment or fine, using the word "or" in the statutory language, and are not obligatory in Section 303(2). This is to provide the judge with discretion as to whether a community service is fit and proper in any case and flexibility for sentencing. Both offenses have similar features. They are usually minor in nature, non-violent, and probably not predatory, but rather a lack of judgment and social behaviour. Section 303(2) is illustrative. It can be used for petty theft (when the value of property is less than Rs.). 5,000) and make restitution. For these people, there's an alternative to jail time without the same stigma and collateral consequences: community service. Similarly, the conduct in each of Sections 355 (public drunkenness) and 356 (2) (defamation) is socially undesirable but not worthy of a custodial sentence which would conflict with the offender's life, work and relationships with his family.

B. Definition and Scope

The BNS does not have a wide-reaching definition of community service. The meaning of "community service" shall be as defined in the Explanation to section 23 of the BNSS: "community service shall mean work which the Court is satisfied shall be performed by a convict as a punishment for his offence in benefit of the Community and for which he shall not be paid any remuneration". According to the above definition, three elements are needed: (1) court-ordered¹¹, (2) work for the benefit of the community, (3) work is not paid. The BNS, however, does not specify the kind of community service nor its length. BNSS does not specify the work that may be performed as community service, the duration of the service or how it will be supervised. This lack of legislation presents opportunities and challenges. One benefit is that it offers the flexibility of the judge to develop community service sentences for the offender according to his or her skills, situation and the needs of the community. It is, however, vulnerable to the lack of implementation and accountability for enforcement.

C. Consequences of Default

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¹¹ Pandey, Avneesh Kumar. "INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH FROM RETRIBUTION TO REFORMATION: A CASE OF FIRST TIME OFFENDER IN THE LENS OF BNSS." *INTERNATIONAL JOURNAL* 6, no. 3 (2026).

¹² Bagaric, Mirko. *Punishment and sentencing: A rational approach*. Routledge, 2025.

however, does not specify the kind of community service nor its length. BNSS¹³ does not specify the work that may be performed as community service, the duration of the service or how it will be supervised. This lack of legislation presents opportunities and challenges. One benefit is that it offers the flexibility of the judge to develop community service sentences for the offender according to his or her skills, situation and the needs of the community. It is, however, vulnerable to the lack of implementation and accountability for enforcement.

V. A PARADIGM SHIFT IN INDIAN SENTENCING POLICY

A. From Retributive to Reformatory Orientation

The introduction of community service involves a paradigm shift from retributive to more balanced approach to criminal justice in India that embodies reformatory and restorative principles. Indian criminal law had traditionally been more focussed on incarceration than any other form of punishment for crimes. Even for low level offences, the fear of jail sentence was the greatest deterrent. Colonial-derived law and its principle of control and punishment over rehabilitation/reintegration took priority¹⁴. The BNS is founded on another philosophy. The legislature acknowledges that other than incarceration, justice may be served. The Indian courts have captured this in their words: 'Every saint has a past, every sinner has a future'. The reformatory theory behind this change implies that not every crime is an indication of "unredeemable personality," but that some crimes are merely indicating "correctable errors of judgement, errors of control or social relations. Community service can meet these needs and be a way for offending to stay linked to the community.

B. Addressing Prison Overcrowding

It's like there's a plan to this reform and it's not a small one. Indian prisons are overcrowded with more than 118 per cent of their designed population and nearly 75 per cent of the prisoners are undertrials. They are conditions which are detrimental to the dignity of prisoners, to the rehabilitation process and to the cost to the State.¹⁵ Community service is a viable alternative and is a way to reduce the prison population particularly for first-time offenders and for minor offenses. Think about Section 303(2)¹⁶ that states that community service is required for first-

¹³ Sreekumar, Aparna. "An Exclusive chapter on 'offences relating to women and children' in BNS-A critical analysis." *Edulogic International Journal for Multi Disciplinary Research P-ISSN: 3051-2395 E-ISSN: 3051-2409* 1, no. 01 (2025): 107-116.

¹⁴ Khan, Muhammad Imran, Adnan Nisar, and Sidra Kanwell. "From Punishment to progress: the legal evolution of criminal rehabilitation." *Pakistan JL Analysis & Wisdom* 2 (2023): 556.

¹⁵ Singh, Rahul, and Arpita Singh. "COMMUNITY SERVICE:-A PROGRESSIVE SHIFT INTRODUCED TOWARDS REFORMATORY OR RESTORATIVE JUSTICE." *The Bharatiya Nyaya Sanhita, 2023 Significance and Concerns* (2025): 69.

¹⁶ Olesiuk-Okomska, Magda. "NON-CUSTODIAL SANCTIONS AND MEASURES IN AN

time petty theft offenders who make restitution. Otherwise, these people might end up in jail, albeit for a short time. Criminalisation would impact on their employment opportunities, increase the stigma and could introduce them to prison conditions and put them at risk of reintegration. Without community service these harms are experienced, without community service offenders are not held accountable, nor held accountable to be contributing members to society.

C. Promoting Social Reintegration

Community service has a re-integrating effect which cannot be obtained with incarceration. Community service orders can foster empathy, responsibility and pro-social behaviour for the offender through exposure to others in the community doing service and by engaging the person to do productive activities that service the public¹⁷. The offenders retain their employment, maintain their families and do not have to be incarcerated, where they might socially isolate themselves.

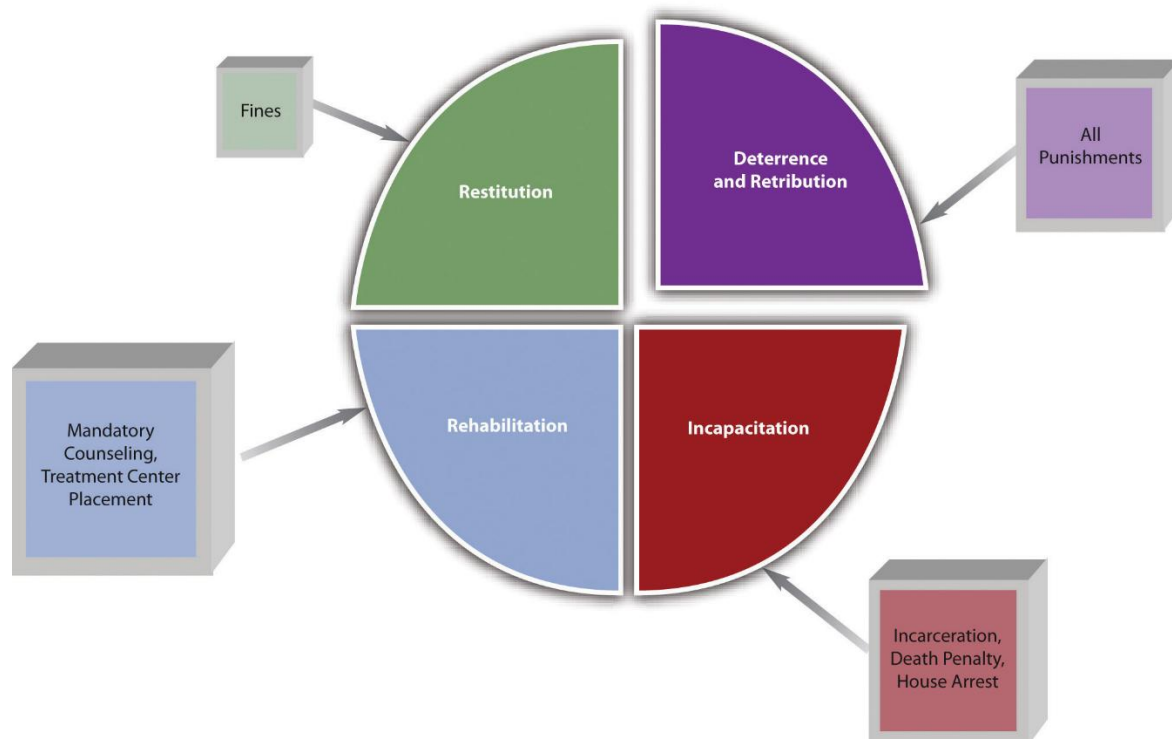


Figure 2: Criminal Law¹⁸

This continuity is crucial in rehabilitation for the success to be obtained. Students that had a

INTERNATIONAL PERSPECTIVE." *Probation* 3 (2024): 143-159.

¹⁷ Moraga, Gabriel, Ana María Morales, Jorge Fábrega, and Sebastián Salinero. "Impact of the reform to non-custodial sanctions in Chile." *Journal of quantitative criminology* 39, no. 4 (2023): 875-896.

¹⁸ Rodrigues, Anabela Miranda, Maria João Antunes, S. Fidalgo, I. H. Pinto, and K. T. Ishiy. "Non-custodial sanctions and measures in the member states of the European Union." *Comparative report, University of Coimbra Institute for Legal Research* (2022).

stable job and strong social supports are regularly identified as a protective factor in preventing recidivism. Also, community service can help heal the social fabric that has been ripped apart by crime. The community directly benefits when an offender can make a positive difference to the community, in volunteering, lending a hand to vulnerable groups or through the community-based projects¹⁹. This reparative aspect is in line with the principles of restorative justice, which focus on healing and reconciling with those who have been harmed rather than just punishing the wrongdoer.

VI. COMPARATIVE PERSPECTIVES: INTERNATIONAL MODELS

It is not a novel idea in India; there are number of jurisdictions that have already achieved it successfully. These international models can be analysed and lessons learnt for implementation in India. The United Kingdom has been using community service orders as a form of sentencing since the 1970s. The Criminal Justice Act 1972 provided for unpaid work for up to 240 hours. Studies have revealed that British community measures' recidivism rates are comparable with or lower than those of short-term incarceration and the costs are significantly less²⁰.

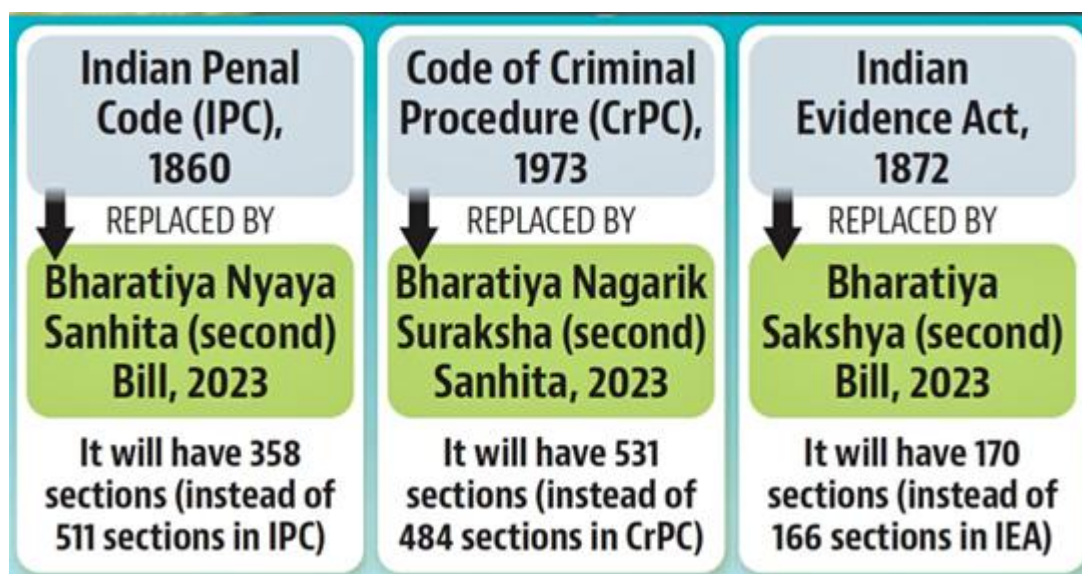


Figure 3: Criminal Law Reforms²¹

Good Oversight, standards (what work is allowable) and judicial, probation and community

¹⁹ Shah, Saeedah, Novera Bhatti, and Tanveer Ahmed Daudani. "Prison Overcrowding and its Impact on Rehabilitation Outcomes: A Comparative Policy Analysis." *Pakistan Social Sciences Review* 10, no. 1 (2026): 253-266.

²⁰ ADIKWU, Ishaya Agmeshi, and Mohammed Sagir BUNUNU. "Non-custodial Sanctions and Administration of Restorative Justice in Wukari Local Government Area, Taraba State, Nigeria." *Federal University Wukari Journal of Social Sciences* (2024): 3.

²¹ Tomaz, Vera, Diana Moreira, and Olga Souza Cruz. "Criminal reactions to drug-using offenders: A systematic review of the effect of treatment and/or punishment on reduction of drug use and/or criminal recidivism." *Frontiers in Psychiatry* 14 (2023): 935755.

integration are necessary for effective programs. Community service is a practice that is common in the United States, both at the local and state level. In New York, community service is frequently an alternative to a brief jail sentence for a misdemeanour crime, or a condition of probation. The work includes clean-ups in parks, painting public buildings, working in hospitals and food banks. Studies show that community service is most effective when it is meaningful, supervised and is offered to the skills of the person doing the work and the needs of the community. Another instructive example is in Singapore.

The program offers a variety of offenses that can be served by community service and emphasizes placement of the offender in the most appropriate community location for the offense and the offender. With a structured approach implemented in Singapore (preplacement assessment, supervisory support and evaluation at completion), high completion rates and favourable recidivism outcomes have been achieved. These are the important issues which India is getting highlighted in such experiences abroad. Having institutional infrastructure is the first step²², which involves the need for trained supervisors, community organization partnerships and compliance monitoring systems, all of which are essential to developing effective community service programs. Second, there must be uniform and fair guidelines regarding the type, duration and context of the community service. Third, community service can be most productive when it is integrated into a comprehensive community service, counselling, skill development and support services rehabilitative program.

VII. IMPLEMENTATION CHALLENGES AND PROPOSED SOLUTIONS

A. Legislative Ambiguity and Judicial Discretion

There is a framework of community service in the BNS and BNSS, but don't miss any details. What sort of work can be done? How much time should the time be? Who supervises compliance? The absence of law gives the courts a bit of freedom to manoeuvre, which can be beneficial or detrimental. Flexibility can also provide judges with some room to sentence the person; however, it can also cause inconsistencies and inequity as different judges will sentence the same person to different amounts of community service in different jurisdictions.

This problem can be resolved by detailed guidance of the implementation of the community service by central or state governments. Guidelines should include: (1) the types of organizations and individuals who are appropriate (2) the type of work authorized (3) duration norms that are dependent on the nature and severity of the offense (4) supervision and reporting

²² Sidique, Ayisha, and Kanchal Gupta. "Silent Victims: Understanding the Correlation Between Undertrial Prisoners and Overcrowding-An Analysis of Prison Statistics Report2022."

requirements, and (5) procedures for non-compliance. Model rules could be developed through consultation with judges, probation officials, and community groups, to foster consistency and flexibility for judges.

B. Institutional Capacity and Infrastructure

Effective community service programs require an institutional structure which is not necessarily in place in Indian jurisdictions. Probation services in other parts of the world are underfunded and understaffed and are not as well monitored in India as they are in the rest of the world. Most states have fewer probation officers than required to keep track of the number of probationers they have in their system, not to mention the number that may be in the system²³ if community service orders were common. This capacity needs to be built over time and with commitment. States should make probation services more accessible by providing more resources, more officers, and partnerships with non-governmental organizations, community groups, and public agencies to be able to place probationers and provide supervision. Technology could also be part of the solution – digital reporting systems, electronic monitoring and mobile apps could enable oversight and ease administrative burden.

C. Public Perception and Acceptance

There is mixed public opinion regarding community service as punishment. Some consider it to be a "soft on crime" option to jail. This perception can have a negative impact on support for community service programs and political opposition to the expansion of community service programs. These attitudes need to be altered and can be changed by educating the public about the purposes and benefits of community service, while emphasizing that community service imposes accountability on an offender and offers a rehabilitation and reduces the social and economic burden of incarceration. Courts and policymakers should explain why community service is an effective method of reducing recidivism, reducing overcrowding in prisons, and complying with the constitutional values of dignity and rehabilitation. Public attention to the many successes of community service programs in the area, such as accounts of community members who have successfully changed their lives through positive interactions, can also make a difference²⁴.

²³ SHAIKH, ADV ARSHIYA ABDULKADIR, and RAJ SAYYED WAJAHAD SAYYED AHMED. "COMMUNITY SERVICE AS A PUNISHMENT UNDER BNS: A STEP TOWARDS REFORMATIVE JUSTICE IN INDIA."

²⁴ Juneja, Vinay, Saurav Joshi, and Saujanya Sarkar. "From Cells to Crisis: The Dynamics of Prison Overpopulation." *Indian J. Criminology* 53 (2025): 125.

D. Ensuring Meaningful Work and Avoiding Exploitation

To be effective in reforming, community service should be meaningful, skill appropriate, and helpful to the community. There is a risk that if community service is undertaken without supervision, it can be a routine task or even an opportunity to exploit. Support and guidance needs to be directed towards ensuring that the skills and experiences of offenders match the placements which should include working in community technology projects for those with technical skills and working in health clinics for those with medical skills. Moreover, measures should be implemented to avoid using community service workers as free community workers for profit. Community service should be for the benefit of people and not for profit. Regular inspections and/or reporting requirements and offender feedback systems can be effective tools to manage the implementation of community service orders.

VIII. CONCLUSION

It is a welcome development in the criminal law of India and is one of the much-needed reforms in the existing criminal law, that community service is being introduced as a form of punishment in the Bharatiya Nyaya Sanhita, 2023. It is a sign of the legislators' awareness of the need for a reformatory justice; it shows a grasp of the fact that incarceration is not a panacea for crime; and it provides courts with a valuable sentencing tool to promote rehabilitation and reduce the problems of prison overcrowding. But it is dependent on implementation for the success of this reform. Legislative recognition of community service is a must but not enough. To make this a reality, there is a need for a series of clear implementation guidelines, institutional readiness, public education and political commitment. Challenges are extremely difficult, but not impossible. Community service programs based on best practices from around the world, investment in probation infrastructure, and community-based partner organizations can create a robust community service program that serves justice, rehabilitation and public safety. The BNS is based on a paradigm shift from retributive to a more balanced approach, which considers reformatory as well as restorative aspects in accordance with the constitutional principles, international human rights standards and today's understanding of good criminal justice. This initial effort by the courts will need to be worked with by all parties involved – practitioners, civil society and the policy makers to ensure that community service does what it promises: holds offenders accountable, helps to bring about their reintegration and contributes to the strengthening of the social fabric. This will be a difficult journey to the bill's adoption into a fully effective, humane and fair criminal justice system, but the steps will be worth it.
