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## Out of the Cell: Introduction of Community Service as an Alternative Form of Punishment in India

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*There has been a recurrent emphasis on the need for reformation in India's criminal justice administration system. Owing to the dynamic changes taking place in the criminal justice system to adapt to the evolving needs of society and expanding the concept of rehabilitation and reformation, the Bharatiya Nyaya Sanhita 2023 incorporates community sentencing as one of the six prescribed forms of punishment for petty offences. The shift away from the conventional sanctions outlined under the IPC, such as imprisonment and fines, signifies a departure from the traditional notion of punishment as solely a form of retribution. With community sentencing already proving successful in the Western justice systems, its integration into the Indian framework signifies a progressive step towards a more rehabilitative and reformatory justice system. This paper seeks to analyse the necessity for an alternative form of punishment, assess the repercussions of its introduction in India, and analyse the possible challenges faced in its implementation.*

**Keywords:** *community sentencing, prison, punishments.*

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### INTRODUCTION

The Indian criminal laws were first enacted during the colonial era, and after almost 200 years, there was a need to revamp them to overcome their shortcomings and address the changing

demands of the current times. The criminal system in India is beset with several issues, as a result of which there have been delayed investigations, the pendency of cases, low conviction rates and violations of the rights of victims and accused.<sup>1</sup> On 25 December 2023, the President of India approved the three criminal law bills that replaced the procedural and substantive criminal laws the British had initially passed. The new criminal law acts are, namely, the Bharatiya Nyaya Sanhita 2023 replacing the Indian Penal Code 1860, the Bharatiya Nagrik Suraksha Sanhita 2023 replacing the Code of Criminal Procedure, 1973 and the Bharatiya Sakshya Adhiniyam 2023 replacing the Indian Evidence Act, 1872. These bills introduce the concept of community service as one of the six forms of punishment, which until now had not received recognition or consideration in India as it was previously found only in the Juvenile Justice Act of 2015.

In ancient India, deterrence and retribution formed the basis of punishment.<sup>2</sup> They were brutal and ruthless, causing the number of crimes to decrease. Some of the forms of punishment in ancient and medieval India were hanging, whipping, branding, mutilation, flogging and imprisonment.<sup>3</sup> In the modern society, offenders are imprisoned and isolated to reform them. Gradually, the objective of punishment changed into deterrence and reformation. In recent years, there has been a growing awareness in the judicial system regarding the disadvantages of imprisonment and the need for alternative forms of punishment.<sup>4</sup> The three new bills introduce community service as punishment, emphasising reformative justice.

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<sup>1</sup> Kislay Kumar and Vibhor Jain, 'Indian Criminal Law: Changing Paradigm' *Bar and Bench* (27 December 2023) <<https://www.barandbench.com/law-firms/view-point/indian-criminal-law-changing-paradigm>> accessed 06 January 2024

<sup>2</sup> Mansi Dagrass, 'Corrective Labour as a Form of Punishment in India' (2021) SSRN <<https://www.ssrn.com/abstract=3905402>> accessed 06 January 2024

<sup>3</sup> Qadeer Alam, 'Historical Overview of Torture and Inhuman Punishments in Indian Sub-Continent' (2018) 31(2) *Journal of the Punjab University Historical Society* <[http://pu.edu.pk/images/journal/HistoryPStudies/PDF\\_Files/12\\_v31\\_2\\_july2018.pdf](http://pu.edu.pk/images/journal/HistoryPStudies/PDF_Files/12_v31_2_july2018.pdf)> accessed 06 January 2024

<sup>4</sup> Dagrass (n 2)

## COMMUNITY SENTENCING AND THE BHARATIYA NYAYA SANHITA

Community service is one of the six penalties stipulated in the Bharatiya Nyaya (Second) Sanhita 2023.<sup>5</sup> The death penalty, imprisonment for life, rigorous or simple imprisonment, forfeiture of property, and fine were the forms of punishments included in the Indian Penal Code.<sup>6</sup> The BNS adds community service to this list. The Bharatiya Nagarik Suraksha (Second) Sanhita, 2023 defines community service as the work that the Court may order a convict to perform as a form of punishment benefitting the community, for which he shall not be entitled to any remuneration.<sup>7</sup> In the simplest sense, it is the most direct form of compensation for the public, i.e. unpaid labour intended for social use. Petty and minor offences, like small theft, defamation or public nuisance, will be punished with community service, which will act as an alternative to jail time and use labour as a form of punishment.

### **The BNS calls for community service as punishment for the following offences:**

- Engaging in unlawful trade as a public servant,<sup>8</sup>
- Non-appearance in response to a proclamation under Section 84 of BNSS, 2023;<sup>9</sup>
- Attempting suicide to compel or restrain the exercise of lawful power:<sup>10</sup>
- Petty theft, where the value of the property stolen is less than Rs. 5000,<sup>11</sup>
- Misconduct in public while being intoxicated,<sup>12</sup> and defamation<sup>13</sup>.

Community service for theft is prescribed only in the case of a first-time offence and where the property has been restored. The BNS provides harsher punishments for second or subsequent theft convictions.

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<sup>5</sup> Bharatiya Nyaya Sanhita 2023

<sup>6</sup> Indian Penal Code 1860, s 53

<sup>7</sup> Bharatiya Nagarik Suraksha Sanhita 2023

<sup>8</sup> Bharatiya Nyaya Sanhita 2023, s 202

<sup>9</sup> Bharatiya Nyaya Sanhita 2023, s 209

<sup>10</sup> Bharatiya Nyaya Sanhita 2023, s 226

<sup>11</sup> Bharatiya Nyaya Sanhita 2023, s 303 (2)

<sup>12</sup> Bharatiya Nyaya Sanhita 2023, s 355

<sup>13</sup> Bharatiya Nyaya Sanhita 2023, s 356 (2)

Numerous criminal justice systems around the world have already implemented community sentencing. By introducing community service as an alternative to incarceration, India will join the ranks of many developed countries such as the USA, Sweden, England, Canada, Spain, and Australia.<sup>14</sup> However, while the BNSS and the BNS provide provisions for implementing community sentencing, it does not specify the term for the punishment or any guidelines or parameters on how to implement it.

## THE NEED FOR COMMUNITY SENTENCING

In recent years, concerns over India's criminal justice system have intensified, consistent with a disturbing trend in the Rule of Law Index. As of 2023, India has seen a steady deterioration in its overall ranking, standing 79<sup>th</sup> out of 142 countries.<sup>15</sup> The country's position in the realm of criminal justice is a significant point of concern, as it ranks as low as 93<sup>rd</sup> out of 142 countries.<sup>16</sup> The state of prisons in India is alarming, with their atrocious conditions for living and significant human rights violations that occur there. One major problem that prisons in India are dealing with is overcrowding. As per Prison Statistics India 2022, the occupancy rate in jails increased to 131.4% in 2022.<sup>17</sup> The inmate population in jails grew 14%, from 4.8 lakhs in 2020 to 5.5 lakhs as of 31<sup>st</sup> December 2021, taking the national average prison overcrowding to 130%, from 119% in 2019.<sup>18</sup> 391 of 1314 prisons in India had an occupancy above 150%, classifying it as 'extreme' overcrowding. Only 22% of the prison population are convicts, while 77% are 'undertrials', i.e., people awaiting the completion of an investigation or trial.<sup>19</sup> The bulk of prisoners are 'undertrials' since little attempt is made to distinguish undertrials from convicts, despite the Supreme Court's decision requiring so.<sup>20</sup> Inmates belonging to the age group 18-50 account for 87.2% of the total number of prisoners<sup>21</sup>, indicating that a significant share of productive human

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<sup>14</sup> Nalini Sharma, 'In a first, community service proposed as punishment for petty offences in India' *India Today* (12 August 2023) <<https://www.indiatoday.in/law-today/story/community-service-punishment-petty-offences-india-ipc-bharatiya-nyaya-sanhita-amit-shah-2419928-2023-08-12>> accessed 06 January 2024

<sup>15</sup> World Justice Project, *World Justice Project Rule of Law Index* (2023)

<sup>16</sup> *Ibid*

<sup>17</sup> National Crime Records Bureau, *Prison Statistics India 2022* (2023)

<sup>18</sup> *Ibid*

<sup>19</sup> Tata Trusts, *India Justice Report 2022: Ranking States on Police, Judiciary, Prisons & Legal Aid*

<sup>20</sup> Human Rights Watch, *Prison Conditions in India* (1991)

<sup>21</sup> Bharatiya Nagarik Suraksha Sanhita 2023

resources lay behind bars while taxpayers continue to bear their economic burden.<sup>22</sup> Implementing community service as a punishment would significantly reduce the burden on Indian prisons, resulting in a decline in the occupancy rates in prisons.

The sanctioned annual budget for prisons has increased by 66.1% between 2017-18 and 2022-23, from Rs. 5.25 crores to Rs. 8.73.<sup>23</sup> The actual expenditure has increased by 63.7%, from Rs. 4.75 crores in 2017-18 to Rs. 7.78 in 2022-23.<sup>24</sup> According to Prison Statistics of India, 2022, the share of expenses on inmates in the total annual expenditure was 32.5%. Nevertheless, the condition of Indian prisons continues to be detrimental despite the significant amount of money spent. Prison inmates have inadequate access to doctors. The actual number of prison doctors fell precipitously between 2020 and 2021. The Model Prison Manual, 2016, requires one doctor for every 300 prisoners.<sup>25</sup> However, due to increased vacancies and a shortage of qualified doctors, there is only one doctor for every 842 inmates.<sup>26</sup> Indian prisons lack the infrastructure and facilities to maintain their overcrowded inmate population. The High Court stated in *Pappu Khan v State of Rajasthan*<sup>27</sup> that a welfare state cannot afford an extensive, unproductive prison population due to the financial strain it places on the government. Since community sentencing for minor and petty offences would reduce the number of convicts, it could substantially reduce prison expenditure on inmates.

The treatment of inmates in prisons, particularly of first-time offenders, is also of great concern. Incarceration can have a lasting impact on the inmate's physiological and psychological health, resulting from prison overcrowding<sup>28</sup>, suffering, isolation, deprivation and exposure to the inhumane living conditions of prisons. Many prisoners develop depression and PTSD, substance use disorder, emotional withdrawal and suicidal tendencies. A total of 1,995 prisoners

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<sup>22</sup> Mitali Agarwal, 'Beyond the prison bars: Contemplating Community Sentencing in India' (2019) 12 NUJS Law Review <<http://nujlawreview.org/wp-content/uploads/2019/10/12.1-Agarwal.pdf>> accessed 06 January 2024

<sup>23</sup> Bharatiya Nagarik Suraksha Sanhita 2023

<sup>24</sup> *Ibid*

<sup>25</sup> Ministry of Home Affairs, *Model Prison Manual 2016* (2016)

<sup>26</sup> Bharatiya Nyaya Sanhita 2023, s 209

<sup>27</sup> *Pappu Khan v State of Rajasthan* (2005) CriLJ 4732

<sup>28</sup> Wanda Lynn Bates, 'A Phenomenological Examination of Prisonization and the Psychological Effects of Incarceration' (D'Phil Theses, Walden University 2018)

died while in prison in 2022, of which 8% were unnatural deaths. Among unnatural deaths, suicide was the predominant cause, amounting to 119 deaths.<sup>29</sup> The exposure of offenders of petty or minor offences to hardened criminals can lead to a negative influence on them, resulting in damaged individuals ever after the completion of their sentences. It can impede their rehabilitation and reintegration into the society. It was observed that those convicted for petty offences might tend to commit crimes that are more serious after coming in contact with hardened criminals. Thus, rather than serving as a means of rehabilitation, incarceration promotes the growth of prison gangs and other illegal activity, which can be prevented by employing a different kind of punishment.<sup>30</sup>

Incarceration also has devastating effects on one's self-worth, resulting from the internalisation of prison culture and the societal stigma of serving time. The stigma persists even after the convicts complete their sentences, and society shuns them as outcasts. Reintegration into society following incarceration is a challenging process because of the severe material deprivation as well as the anxiety, isolation, stigma, and uneasiness associated with being around criminals after their release.<sup>31</sup>

Community service as a punishment holds offenders directly responsible for the damage caused by them. It also provides the community with human resources, which otherwise would have remained unproductive behind bars.<sup>32</sup> Given that a large percentage of inmates are from low-income backgrounds, community service can help the offender acquire a new set of skills that can aid them with employment and other opportunities. They can also cultivate a feeling of community belonging and a positive work attitude. The offender is not subjected to the harsh conditions of prison and is safeguarded from the poor treatment at the hands of other prisoners and the prison staff. Community sentencing is also effective in bringing about an improvement in the sense of self-worth among convicts.

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<sup>29</sup> Bharatiya Nagarik Suraksha Sanhita 2023

<sup>30</sup> Dagrass (n 2)

<sup>31</sup> Bruce Western et al., 'Stress and Hardship after Prison' (2015) 120(5) *American Journal of Sociology* <<https://doi.org/10.1086/681301>> accessed 06 January 2024

<sup>32</sup> Agarwal (n 22)

Community service has been to be working effectively in New Zealand. It has been used extensively in New Zealand, catalyzing developments in the implementation and supervision of these orders. The Sentencing Act of 2002 lays down comprehensive provisions regarding community-based sentencing. This includes the administration of such sentencing, guidelines, its implementation and regulation of work hours, supervision and the consequences of breaching the imposed sentences. The offenders gain so much from the community-based projects that they stay as volunteers even after the completion of their sentence.<sup>33</sup> Similarly, through court-ordered community service, offenders in Singapore have benefited by acquiring not only new skills but also fostering the development of moral principles as human beings.<sup>34</sup> Data from 2020 reveals that there was a 42% increase in inmates undergoing rehabilitation in the community, as compared to 2019, and completion rates of community-based sentences remain high, exceeding 90%.<sup>35</sup> This statistic underlines the effectiveness of community-based sentencing in Singapore, suggesting a willingness among offenders and their meaningful reintegration into society. In Oklahoma, USA, community sentencing cost was found to be lower than incarceration, with a declining annual cost per. In 2022, a total of 1,203 offenders were placed on community service, with the sentences boasting an impressive success rate of 80%.<sup>36</sup> Additionally, the recidivism rate following community sentencing has also been found to be relatively low.<sup>37</sup>

Concisely, court-ordered community service aims to instil habits of societal responsibility in addition to atonement. Community service as a form of punishment relieves the overall burden on the criminal justice system by enabling it to keep first-time offenders safe from interactions with hardened criminals and through the decongestion of overcrowded prisons. Additionally, it contributes towards the reduction of costs and has also been found effective in bringing about

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<sup>33</sup> Department of Corrections, *Government of New Zealand, 'Annual Report 2022/23 (2023)*

<sup>34</sup> Ministry of Social and Family Development, *Government of Singapore, Probation and Community Rehabilitation Service Annual Report 2020 (2021)*

<sup>35</sup> Singapore Prison Service, *Annual Report 2022 (2023)*

<sup>36</sup> Oklahoma Statistical Analysis Center, *Oklahoma Corrections Community Sentencing 2022 Annual Report (2023)*

<sup>37</sup> *Ibid*

a decline in recidivism, avoidance of re-entry crises and an improvement in the convict's overall sense of self-esteem.<sup>38</sup>

## PAST ATTEMPTS TO INCORPORATE COMMUNITY SENTENCING IN INDIA

Up until now, the only provision for court-order community service in India existed under Section 18 of the Juvenile Justice (Justice and Protection of Children) Act 2015 which provides the Juvenile Justice Board to charge child offenders to perform community service under the supervision of an institution, a specified person, or a group of persons identified by the board.<sup>39</sup> However, the 42<sup>nd</sup> Law Commission Report introduced the concept of labour in lieu of incarceration in India decades ago in the form of 'corrective labour'.<sup>40</sup> Then, the Indian Penal Code (Amendment) Bill, 1978, provided for community service in its Section 53. According to Clause 27 of this bill, any offender over the age of 18 may be ordered to perform community service without any remuneration if convicted for offences with imprisonment of fewer than three years. The bill also provided that the number of hours for which the person shall work be not under 40 hours or more than 1000 hours.<sup>41</sup> This bill was passed in the Rajya Sabha but was later lapsed due to a proclamation of emergency.

Although the Indian penal laws did not mention community sentencing, the judiciary actively participated in interpreting and implementing the concept of community service. They did this through the exercise of their discretionary powers under Section 482 of the Code of Criminal Procedure,<sup>42</sup> according to which the High Courts may make any orders necessary to secure the ends of justice. Despite the increasing attempts of the judiciary to promote community sentencing through this section, its discretionary nature leads to ambiguity, and specific legislation regarding this aspect is necessary for consistent application and transparency in order to be able to use community sentencing to its full benefit.

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<sup>38</sup> Agarwal (n 22)

<sup>39</sup> Juvenile Justice Act 2015, s 18(1)(c)

<sup>40</sup> Law Commission, *Indian Penal Code* (Law Com No 42, 1971)

<sup>41</sup> Law Commission, *Indian Penal Code* (Law Com No 156, 1977)

<sup>42</sup> Code of Criminal Procedure 1973, s 482



## POSSIBLE HURDLES WHILE INTRODUCING COMMUNITY SENTENCING IN INDIA

The process of implementing community sentencing is complicated, and certain potential challenges need to be thoroughly assessed and resolved for its appropriate functioning. The subsequent section elucidates some of the challenges pertaining to community sentencing:

**Recidivism:** The purpose of incarceration is to dissuade the offender from committing crimes in the future, as the criminal mindset does not change quickly and needs a significant blow to show deterrence. However, because community sentencing is more pleasant than imprisonment, without the fear of the harsh conditions of prison and payment of hefty fines, the element of deterrence may not be equally formidable. As a result, convicts performing community service may not fully realise the consequences of the crime they commit and may be less inclined to desist from crime following their sentence.<sup>43</sup>

Nonetheless, research indicates that community service is a better alternative to incarceration for petty offenders. The rate of recidivism in community service is found to have been lower than that in prisons.<sup>44</sup> In many judicial systems across the world, for example, New Zealand, Finland, and the USA, recidivism has been found to decline after the introduction of community service. In a 2019 study, it was found that recidivism rates in individuals receiving community sentences are typically lower in comparison to those released from prison.<sup>45</sup> Therefore, by establishing clear criteria for evaluating completion of community sentencing and proper supervision, recidivism rates can be reduced among convicts. Moreover, a decrease in recidivism rates will significantly contribute to the overall reduction of crime rates in the country.

**Public Perception:** The introduction of community sentencing in India may bring about mixed perceptions from the public. While some individuals may view community sentencing as a

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<sup>43</sup> Signe Hald Andersen, 'Serving Time or Serving the Community? Exploiting a Policy Reform to Assess the Causal Effects of Community Service on Income, Social Benefit Dependency and Recidivism' (2015) 31(4) *Journal of Quantitative Criminology* <<https://www.jstor.org/stable/44504778>> accessed 06 January 2024

<sup>44</sup> Agarwal (n 22)

<sup>45</sup> Denis Yukhnenko et al., 'Recidivism rates in individuals receiving community sentences: A systematic review' (2019) 14(9) *PLOS ONE* <<https://doi.org/10.1371/journal.pone.0222495>> accessed 06 January 2024

positive force toward rehabilitation, contrasting views contend that community service as a punitive measure is lenient. Moreover, there may be discomfort among the public with the idea of offenders working in public places. Views regarding community sentencing may be more positive in communities that participate or gain from well-executed community sentencing programs. Additionally, the effectiveness of court-order community service also influences public opinion. Engaging in public discussions, utilising media, having stringent supervision, and providing transparency regarding the outcome of community sentencing can contribute to fostering a positive public perception of community sentencing.

**Unmonitored Absence:** Even though community sentencing promotes rehabilitation and community reintegration, the unmonitored absence of offenders presents a significant challenge. While the new bills define and mention the offences for which community sentencing can be ordered, they do not provide any guidelines for its administration or consequences of non-performance. To mitigate unchecked absenteeism, it is essential to guarantee adequate supervisory mechanisms, as the absence of such oversight could lead to heightened absenteeism.

## CONCLUSION

Community sentencing is by far one of the best punitive measures fostering reformatory and rehabilitative justice. Although Indian Courts had previously utilised community sentencing, the codification of community service as a punishment in the Bharatiya Nyaya Sanhita is a progressive step of commitment towards reformatory justice. It offers the potential for reformation and improves the overall sense of self-worth of the offenders while providing society with valuable human resources that would have otherwise been left unused in the prisons. Since the BNS does not provide specific guidelines for its implementation, the success of community sentencing lies in careful implementation, mitigating issues like unchecked absenteeism and ensuring the reintegration of the offenders into the community. In this context, strong community support is also essential to transform the justice system into a truly rehabilitative one. Therefore, striking a balance between support and accountability can foster

the positive effects of court-ordered community sentencing, thereby building a more comprehensive and reformatory form of criminal justice.