



# INTEGRATION OF COMMUNITY SERVICE AS A METHOD OF SENTENCING IN THE BHARATIYA NYAYA SANHITA: A PATH TO RESTORATIVE JUSTICE

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## Abstract

*The concept of community service as a mode of punishment or legal sanction was introduced in the Bhartiya Nyaya Sanhita in 2023 (BNS). Though such a form of punishment is not new to the world, as various countries already have it in their criminal law, for India, it is a new addition to its existing five conventional forms of punishment. However, the essence behind such a form of punishment can be traced to the ancient concept of prayaschita. The shift from a retributive approach to a reformatory approach is remarkable through this new legislation. This article discusses the concept of community service as punishment at length. It starts by hinting at various aspects of community service, which are substantiated in the subsequent chapter. This article elaborately discusses the theoretical framework of community service punishment to provide a better view. It further delves deep into parallel Indigenous concepts and modern applications. With a detailed analysis of the historical evolution of punishment in India, focusing on community service, it tries to explain its significance.*

**Keywords:** Community service, reformatory, punishment, indigenous, prayaschita, and jurisdiction.

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## I Introduction

*“THE MODERN concept of punishment and penology has undergone a vital transformation, and the criminal is not now looked at as a grave menace to the society which should be got rid of but is a diseased person suffering from mental malady or psychological frustration due to subconscious reactions and is, therefore, to be cured and corrected rather than to be destroyed....”*<sup>1</sup>

This Supreme Court observation clearly indicates the restorative approach of the legal landscape of India, which has been reflected in the newly enacted Bhartiya Nyaya Sanhita, 2023 (BNS),<sup>2</sup> as it includes community service as a method of punishment.<sup>3</sup> Since ancient times, *prayaschita* has been considered one of the most sacred forms of punishment (rather self-punishment), in which an individual voluntarily undertakes specific actions to atone for their offense. Though not the same, the relics of present-day community service can be traced to the ancient concept. Community service is an activity performed by an individual or community of individuals for the welfare of society. When imposed as a form of punishment, it gains a lot more significance as it aims to develop and heighten moral consciousness and social awareness in the offender. Earlier, this form of punishment was given to children in conflict with the law and is expressly provided under the Juvenile Justice Act of 2015; a few states have also adopted it as a form of penal law reform initiative, such as Andhra Pradesh.<sup>4</sup> It has also been utilized as a bail condition by the Apex Court and the High Courts. Nevertheless, the

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<sup>1</sup> *Santa Singh v. State of Punjab*, AIR 1976 SC 2386.

<sup>2</sup> The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023).

<sup>3</sup> *Id.*

<sup>4</sup> Government of India, “Letter regarding Best Prison Practice” (Ministry of Home Affairs, 2010).

principle has been crystallized through different judicial pronouncements.

The Bhartiya Nyaya Sanhita (Indian Justice Code) emphasizes a reformative approach to justice. The earlier Indian Penal Code, 1860,<sup>5</sup> which was enacted during the British colonial era, was enacted with the colonial intent of suppressing the Indians, and the focus was more on punishing offenders rather than their rehabilitation. Hence, initially, the approach taken by the IPC was retributive; later, over time, it underwent several modifications in independent India. However, the colonial aspects were reflected in various provisions; hence, the centuries-old IPC was repealed, and the BNS was enacted. BNS reflects a modern and justice-oriented approach, which is reformative. The insertion of community service as a method of punishment aligns with the vision of a transformative and reform-focused legal system for a new India that emphasizes restoration and social reintegration over retribution. To understand the relevance and importance of this provision, it is pertinent to study its historical evolution and subsequent conceptual variations among various jurisdictions, but before that, a close analysis of its theoretical framework is crucial.

## **II Theoretical Framework of Community Service in the Bharatiya Nyaya Sanhita**

This chapter seeks to provide a theoretical perspective through decolonial theory and legal pluralism, which supports the argument that the modern reformative approach to awarding punishments or restorative justice in the form of community service in the new Bharatiya

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<sup>5</sup> The Indian Penal Code, 1860 (Act 45 of 1860).

Nyaya Sanhita, 2023<sup>6</sup> and state policy and judicial precedents is a gradual but definitive step to decolonize the British retributive and deterrent punishment systems as provided under the Indian Penal Code, 1860 and other colonial laws, and revert back to the Indigenous justice mechanisms grounded in restorative justice, especially towards reformatory measures like community service.

According to Fanon,<sup>7</sup> decolonization is the act of forgetting and reversing the damage brought about by colonization. He saw it as a process in which “the colonized liberate themselves politically and psychologically.”<sup>8</sup> Monchalin<sup>9</sup> saw it as an objective and a way to change colonial frameworks, discourses, and ideologies profoundly. The decolonizing theory addresses the historical harms caused by colonization. Decolonization also refers to the restoration of praxis, cultures, and ceremonies.<sup>10</sup> Michael Yellow Bird states,<sup>11</sup> “culture and ceremonies are considered medicines for indigenous people.”<sup>12</sup> Bird considers decolonization a “restoration of cultural practices, thinking, belief, and values.”<sup>13</sup> The concept of decolonization is found in several disciplines, including justice and governance, education, restorative justice, criminology, psychology, and research methods.<sup>14</sup>

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<sup>6</sup> *Supra* note 1.

<sup>7</sup> Frantz Fanon, *The Wretched of the Earth* (Grove Press, New York, 1963).

<sup>8</sup> Ben Etherington, “An Answer to the Question: What Is Decolonization? Frantz Fanon’s *The Wretched of the Earth* and Jean-Paul Sartre’s *Critique of Dialectical Reason*” 13 *Modern Intellectual History* 156 (2016).

<sup>9</sup> Lisa Monchalin, *The Colonial Problem: An Indigenous Perspective on Crime and Injustice in Canada* (University of Toronto Press, Canada, 2016).

<sup>10</sup> Muhammad Asadullah, “Decolonization and Restorative Justice: A Proposed Theoretical Framework” 3(1) *Decolonization of Criminology and Justice* 30 (2021).

<sup>11</sup> Michael Yellow Bird, *Decolonising the Mind: Healing through Neurodecolonization and mindfulness*, Seminar, Held on (Portland State University, Oregon and January 24, 2014), available at <<https://vimeo.com/86995336>> (last visited on March 27, 2025).

<sup>12</sup> *Ibid.*

<sup>13</sup> *Supra* note 12.

<sup>14</sup> *Supra* note 11 at 28.

Various examples of decolonization can be found in modern democratic India after independence, like the incorporation of Ayurveda and other Indian medical practices through the creation of the Ministry of AYUSH (Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homeopathy) in 2003,<sup>15</sup> the establishment of National Education Policy in 2020 that embraced highest standards of multidisciplinary teaching and research, and complete self-awareness and liberation, which was the prime focus of ancient Indian institutions such as Takshashila and Nalanda.<sup>16</sup> In the Indian legal landscape, the introduction of the “Bharatiya Nyaya Sanhita, 2023 (BNS),”<sup>17</sup> “Bharatiya Nagarik Suraksha Sanhita, 2023,”<sup>18</sup> “Bharatiya Sakshya Adhiniyam, 2023,”<sup>19</sup> overhauling the British colonial laws of the “Indian Penal Code, 1860 (IPC),”<sup>20</sup> Code of Criminal Procedure, 1973,”<sup>21</sup> and the “Indian Evidence Act, 1872,”<sup>22</sup> is a significant example of decolonization of legal system of India. The new penal law introduced several vital changes as part of its decolonization efforts, including the replacement of the offense of sedition with an “Act endangering sovereignty, unity and integrity of India”<sup>23</sup> and implementing community service as a method of sanction for some offenses, to be used across India.

India’s efforts of decolonizing itself from the conventional British retributive and deterrent punishment systems and adoption of an ancient Indigenous justice system grounded in restorative justice

<sup>15</sup> AYUSH Knowledge Portal, *available at*: [https://ayushedu.bisag-n.gov.in/AYUSH\\_EDU/ayushknowledge](https://ayushedu.bisag-n.gov.in/AYUSH_EDU/ayushknowledge) (last visited on March 10, 2025).

<sup>16</sup> Government of India, “National Education Policy” (Ministry of Human Resource Development, 2020).

<sup>17</sup> *Supra* note 2.

<sup>18</sup> The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023).

<sup>19</sup> The Bharatiya Sakshya Adhiniyam, 2023 (Act 47 of 2023).

<sup>20</sup> *Supra* note 6.

<sup>21</sup> The Code of Criminal Procedure, 1973 (Act 2 of 1974).

<sup>22</sup> The Indian Evidence Act, 1872 (Act 1 of 1872).

<sup>23</sup> *Supra* note 1, s. 152.

measures like the concept of *prayascitta* through its modern form of community service can be found in the new Bharatiya Nyaya Sanhita, 2023, in the Juvenile Justice Act, 2015<sup>24</sup>, in state government probation policies, and judicial precedents. The concept of *prayascitta* is mentioned in the ancient scripture, the Manusmriti, where it is said that men are absolved of their misdeeds through austerities or *tapas* or the performance of tasks.<sup>25</sup>

This also points towards applying the theoretical concept of legal pluralism in India, an idea that Roseveare<sup>26</sup> defines as the existence of multiple sources of law within a single geographical area. It also describes the idea that in any one geographical location or a nation-state, numerous legal systems or sets of rules can coexist.<sup>27</sup> In relation to community sentencing, the application of this concept is found by way of multiple legislations and policy and judicial measures that provide for community service as an alternative mode of punishment, re-incorporated into the Indian criminal justice system, thus decolonizing itself from the colonial methods of sentence of imprisonment and moving towards a modern take on the Indigenous communal responsibility concept of *prayascitta*.

The coexistence of multiple sources of law provides legitimization and recognition of alternative sentencing measures like community service. The concept of *prayascitta* emphasizes the restoration of justice rather than retribution. It also provides for integrating the offender's spiritual

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<sup>24</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), s. 18(1)(c).

<sup>25</sup> Robert Lingat, *The Classical Law of India* 85-86 (University of California Press, California, 1973).

<sup>26</sup> C. Roseveare, *Rule of Law and International Development* 87 (Department for International Development, London, 2013).

<sup>27</sup> Margaret Davies, "Legal Pluralism", in Peter Cane, Herbert M. Kritzer *et.al.* (eds.), *The Oxford Handbook of Empirical Legal Research* 805-827 (Oxford Academic, 2012).

and social rehabilitation. This Indigenous principle is reflected in the application of the modern punishment measure of community sentencing, whereby the performance of service is recognized as reformation, and the community, through its involvement, helps in their rehabilitation, thus ensuring a balance between punishment and restoration.

### **III Indigenous Concepts in Modern Application**

India has a rich history of several governance and justice systems from time immemorial. These systems have provided numerous ancient legal Indigenous concepts, and parallels can be found in the laws of modern India. Even though the contemporary idea of community service as a method of legal sanction was initiated by the Western reformatory philosophies and systems of justice, it is pertinent to note that the essence of community sentencing is not a new concept in India, as parallels can be found in the ancient indigenous concept of *prayascitta*. *Prayascitta* is an old indigenous concept that can be traced back to the Book XI of *Manusmriti*, where in the context of penances of *prayascittas*, it is said that men will be absolved from their misdeeds through austerities or *tapas*, which essentially means the performance of the task that is allotted to him as per the caste of the person.<sup>28</sup>

Since in ancient times, people served the community by performing the works assigned as per their caste, in the modern sense, the performance of the task allotted as per caste could be translated into the contemporary community sentencing, wherein also similarly, criminals are asked to serve as a penalty for some offenses by doing community service for some length of time. This concept is also reflected in the third

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<sup>28</sup> *Supra* note 26.

book of the *Yajnavalkya Smriti*, which is dedicated to penance or *prayaschitta*,<sup>29</sup> and in the *Parasarasmriti*, which was composed between the first and fifth centuries.<sup>30</sup>

The connection between the ancient concept of *prayaschitta* and modern community service shows a fascinating continuity of Indian jurisprudential thought, even though it is not intentional. While *prayaschitta* was initially made in a caste-based system, its underlying principle of rehabilitation through service to society resonates remarkably with the contemporary restorative justice approaches. Just as *prayaschitta* prescribed specific duties based on an individual's position in society, these modern restorative justice methods, like community sentencing, can also equip offenders with skills and opportunities to contribute meaningfully to their communities. This approach acknowledges that true justice involves not just punishment but also restoring the offender's place in society. The emphasis on austerities (*tapas*) as a means of atonement in *Manusmriti* suggests that even in ancient India, the punishment was not merely retributive but was seen as a path to reformation and reintegration into society.

It can thus be clearly understood that the ancient Indian indigenous justice system emphasized rehabilitation and reformation, which is also being reflected in the restorative justice practices being adopted by independent India, where the focus is more on the reconciliation between the offender and victim and the further reintegration of the offenders into the community, through several measures like the vocational training, open prison, and community service, which could be

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<sup>29</sup> *Supra* note at 98-99.

<sup>30</sup> *Id.* at 103-104.

seen as contemporary adaptations of these Indigenous principles.<sup>31</sup> This shows how the current community-based rehabilitation system in India is aligned with the ancient Indian Indigenous justice system, especially in the case of minor offenses.

#### **IV Historical Evolution and Transformation of Punishment Practices in India**

The decline of the relevance of the indigenous justice systems and punishment mechanisms was marked by the arrival of the Portuguese and, later, the English, who created the East Indian Company. This trading company gradually established English laws and punishment measures in India. The Court of Judicature, set up in 1672, condemned slavery as robbery and theft, and in the common cases of theft, there was a penalty of monetary fines. Regulation LIII of 1803 introduced specificity in terms of punishment and thereby discarded the concept of discretionary punishment under the *tazeer* of the Muslim criminal law. Other changes include the enhancement of the punishments for perjury and forgery and the prescription of exemplary punishments for dacoity.

With the introduction of the IPC in 1860,<sup>32</sup> a comprehensive criminal law applicable throughout India, drafted by the chairman of the 1<sup>st</sup> Law Commission of British India, the indigenous justice systems were largely displaced. The IPC aimed to standardize the criminal justice system in India by defining specific offenses and providing punishments for the

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<sup>31</sup> Contemporary Significance of Ancient Indian Penology, *available at*: [https://www.indianlegalwing.com/post/contemporary-significance-of-ancient-indian-penology#:~:text=For%20instance%2C%20penance%20\(Prayaschitta\)](https://www.indianlegalwing.com/post/contemporary-significance-of-ancient-indian-penology#:~:text=For%20instance%2C%20penance%20(Prayaschitta)) (last visited on March 10, 2025).

<sup>32</sup> *Supra* note 6.

same. It was primarily rooted in punitive measures<sup>33</sup> based on the retributive principle and aimed to punish the wrongdoers and compensate the victims. This led to the abandonment of the Indigenous criminal justice measures grounded in restorative justice, which focused more on giving punishments that were proportionate to the offense committed and acted as a punitive measure for subsequent crimes.<sup>34</sup>

After India's independence in 1947 and the coming into effect of the Indian Constitution in 1950, the Indian criminal justice system underwent significant transformations, gradually removing itself from the clutches of colonial justice systems. Over the years, India began adopting several alternatives to conventional custodial sentencing. These include open prisons, probation, parole, rehabilitation centers, and vocational training. However, community service applications as punishment methods were minimal. Before the introduction of the punishment of community service in BNS, the only legislation that provided for community sentencing was the Juvenile Justice (Care and Protection of Children) Act, 2015,<sup>35</sup> where, as per section 18(1)(c) of the Act,<sup>36</sup> if the Board thinks fit, it may order a juvenile offender to perform community service under supervision.<sup>37</sup> Apart from that, the Social Justice Department of the Kerala Government had attempted to introduce community service as an alternative to custodial sentencing as

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<sup>33</sup> Ravindra Kumar Sharma, "From Colonial to Contemporary: Analyzing the Shift from IPC 1860 to BNS 2023", 12 *International Journal of Creative Research Thoughts* 1 (2024).

<sup>34</sup> Anurag Mishra, Yash Raj *et. al.*, "Community Service: A Progressive Shift Introduced By Bharatiya Nyaya Sanhita" *LIVE LAW*, June 19, 2024, available at <<https://www.livelaw.in/lawschool/articles/community-service-bharatiya-nyaya-sanhita-indian-penal-code-juvenile-justice-act-national-crime-records-bureau-260813#:~:text=Community%20service%20as%20a%20punishment,service%20into%20their%20sentencing%20frameworks>> (last visited on Feb. 23, 2025).

<sup>35</sup> *Supra* note 28.

<sup>36</sup> *Supra* note 25.

<sup>37</sup> *Ibid.*

part of its probation policy. The Andhra Pradesh government also introduced the Community Service of Offenders Act, 2010, which provided for community service as punishment instead of a sentence of imprisonment to offenders in some cases.<sup>38</sup> In addition, there were several judicial precedents like *Babu Singh v. State of Uttar Pradesh*,<sup>39</sup> where Courts have occasionally directed the use of restorative methods like community service to vindicate offenders.<sup>40</sup>

Several legislative attempts were also made to incorporate community service as an effective mode of punishment. The Indian Penal Code (Amendment) Bill of 1978 proposed community service orders. As per the Bill, any offender not under eighteen years of age could be ordered to work for a certain number of hours without any remuneration and is subject to specific terms and conditions. The Bill gave community service as a sentence for crimes punishable by less than three years and working hours from forty to a thousand hours.<sup>41</sup> The Law Commission of India, in its reports 42nd and 156<sup>th</sup>, also supported community service for minor offenses, emphasizing its reformatory aspect and ability to decongest prisons.<sup>42</sup>

Academician Parmeshwar P. Srivastava captures this turn, advocating ethical, non-custodial options diminishing stigma and facilitating reintegration within India's changing penal environment.<sup>43</sup> Sociologist Rais Gul emphasizes the disconnect between rehabilitative ideals and

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<sup>38</sup> *Supra* note 3.

<sup>39</sup> AIR 1978 SC 527.

<sup>40</sup> *Ibid.*

<sup>41</sup> Mitali Agarwal, "Beyond The Prison Bars: Contemplating Community Sentencing In India" 12 *NUJS Law Review* 119-136 (2019).

<sup>42</sup> The Law Commission of India, "42<sup>nd</sup> Report on the Indian Penal Code" (June 1971). See also, The Law Commission of India, "156<sup>th</sup> Report on the Indian Penal Code" (August, 1997).

<sup>43</sup> Parmeshwar P. Srivastava, "Correctional Penology: A Study In Ethics" 22 *Journal of the Indian Law Institute* 377-398 (1980).

prison-punishing practices, calling for individualized rehabilitation, trained personnel, and international standards.<sup>44</sup> Gul calls for a move towards restorative sentencing, such as community service, consistent with the BNS's rehabilitative emphasis.

## **V Comparative Analysis of Community Service in Foreign Jurisdiction**

Community service as a sanction has its place in most jurisdictions, particularly in the Western legal landscape. The United States, the United Kingdom, and many European countries have successfully incorporated community service into their justice system.<sup>45</sup> It is considered an alternative form of sentencing and a restorative justice approach. An analysis of other jurisdictions would help in understanding various facets of it. These jurisdictions can be divided into three broad categories: the Common law system, the European model, and the Asian jurisdictions.

### **A. Community service as a method of legal sanction in common-law countries**

In a common law country like the United Kingdom, the Criminal Justice Act of 1972 introduced community sentences as punishment, mainly through Community Service Orders (CSO).<sup>46</sup> Through this order, community sentences were made a norm where the offense is not serious, and there is a chance that the offender's mindset can be changed. The idea of a community sentence is closely connected to the

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<sup>44</sup> Rais Gul, "Our Prisons Punitive or Rehabilitative? An Analysis of Theory and Practice" 15 *Policy Perspective* 67-83 (2018).

<sup>45</sup> *Supra* note 40.

<sup>46</sup> Shane Kilcommins, "The Introduction of Community Service Orders: Mapping its Conditions of Possibility" 53 *The Howard Journal of Crime and Justice* 487-510 (2014).

principles of probation. Both focus on rehabilitation and community integration while holding the offender accountable and, at the same time, helping them to reconnect with society. Both try to address the root cause of criminal behaviour.

Similarly, Australian law also provides CSOs as a way for offenders to repay the community for their offenses through unpaid community service.<sup>47</sup> The Community Corrections of Australia works closely with various organizations to provide community service work, which offers opportunities for the offender to contribute to society.

The Canadian Justice System also offers alternative sentencing. These orders compel the offenders to do certain things for the good of the community, that is, to pay for their offense.<sup>48</sup>

## **B. Community service as a method of legal sanction in the European model**

In the Netherlands, community service is a standard method of sanction known as the *Taakstaf* system. The Dutch Criminal Code,<sup>49</sup> under Article 22c, talks about community service. It empowers the judge to impose a community service order of up to 240 Hours based on Article 22c.<sup>50</sup> It also provides that if the community service is not completed, the judge

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<sup>47</sup> *Supra* note 46.

<sup>48</sup> Community Justice: Ontario's Approach to Rehabilitation, *available at*: <https://defendcharges.lawyer/EN/get-started/court-procedure/sentencing/community-service#:~:text=Community%20service%20orders%20are%20a,to%20compensate%20for%20their%20wrongdoing> (last visited on March 10, 2025).

<sup>49</sup> The Dutch Criminal Code, 1881, art. 22c.

<sup>50</sup> Noortje Lina, "The relationship between community service and alternative detention is no longer up to date", *SDU* March 2, 2017, *available at* < <https://www.sdu.nl/blog/de-verhouding-tussen-de-taakstraf-en-de-vervangende-hechtenis-is-niet-meer-van-deze-tijd.html> > (last visited on Feb. 28, 2025).

can order substitute detention for up to four months, as Article 22d of the Code mentions.

In Germany, community service is known as *Gemeinnützige Arbeit*; it is pertinent to note that it is not a punitive sanction but rather an obligation concerning non-incarceration sentences. It has been treated as an obligation and not a punishment because it would contravene the ban on forced labour outlined in Article 12 of the German Basic Law.<sup>51</sup> Therefore, legal experts are proposing a new kind of punishment that combines fines and community service, allowing offenders to pay or work off the amount in instalments.<sup>52</sup>

The Spanish Criminal Code introduced community service as a criminal sanction in Spain.<sup>53</sup> As per the law, it should not be demeaning to the convict or for financial gain, and should be granted to promote rehabilitation and social integration.

### **C. Community service as a method of legal sanctions in Asian countries**

Asian countries like Japan have gone a step ahead of European countries and established a proper administrative system with the help of community involvement. In Japan, Volunteer Probation Officers (VPOs) are appointed to assist the government in supervising and rehabilitating

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<sup>51</sup> Mariam Gelashvili, "Community Work As An Alternative To Imprisonment In The Modern Georgian Law (Evolution and Transformation)" 9 *Law & World* 195-205 (2023).

<sup>52</sup> *Id.*

<sup>53</sup> Ankita Roy, "Community Service Sentencing And Its Significance In The Indian Criminal Justice System" *LIVE LAW*, Feb. 6, 2024, available at <<https://www.live.law.in/articles/community-service-sentencing-and-its-significance-in-the-indian-criminal-justice-system> 248589#:~:text=The%20Spanish%20Criminal%20Code%20advances,sexual%20and%20other%20comparable%20things> (last visited on Feb. 23, 2025).

offenders as part-time government officials. These VPOs work with the probation offices, focusing on reintegration and community support. Japan has also established Offender Rehabilitation Support Centres, schemes for VPOs and their families, and local recidivism prevention plans.<sup>54</sup>

In Singapore, the competent authorities issue community service orders (CSO) to offenders to perform unpaid work under the supervision of an authorized officer.<sup>55</sup> The Singaporean law also requires the courts to call for a report to identify whether the offender is suitable for community service and whether it will help rehabilitation before the CSO.

## **VI Constitutional Framework and Community Service**

Community service punishment is grounded in justice, fairness, and equality principles and can be inferred from various constitutional provisions. Article 14 talks about the right to equality;<sup>56</sup> the punishments, including community service, must be applied fairly without discrimination. Article 21 talks about the right to life and personal liberty,<sup>57</sup> which includes the right to dignity; hence, punishments like community service must not be arbitrary or demeaning to an individual. It also aligns with the reformatory approach of the Constitution and its contribution to society. The traces of this form of punishment can also be found in Mahatma Gandhi's ideologies; according to Gandhi, if the crime is a malady, then the criminals are

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<sup>54</sup> Fumiko Akashi, "The role of volunteer probation officers in Japan - Recent challenges and responses" 54 *International Journal of Creative Research Thoughts* 121-132 (2018).

<sup>55</sup> SINGAPORE COURTS, *available at*: <https://www.judiciary.gov.sg/criminal/community-based-sentences> (last visited March 09, 2025).

<sup>56</sup> The Constitution of India, art. 14.

<sup>57</sup> *Supra* note, art. 21.

affected by it. Thus, it is the obligation of society and the state to implement mechanisms to rehabilitate the criminals.<sup>58</sup>

Apart from knowing the legislative intent, an analysis of judicial interpretation is also essential in understanding the present idea behind it. As society and law evolved, the retributive approach of the law changed to the reformatory approach. Hence, the law is implemented with a vision of transforming society. On the issue of punishment, no debate exists that community service constitutes reformatory punishment based on rehabilitation and social integration.

In the case of *Sanjeev Nanda*,<sup>59</sup> the importance of rehabilitation was emphasized, reducing the sentence to the duration of time already served in jail, along with an imposition of two years of community service. In the case of *Solemen S.K. v. State of West Bengal*,<sup>60</sup> the court directed the juvenile offender (child in conflict with law) to plant 100 trees within a year, thereby setting a precedent for subsequent matters to come up with sentences that combined rehabilitative measures alongside socially beneficial tasks.<sup>61</sup> In the subsequent judgment of *Sunita Gandharva v. State of M.P.*,<sup>62</sup> it was decided that the community service would soften an offender's ego and integrate them into society, fostering empathy and a sense of duty. It also held that as per section

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<sup>58</sup> Vishnupriya, "Community Service as a Punishment: India and Global Perspective Analysis" *Legal Service India E-Journal* Nov. 25, 2024 available at <<https://legalserviceindia.com/legal/article-18992-community-service-as-a-punishment-indian-and-global-perspective-analysis.html>> (last visited on Feb. 27, 2025).

<sup>59</sup> CrI. Appeal No. 807 DHC 2008.

<sup>60</sup> AIR 1965 CAL 312.

<sup>61</sup> Priya Sharma, "Assessing Community Service Implementation as Punishment in India: Is it Truly Punitive?" *NUALS Law Journal* (Dec. 7, 2024) available at <<https://nualslawjournal.com/2024/12/07/assessing-community-service-implementation-as-punishment-in-india-is-it-truly/>> (last visited on Feb. 28, 2025).

<sup>62</sup> M.Cr.C.No. 22615 (2020) MPHC.

437(3) of the Criminal Procedure Code,<sup>63</sup> the Court may pass “any other conditions in the interest of justice” upon the accused by imposing community service.<sup>64</sup> In several cases, both the Supreme Court and the High Courts have granted bail on account that the accused or the convicted individuals on the condition that they would perform community service. In the case of *Aparna Bhat v. State of Madhya Pradesh*,<sup>65</sup> the Apex Court went further into the issue of community service being imposed as a bail condition. The court emphasized the need for reasonable bail conditions and held that it should maintain dignity and fairness.

Generally, it was used as a punishment for children who conflicted with the law. The recent Pune Porsche accident case notably illustrates community service as a method of sentencing. In this case, a juvenile was implicated in a deadly crash, and the Apex court imposed community service as part of his sentence.<sup>66</sup> However, the inclusion in the BNS made it a part of the punishment along with other forms of punishment.

## VII Bhartiya Nyaya Sanhita, 2023: An Analysis

As mentioned earlier, the Bhartiya Nyaya Sanhita, 2023, introduces a new form of punishment known as ‘community service’, expanding the old five categories of penalties in the Indian Penal Code (IPC).<sup>67</sup> The IPC provided the death penalty, life imprisonment (rigorous and straightforward), forfeiture of property, and fines as punishments. The new legislation incorporated community services as an alternative punishment for certain offenses. The BNS categorically prescribes

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<sup>63</sup> *Supra* note 22, s. 437(3).

<sup>64</sup> *Ibid.*

<sup>65</sup> AIR 2021 SC 1492.

<sup>66</sup> *Supra* note 35.

<sup>67</sup> *Supra* note 2, s. 4.

community service as a mode of sentencing for six offenses;<sup>68</sup> these are “Section 202 (Public servant unlawfully engaging in trade),”<sup>69</sup> “Section 209 (Non-appearance in response to a proclamation under section 84 of Bharatiya Nagarik Suraksha Sanhita, 2023),”<sup>70</sup> “Section 226 (Attempt to commit suicide to compel or restrain exercise of lawful power),”<sup>71</sup> “Section 303(2) (in cases of theft where the value of the stolen property is less than five thousand rupees, and a person is convicted for the first time),”<sup>72</sup> “Section 355 (Misconduct in public by a drunken person),”<sup>73</sup> and “Section 356 (Defamation).”<sup>74</sup>

This progressive approach by the government aims to address minor offenses by ensuring that individuals who commit crimes contribute positively to society, offsetting the problems they have caused. It is important to note that community service is reserved for minor offenses that can be effectively addressed through this form of punishment.<sup>75</sup> Section 4(f) of the BNS defines community service as a form of sentencing. This legislative reform introduces an alternative to traditional punishments within the IPC. It seeks to address issues like prison overcrowding while promoting offender rehabilitation. Legislative intent is for the Indian criminal justice landscape to join the global commonplace in adopting reformation over vengeance. This approach acknowledges the potential positive aspects of human beings. It allows the offenders to make constructive contributions to society.

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<sup>68</sup> *Supra* note 3.

<sup>69</sup> *Supra* note 3, s. 202.

<sup>70</sup> *Supra* note 3, s. 209.

<sup>71</sup> *Supra* note 3, s. 226.

<sup>72</sup> *Supra* note 3, s. 303 (2).

<sup>73</sup> *Supra* note 3, s. 355.

<sup>74</sup> *Supra* note 3, s. 356.

<sup>75</sup> Akhil Kumar K.S., “The Bhartiya Nyaya (Second) Sanhita 2023: An Integrated Perspective – A Comprehensive Study and Analysis” 4 *Jus Corpus Law Journal* 365-366 (2024).

However, its success will rely on accurately defining and enforcing community service.<sup>76</sup> Implementation of community service might pose several challenges, including the lack of comprehensive guidelines and monitoring mechanisms, the broad scope of community service, and the extent of judicial discretion. Failure to address these challenges may result in improper use and inconsistency in implementing community service as a penalty.

### **VIII Future Prospects and Recommendations**

The incorporation of community service into the BNS is a reformative measure. It aims at establishing a system through which offenders can contribute positively to society, thus enhancing their rehabilitation and alleviating the prison system's burden.<sup>77</sup> It is pertinent to note that the present provision lacks clear guidelines and a framework, which leads to ambiguity and may reduce the effectiveness of this reformative approach. As Chapter IV of this article mentions, various countries have proper administrative systems and set rules to execute community service as a punishment. However, India lacks it, and in such a case, it will also be difficult for Courts to grant it as punishment. Since it has been a recent addition to BNS, the provision requires strengthening with administrative and policy backing; hence, the following are some recommendations –

1. There is a need for dedicated, comprehensive guidelines on how community service can be applied as a form of sentencing. The executive body of government should establish specific rules and regulations that define the scope of community service.

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<sup>76</sup> *Supra* note 44.

<sup>77</sup> *Supra* note 34.

Though the BNS categorically provides the offenses for which community service can be given, it does not clarify the types of tasks. This ambiguity could lead to inconsistent judicial decisions. Therefore, clear rules and regulations will ensure consistency and certainty in its applications.

2. Countries like the UK and the USA have set types of community services, such as 300 hours of work, including removing graffiti and clearing wasteland, undertaking rehabilitation activities, sticking to a curfew, etc.<sup>78</sup> These are also scheduled outside working hours. In contrast, India lacks a well-formulated system for community service. Hence, clear guidelines with the analysis of various jurisdictions and the adoption of modifications that are suitable to the Indian legal and social system could help achieve the goal of rehabilitating offenders.
3. Several countries also collaborate with non-governmental organizations to create an environment for offenders to serve in the community. For example, Japan has established Offender Rehabilitation Support Centres for rehabilitation, which is the intent behind community service.<sup>79</sup> The government may also introduce various schemes for offenders.

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<sup>78</sup> Community Sentences, *available at* <<https://www.sentencingcouncil.org.uk/sentencing-and-the-council/types-of-sentence/community-sentences/>> (last visited on March 10, 2025).

<sup>79</sup> Naveen Talawar, Revolutionising Justice: Emergence Of Community Service Punishment In The Indian Criminal Justice System, *available at*: <https://www.verdictum.in/columns/revolutionising-justice-emergence-of-community-service-punishment-in-the-indian-criminal-justice-system-1526844#:~:text=Community%20service%20stands%20as%20a,the%20opinion%20of%20Kenneth%20D>> (last visited on March 10, 2025).

4. In India, institutions like the NALSA (The National Legal Services Authority), established under the Legal Services Authorities Act of 1987,<sup>80</sup> along with SLSA (State Legal Services Authority) and DLSA (District Legal Services Authority), aim to provide easy access to justice. These institutions can also create opportunities for offenders to contribute to society. For example, they can organize mass community service events for offenders. However, implementation remains challenging unless there are clearly defined kinds of community services. Hence, utilizing such governmental agencies and widening their scope will be more feasible for the government than creating a new one.
5. It is also pertinent to note that this reformatory approach has only been taken against six offenses in the BNS. However, it could be extended to other less serious crimes punishable with a mere fine or less than three years of imprisonment. These may include minor property-related offenses, public nuisance, or other offenses where harm or intent is not serious. Some recommendations would be section 270 (public nuisance),<sup>81</sup> section 324 (Mischief),<sup>82</sup> and section 352 (Intentional insult with intent to provoke breach of peace).<sup>83</sup>

Therefore, for all these reasons and recommendations, collaboration among government agencies, NGOs, and the judiciary is essential to implement this reformatory approach effectively. Mere inclusion in the law won't fulfil the actual goal, which is the reintegration of offenders

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<sup>80</sup> The Legal Services Authorities Act, 1987, (Act 39 of 1987).

<sup>81</sup> *Supra* note 3, s. 270.

<sup>82</sup> *Supra* note 3, s. 324.

<sup>83</sup> *Supra* note 3, s. 352.

into society. It is also important to note that, while ostensibly beneficial, the models used abroad cannot be transplanted while seeking to implement community service as a sentencing measure in the Indian legal landscape.<sup>84</sup> However, it can be taken as a source to build a framework and can be modified as per the Indian legal system.

### IX Conclusion

The words of Dorothy Height remind us of the importance of community service: “Without community service, we would not have a strong quality of life. It is important to the person who serves as well as the recipient. It is how we grow and develop.”<sup>85</sup> The introduction of community service as a method of sentencing in the BNS is a significant departure in India’s criminal justice system, and both a turn back to Indigenous justice values and conformity with contemporary reformatory trends. This is evident from the dual theoretical lenses of decolonial theory and legal pluralism, where the incorporation of community service signifies a gradual withdrawal from a purely retributive colonial punishment system to a more restorative Indigenous justice mechanism.

The parallels between the modern concept of community service and the ancient indigenous concept of *prayascitta* demonstrate a remarkable continuity in Indian jurisprudential thought, albeit unintentional. While the contemporary Indian justice system draws inspiration from Western reformatory justice systems, its underlying rehabilitation and community reintegration principles echo the indigenous justice mechanisms

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<sup>84</sup> *Supra* note 35.

<sup>85</sup> Elizabeth Valenti, The Power of Volunteering, *available at*: <https://www.gcu.edu/blog/criminal-justice-government-and-public-administration/power-volunteering>.> (last visited on March 10, 2025).

prevalent in pre-colonial India. The convergence of the ancient Indigenous practices and the contemporary practices suggests that, irrespective of time and culture, effective justice systems often share solid common foundational principles.

However, achieving community service as a sentence entails overcoming many hurdles, owing to the unavailability of robust guiding principles and checking mechanisms. The experiences of other jurisdictions, particularly the structured approaches taken by the United Kingdom, Japan, and Singapore, give valuable insights for India in developing a robust framework best suited to India's social and legal context.

Looking ahead, the effectiveness of community service as a reformatory punishment will largely depend on the development of clear guidelines, the establishment of proper administrative systems, and collaboration among various stakeholders, including government agencies, NGOs, and the judiciary. Extending community service to other minor offenses beyond the six currently specified in the BNS requires due consideration. This would further expand the offenders' rehabilitation and community reintegration goals while addressing practical challenges like prison overcrowding. Ultimately, introducing community service is not just a reform in law but a fundamental transformation in philosophical thinking toward a more balanced and restorative approach to justice that harmoniously blends India's Indigenous legal heritage with contemporary reformatory principles.