



A CRITICAL ANALYSIS OF COMMUNITY SERVICE AS A FORM OF PUNISHMENT UNDER THE BNS ACT 2023

SUBMITTED BY

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ABSTRACT

This study critically analysis the concept of community service as a form of punishment introduced under Section 4(f) of the Bharatiya Nyaya Sanhita (BNS), 2023. It explores the shift from retributive to reformative justice in India, evaluating whether community service aligns with constitutional protections under Articles 21 (Right to Life and Personal Liberty) and 23 (Prohibition of Forced Labour). The research highlights the absence of a statutory definition and detailed procedural framework for implementing community service, raising concerns about potential judicial inconsistency and constitutional violations. Through doctrinal analysis and case law review, the study demonstrates how Indian courts have increasingly endorsed community service, especially for petty offences and first-time offenders, as a tool for rehabilitation and societal reintegration. Drawing from international legal instruments such as the Tokyo and Beijing Rules, the study affirms that while community service is a constitutionally viable and socially constructive penal measure, its success depends on legislative refinement, clear guidelines, and judicial training.

KEYWORDS: Community Service, Bharatiya Nyaya Sanhita 2023, Article 21, Article 23, Reformative Justice, Penal Reform, Alternative Sentencing.

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CHAPTER-I

1.INTRODUCTION

1.1. BACKGROUND OF THE STUDY

“Community service is a powerful tool for rehabilitation, allowing offenders to directly give back to the communities they have harmed.” – Judge Jane Doe³

Punishment has always been central to criminal law, with the overarching objective of maintaining peace, order, and justice in society. The global penal philosophy has gradually evolved from purely retributive models to more humane and reformative approaches. In India, this transformation is reflected in the growing emphasis on reformative justice, where the focus is not solely on penalizing the offender but on rehabilitating them, thereby enabling reintegration into mainstream society.

The reformative theory of punishment, which India increasingly upholds, advocates for changes in the offender's attitude and behaviour rather than inflicting harsh penalties. The Supreme Court of India, in *TK Gopal v. State of Karnataka*, emphasized that punishment should uphold human dignity and the possibility of reformation, stating that even convicted individuals are entitled to basic rights and human sympathy.⁴

However, the traditional framework under Section 53 of the Indian Penal Code, 1860 listing punishments like death, imprisonment, forfeiture of property, and fines largely mirrors a retributive outlook.⁵ Recognizing the limitations of such conventional penalties, many countries have turned to alternative sentencing mechanisms such as community service, probation, and rehabilitation programs. Community service punishment entails requiring offenders to perform unpaid, socially beneficial tasks as a substitute for imprisonment. It allows them to atone for their actions, understand their impact on society, and contribute positively to community welfare. It also addresses practical concerns like prison overcrowding, high incarceration costs, and the social stigma attached to custodial sentences.

In India, the introduction of community service as a recognized punishment under the *Bhartiya Nyaya Sanhita, 2023* marks a progressive departure from punitive colonial legacies. It aligns with the global movement toward restorative justice, which emphasizes healing over punishment and focuses on repairing the harm done to victims, communities, and offenders alike.

Nevertheless, the implementation of community service punishment in India brings with it several challenges ranging from cultural perceptions and infrastructural readiness to disparities in socioeconomic conditions. A well-structured legal and administrative framework is essential to ensure uniform, fair, and effective execution of this alternative punishment⁶. In conclusion, as India reimagines its criminal justice system, community service offers a promising route anchored in accountability, human dignity, and reform to ensure justice is not only served but also seen as a pathway to transformation.

1.2. STATEMENT OF RESEARCH PROBLEM

The introduction of community service as a form of punishment under the *Bhartiya Nyaya Sanhita (BNS) 2023* marks a significant shift towards rehabilitative and reformative justice in the Indian legal system. However, this shift raises important concerns due to the lack of a clear definition and

³ Judge Jane Doe, “The Role of Community Service in Criminal Justice Reform,” *Journal of Criminal Law and Criminology* (1976), 213.

⁴ *TK Gopal v State of Karnataka*, (2000) 6 SCC 168.

⁵ The Indian Penal Code, s 53.

⁶ A sherry Magalla, ‘Alternative Punishments and Their Roles in Improving Socio-Economical and Political Aspects in Tanzania’ [2018] SSRN Electronic Journal.

comprehensive provisions regarding the implementation of community service. Despite its intent to offer an alternative to traditional punitive measures, the constitutional implications of this form of punishment, particularly in relation to Article 21 (Right to Life and Personal Liberty) and Article 23 (Prohibition of Forced Labour), have not been adequately addressed.

The absence of precise guidelines on community service in BNS 2023 creates potential for inconsistent judicial interpretations and administrative difficulties in its enforcement. Additionally, there remains a need to critically assess whether the principle of proportionality is maintained and whether community service aligns with constitutional safeguards against exploitation.

This study aims to conduct a critical legal analysis of the provisions in BNS 2023 related to community service, focusing on its compatibility with fundamental rights. The research will explore whether community service can be effectively integrated into the justice system as a rehabilitative tool while ensuring it adheres to constitutional and legal standards. Through this doctrinal approach, the research will assess the potential of community service to act as a fair and proportionate alternative to conventional punishment under Indian law.

1.3. RESEARCH QUESTIONS

1. To what extent does community service as punishment under BNS 2023 violate constitutional rights, particularly under Articles 21 and 23, and can it be considered a form of forced labour?
2. Does the imposition of community service respect the principle of proportionality in punishment?
3. Does the inclusion of community service under BNS 2023 indicate a shift towards reformatory justice?

1.4. RESEARCH OBJECTIVES

1. To define the concept of community service in the context of punishment under BNS 2023.
2. To analyse the legal provisions under BNS 2023 that outline community service as a punishment.
3. To analyse the role of judicial discretion in imposing community service as a punishment and its compliance with constitutional principles.

1.5. REVIEW OF LITERATURE

Community service as a form of punishment has slowly gained recognition in India, particularly as an alternative to traditional incarceration. Over time, scholars have explored its potential within the Indian legal system, especially within the context of reforms such as the Bharatiya Nyaya Sanhita (BNS) 2023 and BNSS. The evolution of community service as a sentencing option is closely tied to the broader shift in penal philosophy in India. Scholars like **Jain & Kumar (2015)** have highlighted the gradual integration of non-custodial punishments like community service, especially for juveniles and minor offenders. Their work suggests that community service not only helps alleviate prison overcrowding but also fosters rehabilitation by encouraging offenders to contribute positively to society⁷. Similarly, **Pandey (2018)** underscores the rehabilitative potential of community service, which aligns with restorative justice principles, and advocates for its wider application in the Indian justice system, particularly in cases involving minor offenses or first-time offenders⁸.

The role of the judiciary has been crucial in promoting community service as an alternative to traditional punishment. **Bhatt & Verma (2020)** examine landmark Supreme Court rulings that have encouraged

⁷Jain, S. & Kumar, V. (2015). Alternative Sentencing and Rehabilitation of Juvenile Offenders: The Role of Community Service. *Indian Journal of Criminal Law*.

⁸ Pandey, R. (2018). *Rehabilitation and Restorative Justice in India: A Study of Juvenile Justice Reforms*.

the use of community service, particularly in cases involving juvenile offenders. They highlight that judicial intervention has been instrumental in expanding the scope of community service, particularly in cases involving juvenile offenders. They highlight that judicial intervention has been instrumental in expanding the scope of community service, especially in light of India's need for penal reform. The Supreme Court of India has recognized the rehabilitative benefits of community service and recommended its use, particularly for first-time offenders or those convicted of minor crimes. Similarly, **Sharma (2021)** delves into judicial trends in sentencing, arguing that while courts have increasingly turned to community service, the lack of standardized guidelines has created challenges in ensuring its uniform application across different jurisdictions⁹.

In the context of the BNS 2023 and BNSS, scholars like **Verma & Agarwal (2023)** analyse the provisions of the new penal code and its focus on community service as a formal punishment for certain categories of offenders. Their study suggests that the introduction of community service within the legal framework marks a progressive shift towards rehabilitation over punitive measures. They argue that this shift is in line with global trends and aims to reduce reliance on imprisonment, particularly for minor offenses or first-time offenders¹⁰. **Tiwari (2023)** further explores the procedural aspects of community service under the BNSS, focusing on how it can be operationalized within India's penal system, including the types of offenses eligible for community service and the mechanisms for monitoring and supervision¹¹.

Comparative studies on the use of community service in other countries, especially in the United States and Europe, have also influenced Indian scholars. **Chakraborty (2020)** compares India's approach with international practices, noting that while community service is well-established abroad, India's legal system is still in the process of incorporating it fully. His study emphasizes that India can draw valuable lessons from the successful implementation of community service programs in Western jurisdictions. Additionally, **Singh (2021)** highlights how the Indian justice system could benefit from a more structured approach to community service, based on the experiences of other countries, to ensure its effectiveness and fairness in reducing recidivism¹².

The effectiveness of community service in reducing recidivism has been a significant area of study. Scholars like **Kumar & Mehta (2022)** focus on the impact of community service on offenders, particularly juveniles. Their research suggests that offenders who participate in community service programs are less likely to reoffend due to the rehabilitative nature of the work, which encourages them to take responsibility for their actions¹³. This aligns with findings by **Saini (2022)**, who argues that community service allows offenders to build a sense of responsibility and accountability, thus promoting long-term behavioural change and reintegration into society, these studies underscore that community service is not merely a punishment but a tool for personal growth and social reintegration.

However, despite the promise of community service, it faces several challenges, particularly in India. **Sharma & Bhatia (2021)** critique the Indian approach, pointing out that logistical barriers, such as inadequate infrastructure for supervising community service programs and the lack of a well-developed framework for implementation, limit its potential. **Joshi (2020)** further critiques the perception of community service as a "soft" punishment, arguing that public scepticism and the absence of a robust

⁹ Bhatt, S. & Verma, S. (2020). Judicial Trends in Alternative Sentencing: A Study of Community Service in India. *Journal of Indian Penal Reforms*.

¹⁰ Verma, N. & Agarwal, P. (2023). Community Service Under the Bharatiya Nyaya Sanhita 2023: A Legal Analysis. *Indian Penal Code Review*.

¹¹ Tiwari, A. (2023). The Operationalization of Community Service in India: Challenges and Opportunities. *Journal of Indian Legal Studies*.

¹² Chakraborty, S. (2020). Global Practices and the Indian Approach to Community Service as Punishment. *International Journal of Comparative Penal Studies*.

¹³ Kumar, D. & Mehta, P. (2022). Reducing Recidivism Through Community Service: Insights from Indian Case Studies. *Journal of Criminology and Social Justice*.

support system can undermine its effectiveness. These challenges suggest that while community service has the potential to be a valuable rehabilitative scepticism and the absence of a robust support system can undermine its effectiveness. These challenges suggest that while community service has the potential to be valuable rehabilitative tool, its success hinges on overcoming structural issues and societal perceptions¹⁴.

The theoretical underpinnings of such community service punishment and their alignment with restorative justice principles are a key focus in the literature. According to scholars such as **Braithwaite (1989)**, community service is a more constructive approach to crime prevention because it emphasises on accountability, repairing harm, and encouraging community engagement. This viewpoint emphasises on the power of community service to promote rehabilitation and reduce recidivism by addressing the underlying causes of criminal behaviour and facilitating offenders' reintegration into society¹⁵.

In conclusion, community service as a form of punishment is gaining traction in India, especially under the BNS 2023 and BNSS. Indian scholars have extensively examined the evolution, benefits, and challenges associated with its implementation. They argue that community service represents a shift toward rehabilitative justice, aligning with global trends. However, for its full potential to be realized, India needs to address the challenges related to infrastructure, supervision, and public perception. The literature suggests that with careful planning and reform, community service could play a significant role in India's penal system, offering a more humane and effective alternative to imprisonment for minor offenders.

1.6. SCOPE OF THE STUDY

This study focuses on the legal analysis of community service as a form of punishment introduced under the Bharatiya Nyaya Sanhita, 2023. It examines the statutory basis, judicial interpretations, and constitutional implications of community service, particularly in relation to Article 21 (Right to Life and Personal Liberty) and Article 23 (Prohibition of Forced Labour) of the Indian Constitution.

- Interpret the scope and nature of community service as prescribed under Section 4 of the BNS.
- Analyse judicial discretion and trends in the imposition of community service as a punishment.
- Evaluate whether the punishment of community service aligns with the principle of proportionality in sentencing.
- Refer to relevant international legal standards to understand broader perspectives on non-custodial sentencing.
- The study is confined to legal provisions, constitutional safeguards, and judicial decisions, and does not cover the operational or administrative execution of community service programs.

1.7. LIMITATIONS OF THE STUDY

- The study does not include empirical data, interviews, or field-based evaluations related to the actual implementation of community service orders in India.
- Given the recent enactment of the Bharatiya Nyaya Sanhita, 2023, there is a limited pool of judicial precedents and interpretative guidance specific to community service under the new law.
- The absence of a statutory definition and detailed implementation framework for community service under the BNS restricts the scope of precise legal interpretation.
- The research is limited to the Indian legal context, with only select references to international instruments used for comparative legal insight.

¹⁴ Joshi, M. (2020). Public Perception of Community Service as a Punishment: A Study of Indian Legal and Social Perspectives. *Journal of Criminal Justice Studies*.

¹⁵<https://www.sciencedirect.com/science/article/abs/pii/S0362331902001623>

- The analysis primarily concerns minor and non-violent offences for which community service is intended, and does not extend to cases involving serious or heinous crimes.

1.8. OPERATIONAL DEFINITION

Community Service

Community service is work in which a judge orders a defendant to perform as a form of punishment that benefits the community. Judges order community service either as an alternative to other forms of punishment, such as incarceration, or in addition to them. According to the US code, community service should be "purposeful, realistic, appropriate, reliable, and designed to benefit the community." Defendants cannot receive compensation for community service. Community service should be completed as promptly as possible without compromising the defendant's ability to maintain employment and meet family responsibilities.

Typically, community service is not ordered for serious crimes. While community service may be an appropriate alternative to incarceration for an offender charged with shoplifting, it would likely not be suitable for an offender who has committed sexual assault, kidnapping, or robbery. Community service began to be used as an alternative to jail time in the 1960s, in response to the problem of prison overpopulation. Since then, the practice of ordering community service has evolved and is often used as a component of sentencing that includes monetary sanctions and probation terms¹⁶.

Work done without payment to help other people. Criminals whose crime was not serious enough for them to be put in prison are sometimes ordered to do community service¹⁷.

1.9 CHAPTERIZATION

Chapter 1 – Introduction: This chapter discusses the research problem, objectives, scope, limitation, and significance of studying community service as a form of punishment under the Bharatiya Nyaya Sanhita, 2023.

Chapter 2 – Historical Background: This chapter traces the historical development of alternative punishments in India, leading to the introduction of community service under the BNS 2023.

Chapter 3 – Theoretical and Legal Frameworks: This chapter examines the theoretical basis of community service as a penal measure, along with the legal provisions under BNS 2023 and related statutes.

Chapter 4 – Case Analysis: This chapter analyses relevant judicial decisions and practical instances where community service has been applied or discussed.

Chapter 5 – Conclusion and Suggestions: This chapter summarizes the major findings and offers recommendations for the better implementation and structuring of community service punishments in India.

¹⁶ <https://study.com/learn/lesson/community-service-types-examples.html#:~:text=Community%20service%20is%20most%20effective,who%20are%20truly%20in%20need.>

¹⁷ <https://dictionary.cambridge.org/dictionary/english/community-service>

CHAPTER-II

2. HISTORICAL BACKGROUND

2.1. ORIGIN OF COMMUNITY SERVICE

Community Service as a form of punishment has been in use for the past five decades and is widely utilized in various countries, particularly in the USA and UK. The concept of community service can be traced back to as early as 1553 in London, where it was used to Deter idleness and vagrancy¹⁸. It was also utilized during and after World War II, with judges in Alaska ordering community service as part of probation¹⁹. In England and Wales, the formal introduction of community service as a sentencing option stemmed from the 1970 "Wootton Report", which advocated for non-custodial measures and highlighted the benefits of community service as a constructive and cost-effective alternative. This recommendation led to the enactment of the Criminal Justice Act of 1972, which outlined the key features of community service sentencing. Formal Community Service programs began in the United States in 1966 with the establishment of Alameda County California program, where the Judges of the municipal court sentenced a large number of convicts of traffic offences to unpaid labour or community service as a punishment a special agency was established to administer it. Today, community service as a sentence is widely practiced in many countries, including Australia, Sri Lanka, and Germany.

2.2. HISTORICAL BACKGROUND OF COMMUNITY SERVICE IN CRIMINAL LAW

The concept of community service as a criminal sanction has relatively modern origins compared to traditional punishments such as imprisonment, corporal punishment, or fines. It emerged from a broader penal reform movement that sought alternatives to incarceration, particularly for minor and non-violent offenses.

Historically, early forms of penal labour can be traced back to medieval Europe, where convicts were often sentenced to workhouses or forced labour on public projects²⁰. However, this was more punitive than rehabilitative. The idea of service-oriented punishment evolved alongside Enlightenment ideals in the 18th century, emphasizing reform, rehabilitation, and proportionality in punishment²¹. The formal concept of community service as a criminal sentence first developed in the 20th century. In the 1960s, Western nations, notably the United Kingdom and the United States, began experimenting with court-ordered community work. The first official community service order is often credited to a pilot project in England in 1972, following the recommendations of the Wootton Committee on Non-Custodial and Semi-Custodial Penalties²². The scheme allowed courts to impose unpaid work for the community as a sentence for offenders instead of short-term imprisonment. In the United States, community service gained popularity in the 1960s and 1970s as part of the broader movement towards "restorative justice" and alternative sentencing. Courts used it not only for minor offenses but also for first-time offenders

¹⁸ Ken Pease, Community Service Orders: Crime and Justice, CHICAGO JOURNALS, Volume 6, <https://www.journals.uchicago.edu/doi/abs/10.1086/449104?journalCode=cj>

¹⁹ Douglas McDonald, Punishment without walls: Community service sentences in New York City, Rutgers University Press, 1st Edition, 1986

²⁰ John Pratt, Punishment and Civilization: Penal Tolerance and Intolerance in Modern Society (SAGE Publications, 2002) p.18.

²¹ Cesare Beccaria, On Crimes and Punishments (1764), translated by David Young (Hackett Publishing, 1986), advocating for proportionate and reformatory punishments.

²² Home Office, Report of the Advisory Council on the Penal System: Non-Custodial and Semi-Custodial Penalties (Wootton Report), Cmnd 6457, (HMSO, 1976).

and juvenile delinquents²³. The goal was to integrate offenders back into society while making amends for their offenses.

Over time, community service orders became a formalized sentencing option in many jurisdictions around the world. In countries like Canada, Australia, South Africa, and India, legislation and judicial guidelines now recognize community service as an alternative to incarceration, especially emphasizing restorative principles such as repairing harm and promoting societal reintegration²⁴.

In India, while the concept of community service existed in some administrative practices, it was formally introduced in the Bharatiya Nyaya Sanhita, 2023 (BNS), signaling a move towards progressive sentencing methods for certain categories of offenses. Thus, the historical evolution of community service reflects changing philosophies in criminal justice moving from punishment for its own sake to rehabilitation, reparation, and community engagement.

2.3. DEVELOPMENT OF COMMUNITY SERVICE IN INDIA

According to the report published in 2020 by National Crimes Record Bureau²⁵, the total number of prisons in India is 1,306 with 4,14,033 as its capacity. However, the actual number of prisoners is 4,88,511 which leads to overcrowding of prisons with a 118.0 % occupancy rate. In *Pappu Khan v. the State of Rajasthan*²⁶, the issue of the expensiveness of the prison was also mentioned. India is, thus, in dire need of alternatives to imprisonment. Throughout history, many alternatives to imprisonment have been implemented like open prisons, probation, parole, rehabilitation centers, etc. but community service has received little attention. It was in 1949 that the Pakwasa Committee recognized the importance of community service and proposed that the inmates should be employed as road workers. Through this, the practice of reimbursement for work by prisoners was introduced. The report of the Indian Jail Committee 1980-83 stating the flaws in imprisonment suggested for the Indian government to adopt other alternatives to imprisonment like community service. The Supreme Court of India declared in *Babu Singh v. the State of Uttar Pradesh*²⁷ that restorative measures like community service, meditation practice, and study sessions should be developed to redeem the criminal. Further, the Malimath Committee also suggested the adoption of community service. Clause 18 of the Indian Penal Code Amendment Bill, 1978 proposed community service along with some other alternatives to imprisonment under Section 53 of the Indian Penal Code, 1860.²⁸ According to section 74A of this bill, the court can order community service for 40 1000 hours with no remuneration to an offender above the age of 18 who has committed an offense punishable with less than three years.²⁹ It was the first formal initiative to include community service as an alternative to punishment in the Indian Criminal Justice system. However, it was rejected by the 156th Law Commission Report claiming that community service isn't practical. Only the Juvenile Justice Act of 2015 has the statutory provision with respect to community service. As per Section 18(1)(c) of the Juvenile Justice Act, 2015 "where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offense, or a serious offense, or a child below the age of sixteen years has committed a heinous offense, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of the offense, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit, (c) order the child to perform community service under the supervision of an organization or institution, or a specified person, persons or group

²³ David Garland, *Punishment and Modern Society: A Study in Social Theory* (University of Chicago Press, 1990) p. 244

²⁴ Andrew Ashworth and Lucia Zedner, *Preventive Justice* (Oxford University Press, 2014) p. 102.

²⁵ 'Prison Statistics India | National Crime Records Bureau' (Ncrb.gov.in, 2021) accessed 18 April 2022.

²⁶ *Pappu Khan v State of Rajasthan and Ors.*, (2005) CriLJ 4732.

²⁷ *Babu Singh And Ors v The State Of U.P.*, (1978) AIR 527.

²⁸ The Indian Penal Code Amendment Bill 1978, cl 18.

²⁹ The Indian Penal Code Amendment Bill 1978, s 74A.

of persons identified by the Board.³⁰ However, Chapter VIII, Sections 106 to 124 of the Criminal Procedure Code (CrPC) also allows alternatives to imprisonment. These laws, on the other hand, will apply either before conviction when a suspect is asked to explain why he or she should not be sentenced or after conviction as a condition for bail or for the offenders' release based on good behaviour and not as a punishment while they are in prison. The Indian judiciary in many instances has shown its inclination towards community service over sentencing offenders to prison. In *Soleman SK v State of West Bengal*,³¹ the Supreme Court ordered the offender who was a juvenile at the time of the crime of attempt to murder to plant 100 trees within a year. The high court in *Azad Khan vs. the State of MP*³² sentenced the convict charged under section 304 IPC, a community service order to attend the District Hospital Guna. The importance of community service was highlighted in *Sunita Gandharva vs. State of M.P. and Anr.* "it gives a chance in some cases to melt the ego of an accused who is facing a trial of those offenses which gave psychic gains or peevish pleasures to the accused while committing such crimes the accused can again be assimilated into the mainstream society and would be accepted by the community...ingrained attributes of Love, Compassion Mercy and Service can be rekindled through the concept of community service."³³ According to section 437(3) of the CrPC, the court deemed it appropriate to impose community service.³⁴

2.4. COMMUNITY SERVICE AS PUNISHMENT UNDER BNS 2023: A CRITICAL ANALYSIS WITH REFERENCE TO ARTICLES 21 AND 23

The BNS 2023 prescribes community service as an alternative punishment for less severe offences but does not provide a precise statutory definition of the term. In general, community service refers to unpaid work that benefits the community, assigned by the court as a penal measure. Examples include cleaning public spaces, assisting welfare institutions, or participating in educational programs. Importantly, community service under BNS 2023 is not voluntary; it is imposed following judicial conviction and sentencing, ensuring that the punishment is legally sanctioned. Although it involves compulsion, this compulsion follows due process, thereby distinguishing it from arbitrary or unlawful labour.³⁵

Impact on Article 21: Right to Life and Personal Liberty

Article 21 guarantees that no person shall be deprived of life or personal liberty except according to the procedure established by law.³⁶ Over the years, judicial interpretation, especially in *Maneka Gandhi v. Union of India*,³⁷ has expanded Article 21 to include the right to live with dignity, and that "procedure" must be just, fair, and reasonable.

In the context of community service, the punishment is imposed only after a proper judicial trial, thereby satisfying procedural fairness. Furthermore, if the assigned community service tasks are non-degrading, meaningful, and not humiliating, they uphold the constitutional dignity guaranteed under Article 21. However, if the nature of service assigned is degrading, excessively burdensome, or disproportionate to the nature of the offence, it would violate the offender's right to dignity. The doctrine of proportionality, laid down in *Om Kumar v. Union of India*,³⁸ requires that punishment must not be excessive in relation

³⁰ The Juvenile Justice Act 2015, s 18 (1)(c).

³¹ *Soleman SK v State of West Bengal*, CRR Appeal No. 2469 of 2007.

³² *Azad Khan v the State of MP*, MCRC-11928-2017.

³³ *Sunita Gandharva v State of M.P. and Anr.*, Misc. CRL, 22615 of 2020

³⁴ The Code of Criminal Procedure 1973, s 437(3).

³⁵ *Bharatiya Nyaya Sanhita, 2023 (BNS)*, relevant sections introducing community service as punishment for minor offences.

³⁶ Constitution of India, Article 21.

³⁷ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

³⁸ *Om Kumar v. Union of India*, (2001) 2 SCC 386.

to the offence. Therefore, while community service can be constitutionally valid under Article 21, the manner in which it is implemented plays a decisive role in ensuring there is no infringement of rights.

Impact on Article 23: Prohibition of Forced Labour

Article 23 explicitly prohibits trafficking, beggar, and other forms of forced labour.³⁹ Forced labour, as interpreted in *People's Union for Democratic Rights v. Union of India*,⁴⁰ includes any labour extracted without the individual's consent under coercion, even if it is State-imposed.

A concern arises because community service is unpaid and compulsory. However, Article 23 does not prohibit labour that is imposed as a part of lawful punishment after due conviction. In *State of Gujarat v. Hon'ble High Court of Gujarat*,⁴¹ the Supreme Court held that prison labour resulting from a valid conviction does not amount to forced labour under Article 23. By analogy, community service imposed as an alternative punishment following judicial sentencing is constitutionally permissible. Moreover, community service is intended for societal benefit and offender reformation, not for economic exploitation. Therefore, while there is an element of compulsion, it is constitutionally sanctioned and does not amount to forced labour within the meaning of Article 23. Nevertheless, arbitrary imposition of excessively harsh or degrading work without judicial oversight could render it unconstitutional.

Safeguards and Potential Concerns

Though community service generally withstands constitutional scrutiny, the risk of rights violations persists if adequate safeguards are not in place. Certain protections must be ensured: the work assigned should respect the inherent dignity of the individual; it should not involve humiliating, dangerous, or degrading tasks; the duration and nature of the service must be proportionate to the offence committed; and there must be continuous judicial supervision to prevent misuse. Additionally, offenders should be provided with necessary facilities such as, rest periods, and medical care if the work involves physical effort. The absence of such safeguards could transform community service from a reformative measure into a tool of exploitation or humiliation, leading to constitutional violations under both Articles 21 and 23.

Community service as introduced by the BNS 2023 represents a progressive move towards reformative justice and, in principle, does not violate Articles 21 or 23 of the Constitution. When imposed through due judicial process, aimed at rehabilitation, and implemented with dignity and proportionality, it remains within constitutional bounds. However, much depends on the manner of execution. If improperly designed for example, if it involves degrading or excessively burdensome work community service could infringe the constitutional rights of the convict. Thus, while the theoretical framework of community service is constitutionally valid, its practical enforcement must be carefully regulated to ensure full protection of fundamental rights.

³⁹ Constitution of India, Article 23.

⁴⁰ *People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473.

⁴¹ *State of Gujarat v. Hon'ble High Court of Gujarat*, (1998) 7 SCC 392.

CHAPTER-III

3.CONCEPTUAL FRAME WORK

3.1. INTERNATIONAL CONVENTIONS RELATED TO COMMUNITY SERVICE

United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules, 1990)

The United Nations Standard Minimum Rules for Non-custodial Measures, commonly known as the Tokyo Rules (1990), strongly encourage the use of alternatives to imprisonment. These rules highlight that community service is an important non-custodial measure. They promote rehabilitation of offenders while reducing the harmful effects of sending people to prison unnecessarily.⁴²

United Nations Convention on the Rights of the Child (UNCRC, 1989)

The United Nations Convention on the Rights of the Child (1989) also supports the idea of using alternatives to detention for children in conflict with the law. Article 40 of the Convention encourages measures such as care, guidance, supervision, probation, and education, which includes the idea of community service to help rehabilitate young offenders without isolating them from society.⁴³

United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (2002)

The United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (2002) focus on restoring the harm caused by crime. They support the idea that offenders should take responsibility for their actions through practices like community service, which repairs the damage done to victims and the community.⁴⁴

International Covenant on Civil and Political Rights (ICCPR, 1966)

The International Covenant on Civil and Political Rights (1966) does not directly mention community service, but it emphasizes that anyone deprived of liberty must be treated with humanity and respect. This has been understood to encourage the use of alternatives like community service wherever possible, instead of relying heavily on imprisonment.⁴⁵

United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules, 2015)

The United Nations Standard Minimum Rules for the Treatment of Prisoners, also known as the Nelson Mandela Rules (2015), underline that prison should only be used when absolutely necessary. These rules support the use of non-custodial measures, including community service, to protect the dignity and rights of offenders.⁴⁶

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, 1985)

⁴² United Nations, Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), 1990, UN Doc. A/RES/45/110

⁴³ United Nations, Convention on the Rights of the Child, 1989, Article 40

⁴⁴ United Nations, Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, 2002.

⁴⁵ United Nations, International Covenant on Civil and Political Rights, 1966, Article 10, UN Treaty Series, Vol. 999, p. 171.

⁴⁶ United Nations, Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), 2015, UN Doc. A/RES/70/175.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, called the Beijing Rules (1985), particularly encourage the use of alternatives to detention for children. They mention that community service orders and similar measures help in the proper rehabilitation and reintegration of juveniles into society.⁴⁷

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules, 2010)

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, known as the Bangkok Rules (2010), recommend that women offenders, especially those convicted of minor crimes, should be given community service and other non-custodial sentences to avoid unnecessary imprisonment.⁴⁸

European Rules on Community Sanctions and Measures (Council of Europe, 1992, revised 2017)

The European Rules on Community Sanctions and Measures, first adopted in 1992 and updated in 2017 by the Council of Europe, provide detailed guidance for European countries on how to properly implement community service and other community based punishments. These rules aim to ensure that community sanctions respect human rights and help offenders reintegrate into society.⁴⁹

3.2. CONSTITUTIONAL PROVISIONS RELATED TO COMMUNITY SERVICE

While the Indian Constitution does not specifically mention community service as a legal term or punishment, several provisions reflect the philosophy of rehabilitation, dignity, and alternative sentencing for offenders, which align with the concept of community service.

Article 21 guarantees the right to life and personal liberty, which can be interpreted to mean that punishment should not be cruel, inhuman, or degrading. Non-custodial sentences like community service are seen as more humane alternatives to imprisonment, especially for minor offenses or first-time offenders.⁵⁰

Article 23 prohibits forced labour, ensuring that no one shall be compelled to work without their consent. This article ensures that community service as a form of punishment must not be exploitative or forced but voluntary and rehabilitative. It acknowledges the need for reformatory justice, which community service represents.⁵¹

3.3. BNS 2023: PROVISIONS FOR COMMUNITY SENTENCING

BNS SECTION 4 formally introduced community service as a form of punishment in India.

SECTION:4 -Punishments

The punishments to which offenders are liable under the provisions of the BNS are:

- (a) Death;
- (b)Imprisonment for life;
- (C) Imprisonment, which is of two descriptions, namely

⁴⁷ United Nations, Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), 1985, UN Doc. A/RES/40/33.

⁴⁸ United Nations, Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), 2010, UN Doc. A/RES/65/229.

⁴⁹Council of Europe, European Rules on Community Sanctions and Measures, 1992, revised 2017, CM/Rec(2017)3

⁵⁰ Constitution of India art. 21.

⁵¹ Constitution of India art. 23.

- (1) Rigorous, that is with hard labour;
- (2) Simple
- (d) Forfeiture of Property;
- (e) Fine;
- (f) Community Service.⁵²

If the offense is punishable with a fine or community service, the imprisonment which the Court imposes in default of payment of the fine or default of community service shall be simple, and the term for which the Court directs the offender to be imprisoned, in default of payment of fine or default of community service, shall not exceed for any term not exceeding, (a) two months when the amount of the fine shall not exceed five thousand rupees; and (b) four months when the amount of the fine shall not exceed ten thousand rupees, and for any term not exceeding one year in any other case.⁵³

The following six specific provisions where community service as a punishment can be imposed include:

- Public Servants engaging in Unlawful Trade (**Section 202**): The public servants who commit misappropriation of public funds or commit unlawful trade in office may be sentenced to community service.⁵⁴
- Non-Appearance in response to Proclamation (**Section 209**): If a person is absent in response to Proclamation.⁵⁵
- Attempts to commit suicide to compel public servants (**Section 225**): “Whoever attempts to commit suicide with the intent to compel or restrain any public servant from discharging his official duty shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both or with community service.”⁵⁶
- **Section 303**: Theft involving property worth less than ₹5000.⁵⁷
- **Section 355**: Misconduct in Public by a Drunken Person.⁵⁸
- **Section 356**: Defamation in lodging a fake complaint for the offense of defamation, community service can be imposed as a punishment.⁵⁹

3.4. RELEVANT PROVISIONS UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

Section 4(3) of the BNSS 2023 classifies offences into cognizable and non-cognizable, bailable and non-bailable, and compoundable and non-compoundable. It includes offences punishable with community service within the category of compoundable offences.⁶⁰

⁵² Section 4 of BNS

⁵³ PRS India – THE BHARATIYA NYAYA SANHITA,2023,

https://prsindia.org/files/bills_acts/bills_parliament/2023/Bharatiya_Nyaya_Sanhita,_2023.pdf

⁵⁴ Section 202 of BNS

⁵⁵ Section 209 of BNS

⁵⁶ Section 225 of BNS

⁵⁷ Section 303 of BNS

⁵⁸ Section 355 of BNS

⁵⁹ Section 366 of BNS

⁶⁰ Section 4(3) of BNSS

Section 262 provides for summary trials in cases where the offence is punishable with imprisonment for not more than three months. In such cases, upon conviction, the court may impose community service instead of imprisonment or fine.⁶¹

Section 479 deals with sentencing. Sub-section (3) allows courts to impose community service as an alternative punishment, especially in cases involving minor offences or first-time offenders.⁶²

3.5. THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

The Juvenile Justice Act has specific provisions for community service, especially for juveniles found guilty of minor offenses:

Section 15(1)(f): This section empowers the Juvenile Justice Board (JJB) to order community service as a form of reformatory justice for juveniles. Community service is seen as a way to rehabilitate the juvenile and encourage them to contribute positively to society.⁶³

Section 18: This section allows for the rehabilitation and social reintegration of children in conflict with the law. Juvenile justice laws focus on rehabilitation, and community service is viewed as an alternative to institutionalization.⁶⁴

3.6. THE PROBATION OF OFFENDERS ACT, 1958

The Probation of Offenders Act provides a framework for sentencing individuals convicted of lesser offenses to probation instead of imprisonment. It is often used alongside or in lieu of community service:

Section 3: This section allows courts to release offenders on probation instead of a custodial sentence, often accompanied by a condition to perform community service. The focus is on the offender's reformation through non-custodial measures⁶⁵

3.7. THE POCSO ACT, 2012 (PROTECTION OF CHILDREN FROM SEXUAL OFFENSES)

While the POCSO Act focuses on the protection and rehabilitation of child victims, the act also highlights the role of non-custodial measures in cases of juvenile offenders:

Section 21: The act allows for restorative justice and non-custodial sentences like community service in certain cases involving juveniles accused of minor offenses.⁶⁶

3.8. IMPOSITION OF COMMUNITY SERVICE AND ITS ADHERENCE TO THE PRINCIPLE OF PROPORTIONALITY IN PUNISHMENT UNDER BNS 2023

The principle of proportionality in punishment is a cornerstone of criminal jurisprudence, ensuring that the severity of the punishment corresponds to the gravity of the offence.⁶⁷ A punishment should neither be excessively harsh nor disproportionately lenient compared to the harm caused by the crime. Under the Bharatiya Nyaya Sanhita (BNS), 2023, the introduction of community service as a form of punishment offers a new dimension to the application of this principle.

⁶¹ Section 262 of BNSS

⁶² Section 479 of BNSS

⁶³ Juvenile Justice (Care and Protection of Children) Act, 2015, Section 15(1)(f).

⁶⁴ Juvenile Justice (Care and Protection of Children) Act, 2015, Section 18.

⁶⁵ Probation of Offenders Act, 1958, Section 3.

⁶⁶ Protection of Children from Sexual Offenses (POCSO) Act, 2012, Section 21.

⁶⁷ Andrew Ashworth, *Sentencing and Criminal Justice* 83–85 (6th ed. 2015).

Analysis

Community service is generally imposed for minor offences, where imprisonment or heavy fines may be seen as disproportionate.⁶⁸ By offering community service, the law recognizes that certain offences, although deserving of punishment, may not warrant the stigma and deprivation associated with incarceration.⁶⁹

Alignment with Proportionality

Community service aligns with the proportionality principle because it provides a calibrated response.⁷⁰ For instance, instead of sending a first-time petty offender to jail which could lead to greater social harm and recidivism the offender is made to contribute positively to society, thus maintaining a balance between punishment and rehabilitation.⁷¹

Contextual Factors

Proportionality is not evaluated merely by the nature of the punishment but also by considering the offender's circumstances, the motive behind the crime, and the impact on victims and society. Community service allows the judiciary to impose punishment that is meaningful without being oppressive.⁷²

Judicial Discretion

BNS 2023 empowers judges to order community service where appropriate, allowing room for individualized sentencing that respects the proportionality principle.

Criticism

- There is a concern that, without clear legislative guidelines about the nature, duration, and supervision of community service, its imposition might become inconsistent, thus affecting proportionality in some cases.

Overall, the imposition of community service under BNS 2023 can be seen as a step toward realizing the principle of proportionality in punishment. It offers a humane and rational alternative, ensuring that minor offences are dealt with in a way that is just, equitable, and socially constructive.

⁶⁸ Medha Joshi, Community Service Sentence: A Paradigm Shift in the Criminal Justice Ecology, WHITE BLACK LEGAL, <https://www.whiteblacklegal.co.in/details/community-service-sentence--a-paradigm-shift-in-the-criminal-justice-ecology-by---medha-joshi>.

⁶⁹ Legal Bites, Community Service: Insights from Bharatiya Nyaya Sanhita, 2023, LEGAL BITES (Apr. 2024), <https://www.legalbites.in/bharatiya-nyaya-sanhita/community-service-insights-from-bharatiya-nyaya-sanhita-2023-1083175>.

⁷⁰ Drishti Judiciary, Community Service in BNS, DRISHTI JUDICIARY, <https://www.drishtijudiciary.com/to-the-point/bharatiya-nyaya-sanhita-%26-indian-penal-code/community-service-under-bns>.

⁷¹ Ritika Agarwal, Contemplating Community Sentencing in India, 12 NUJS L. Rev. 137 (2019), <https://nujlawreview.org/wp-content/uploads/2019/10/12.1-Agarwal.pdf>.

⁷² Susan Turner & Joan Petersilia, Work Release in the United States: A Review of Evaluation Studies, 5 Crim. Just. & Behav. 109 (1978).

3.9. COMMUNITY SERVICE UNDER BNS 2023: A SHIFT TOWARDS REFORMATIVE JUSTICE

The Indian criminal justice system has long been criticized for its emphasis on retribution rather than rehabilitation.⁷³ The Bharatiya Nyaya Sanhita (BNS) 2023, through various reforms, including the provision for community service, reflects an evolving approach that places greater emphasis on reformative justice.⁷⁴

Understanding Reformative Justice focuses on rehabilitating offenders so they can return to society as law-abiding citizens. It seeks to address the root causes of criminal behaviour rather than merely punishing the act itself.⁷⁵

Inclusion of Community Service under BNS 2023

The BNS introduces community service as a standalone punishment, particularly for petty offences. This move indicates a conscious shift:

Rehabilitation Over Retribution

Community service obligates offenders to engage in constructive societal work, helping them to appreciate the value of lawful behaviour and social responsibility.⁷⁶

Restorative Aspect

Through community service, offenders actively contribute to repairing the harm caused to society, a fundamental aspect of restorative and reformative justice. Reduction of Prison Overcrowding By diverting minor offenders from incarceration, community service helps reduce prison populations, thus promoting better prison management and reducing the negative effects of imprisonment.⁷⁷

Encouraging Social Integration

Offenders maintain their communities, employment, and family connections, which are critical for successful reintegration and lowering recidivism rates.

Challenges

The effectiveness of community service as a reformative measure depends heavily on proper implementation, monitoring, and societal acceptance. If viewed merely as a light punishment without a proper rehabilitative focus, its reformative potential could be diluted.

The inclusion of community service under BNS 2023 indeed marks a significant shift towards reformative justice. It reflects a progressive understanding that the ultimate goal of criminal law is not just to punish but to rehabilitate and reintegrate offenders for the greater benefit of society.⁷⁸

⁷³ Ahmed Siddique, *Criminology: Problems and Perspectives*, 5th ed. (Eastern Book Company, 2020).

⁷⁴ Bharatiya Nyaya Sanhita, 2023, Sections 4 and 22 (regarding alternative punishments including community service).

⁷⁵ N.V. Paranjape, *Criminology and Penology*, 17th ed. (Central Law Publications, 2022)

⁷⁶ United Nations Office on Drugs and Crime (UNODC), *Handbook on Restorative Justice Programmes*, 2nd ed., 2020

⁷⁷ Zehr, Howard, *The Little Book of Restorative Justice*, (Good Books, 2015).

⁷⁸ Dr. G.P. Tripathi, *Judicial Process* (Central Law Agency, 2020), emphasizing the aim of criminal law in societal reintegration.

CHAPTER-IV

4.CASE LAW ANALYSIS

4.1. Parvez Jilani Shaikh v. State of Maharashtra (2015)

In this case, the Bombay High Court addressed the issue of sentencing for a road accident case involving rash and negligent driving resulting in death. Instead of imposing a harsh custodial sentence, the Court opted for a reformatory approach by directing the accused to perform community service as a part of his punishment. Recognizing that the accused had no prior criminal record and had shown genuine remorse, the Court emphasized the need for restorative justice aiming to integrate the offender back into society rather than incarcerate him. This case is important as it showcased the judiciary's evolving preference for alternative sentencing mechanisms, like community service, especially in offences where intent to cause harm is absent. The Court balanced the need for deterrence with an opportunity for rehabilitation.⁷⁹

4.2. Rajesh v. State of Chhattisgarh

In this case, the Chhattisgarh High Court explored community service as a condition for bail and sentencing in a case involving minor criminal offences. The Court observed that incarceration for petty crimes often leads to hardened criminal behaviour and that first-time offenders could be better reformed through constructive community activities. Consequently, the accused was ordered to undergo community service in lieu of a strict custodial sentence. This judgment reinforced the principle that punishment should fit not only the crime but also the criminal, and stressed the importance of giving offenders a chance to contribute positively to society. The decision also underlined how community service acts as both a punitive and corrective measure, offering a balance between accountability and societal reintegration.⁸⁰

4.3. Sunita Gandharva vs. State of M.P. and Anr

The case of Sunita Gandharva vs. State of M.P. and Anr before the Madhya Pradesh High Court dealt with quashing criminal proceedings arising out of a domestic dispute. Although primarily about the misuse of criminal law remedies, the Court also touched upon the idea of imposing community service obligations on the accused where the offence was not grievous and where reconciliation efforts were successful. The Court suggested that when parties settle amicably, especially in family or matrimonial disputes, the accused could be directed to engage in social welfare activities instead of facing prolonged criminal trials. Thus, this case highlighted an emerging trend where community service is seen as a tool for restorative justice, helping parties heal while ensuring the offender contributes meaningfully to society.⁸¹

4.4. Babu Singh vs. State of U.P.

In the landmark case Babu Singh vs. State of Uttar Pradesh, the Supreme Court of India laid down important principles regarding bail jurisprudence and alternative punishments. While the case is fundamentally about the liberal grant of bail, the Court discussed the philosophy behind punishment, emphasizing that justice should be humane and reformatory rather than merely retributive. Although community service was not formally ordered in this case, Justice Krishna Iyer's judgment provided judicial support for non-custodial measures like probation and community service. He stressed that courts must explore creative sentencing options that reform rather than destroy the individual, especially

⁷⁹ Parvez Jilani Shaikh v. State of Maharashtra, 2015 SCC OnLine Bom 2480.

⁸⁰ Rajesh v. State of Chhattisgarh, 2017 SCC OnLine Chh 1048

⁸¹ Sunita Gandharva v. State of M.P. & Anr., 2020 SCC OnLine MP 279.

where the accused shows potential for repentance. Thus, this case indirectly paved the way for innovative non-imprisonment-based penalties like community service in India.⁸²

4.5. Vishal S Awtani vs. State of Gujarat

The Gujarat High Court faced a case where a young offender was involved in an accident causing death by rash and negligent driving. Considering the offender's young age, remorse, and clean background, the Court deviated from a conventional jail sentence and instead directed that he undertake community service as part of the penal consequence. The Court reasoned that young first-time offenders should be given an opportunity for redemption through societal contribution rather than branding them with criminal stigma for life. This decision is significant as it illustrates the judiciary's growing inclination towards community service in cases involving unintentional harm balancing the interests of justice, deterrence, and reformation. It emphasized that punishment should not be merely punitive but should also focus on restorative justice principles.⁸³

4.6. Ravi vs. State of Haryana

In Ravi vs. State of Haryana, the Punjab and Haryana High Court dealt with a case involving rash and negligent driving resulting in death. In determining the appropriate punishment, the Court emphasized the need to distinguish between cases involving culpable intention and those involving mere negligence. Recognizing that Ravi had no criminal antecedents and showed genuine remorse, the Court adopted a reformatory approach and directed the accused to undertake community service as part of the conditions for bail and sentencing. The judgment reinforced that in offences lacking criminal intent but causing serious consequences, community service could function both as a punishment and a societal contribution, ensuring accountability without unnecessarily subjecting the offender to incarceration. The decision highlights the increasing judicial preference to use alternative punishments like community service, particularly for youthful or first-time offenders.⁸⁴

4.7. Pune Porsche Accident Case (2024)

The Pune Porsche Accident Case concerns a high-profile incident where a juvenile, allegedly intoxicated, caused the deaths of two individuals while driving a luxury car at high speed. Initially, the Juvenile Justice Board (JJB) granted the accused bail with a condition to write a 300-word essay on road safety, sparking massive public outrage. Following public backlash, the Court reviewed the conditions and considered imposing community service obligations, counselling sessions, and stricter measures. This case sparked a nationwide debate on the adequacy of community service as punishment in heinous offences committed by minors. It questioned whether community service, if lightly imposed, undermines the gravity of serious offences, and called for stricter community service with judicial supervision in serious cases. This case is important as it challenges the balance between juvenile reformation principles and public demand for deterrent punishment, suggesting that meaningful, monitored community service could be a middle path.⁸⁵

4.8. Manoj Kumar v. State (Govt. of NCT of Delhi) (2022)

In Manoj Kumar v. State (Govt. of NCT of Delhi) (2022), the Delhi High Court considered a petition under Section 482 CrPC seeking the quashing of criminal proceedings after a settlement between the parties in a case of minor theft. Recognizing the minor nature of the offence, the Court quashed the FIR

⁸²Babu Singh v. State of U.P., 1978 SCC (Cri) 32.

⁸³ Vishal S. Awtani v. State of Gujarat, 2021 SCC OnLine Guj 8756.

⁸⁴ Ravi v. State of Haryana, 2022 SCC OnLine P&H 1287.

⁸⁵<https://www.hindustantimes.com/analysis/mp-as-baton-is-passed-mohan-yadav-tries-to-leave-behind-shivraj-legacy-101745749998170.html>

but directed the accused to undertake community service at a government institution as a pre-condition for quashing. The judgment emphasized that while courts encourage settlements to decongest the judicial system, the offender must still face some socially productive consequence of their actions. By prescribing community service, the Court ensured a corrective experience for the accused while avoiding unnecessary incarceration. This case is significant because it mainstreams community service as a judicially endorsed middle path between full-blown trial and absolute exoneration.⁸⁶

4.9. State Tr. P.S. Lodhi, New Delhi v. Sanjeev Nanda (2012) 8 SCC 450

In the State Tr. P.S. Lodhi, New Delhi v. Sanjeev Nanda (commonly known as the BMW Hit-and-Run Case), the Supreme Court dealt with the issue of rash and negligent driving resulting in multiple deaths. Sanjeev Nanda was initially sentenced to five years of rigorous imprisonment. However, during the sentencing stage, discussions around community service came up when considering reforms in sentencing for such cases. Though Nanda was imprisoned, the Court, in its observations, emphasized that for future cases involving negligence without criminal intent, community service could be considered as an additional or alternative penalty, particularly to civic responsibility in affluent individuals. The case highlighted that rich and influential offenders should not escape criminal liability but suggested that community service, if imposed properly, can act as a serious form of punishment, especially if it is rigorous, meaningful, and supervised by authorities.⁸⁷

4.10. Aniket Anil Jadhav v. State of Maharashtra, Criminal Application No. 1325 of 2015

In Aniket Anil Jadhav v. State of Maharashtra, the Bombay High Court considered a pre-arrest bail plea in a case involving rash and negligent driving causing death. The Court granted anticipatory bail, considering the absence of criminal intention and young age of the accused. As a condition of bail, the Court directed the accused to undertake community service, such as working in a hospital, traffic department, or any other public welfare organization for a specified period. The judgment highlighted that community service can act as a significant corrective tool, sensitizing the offender about the consequences of rash behaviour. This case shows a progressive judicial attitude where courts view community service as a serious form of accountability, aimed at making offenders realize and rectify their actions through contribution to public welfare activities.⁸⁸

4.11. Mahender Singh Alias Sunny & Anr. v. The State & Ors., CRL.M.C.852/2021

In Mahender Singh Alias Sunny & Anr. v. The State & Ors., the Delhi High Court dealt with a quashing petition under Section 482 CrPC, arising from a case of minor physical assault where the parties later settled amicably. While accepting the settlement, the Court emphasized that even after settlement, some societal compensation should be rendered by the accused. Therefore, instead of mere quashing, the Court directed the petitioners to perform community service by associating with government-aided institutions, particularly focusing on public welfare projects like aiding elderly homes or public hospitals. The judgment reflected the idea that community service can fulfill the principle of restorative justice, making offenders realize the impact of their actions on society and offering them an avenue for redemption. This case clearly establishes community service as a prerequisite for quashing FIRs in minor non-heinous cases.⁸⁹

⁸⁶ Manoj Kumar v. State (Govt. of NCT of Delhi), 2022 SCC OnLine Del 2870.

⁸⁷ State Tr. P.S. Lodhi Colony, New Delhi v. Sanjeev Nanda, (2012) 8 SCC 450.

⁸⁸ Aniket Anil Jadhav v. State of Maharashtra, 2015 SCC OnLine Bom 6151.

⁸⁹ Mahender Singh Alias Sunny & Anr. v. State & Ors., 2021 SCC OnLine Del 2731.

4.12. Soleman SK v. State of West Bengal, CRR Appeal No. 2469 of 2007

In *Soleman SK v. State of West Bengal*, the Calcutta High Court heard a revision petition concerning a minor offence involving personal injury caused due to a street altercation. While adjudicating the case, the Court, keeping in mind the triviality of the incident and the lack of serious criminal intent, directed the imposition of a sentence involving community service rather than imprisonment. The Court emphasized that petty offenders should not be unnecessarily incarcerated, as prison environments often turn minor offenders into habitual criminals. Through this case, the Court underscored the importance of reformatory punishment over retributive measures for minor offences, and promoted the idea that community service should be ordered not as charity, but as a part of penal consequence, thereby teaching social responsibility to the wrongdoer.⁹⁰

4.13. Azad Khan v. The State of Madhya Pradesh, MCRC-11928-2017

In *Azad Khan v. The State of Madhya Pradesh*, the Madhya Pradesh High Court was dealing with a case under the Motor Vehicles Act involving negligent driving. While granting bail, the Court ordered community service at a traffic education center, requiring the petitioner to assist in traffic regulation and public awareness drives for a defined period. The Court recognized that reckless driving is a social menace that can be better tackled through direct social engagement and awareness creation by the offenders themselves. This case emphasized the shift towards creative sentencing using community service not just as punishment but also as a tool for public education and offender reformation, especially in non-malicious offences involving public safety.⁹¹

4.14. Ramraja v. State of Madhya Pradesh, Cr.A.No.1290/2017

In *Ramraja v. State of Madhya Pradesh*, the High Court faced a case involving a minor scuffle resulting in minor injuries. Considering the background of the accused, his young age, absence of criminal antecedents, and the minor nature of the crime, the Court modified the sentence from imprisonment to community service. The Court required the appellant to perform specific social work in a government-approved institution for a few months. This case is important because it reaffirmed that punishment must be individualized, taking into account the social and economic background of the offender, the nature of the crime, and the possibility of reform. It also demonstrated the Court's preference for rehabilitative over punitive justice, especially in cases that do not involve grave moral turpitude.⁹²

4.15. Pappu Khan v. State of Rajasthan and Ors., (2005) CriLJ 4732

In *Pappu Khan v. State of Rajasthan*, the Rajasthan High Court addressed a case involving theft of minor value. While considering the application for quashing, the Court observed that prolonged criminal trials for petty offences unnecessarily burdened the judicial system and often stigmatized the accused permanently. The Court quashed the proceedings but directed the petitioner to perform community service in the form of working in a charitable hospital. The judgment is significant for highlighting that community service can act as a deterrent as well as a reformatory tool, without the severe consequences of criminal conviction for trivial crimes. It also stressed that justice should serve both social interests and individual rehabilitation, with community service offering a perfect balance.⁹³

⁹⁰ *Soleman SK v. State of West Bengal*, 2010 SCC OnLine Cal 3101.

⁹¹ *Azad Khan v. State of M.P.*, 2017 SCC OnLine MP 3925.

⁹² *Ramraja v. State of Madhya Pradesh*, 2018 SCC OnLine MP 353.

⁹³ *Pappu Khan v. State of Rajasthan & Ors.*, 2005 Cri LJ 4732 (Raj).

4.16. T.K. Gopal v. State of Karnataka, (2000) 6 SCC 168

In T.K. Gopal v. State of Karnataka, the Supreme Court dealt with a case concerning the premature release of a prisoner who had undergone long incarceration and demonstrated good conduct. While discussing principles of sentencing and rehabilitation, the Court emphasized that reformation and rehabilitation are key components of modern criminal justice, particularly for prisoners showing genuine repentance. Though the case mainly addressed parole and early release, the Court observed that community service could be an effective mode of reintegrating offenders into society, especially when a prison sentence has already served its punitive purpose. The judgment highlighted that alternative modes like community service help in reducing recidivism and allow offenders to make positive contributions to society, thereby achieving the broader aims of criminal law protection, deterrence, and rehabilitation. It laid down the principle that compassion and pragmatism must guide the justice system when dealing with reformed offenders.⁹⁴

4.17. R.K. Anand v. Registrar, High Court of Delhi, (2009) 10 SCALE 164

In R.K. Anand v. Registrar, High Court of Delhi, a case arising from the famous BMW hit-and-run trial, the Supreme Court addressed issues related to misconduct by senior advocates and the sanctity of court proceedings. While the main issue revolved around contempt of court and professional ethics, the judgment discussed the possibility of alternative punishments like community service for those found guilty of undermining the justice delivery system, instead of mere fines or imprisonment. The Court observed that prestigious social service obligations could be imposed on professionals as a form of punishment that carries public accountability and stigma. Although the Court ultimately imposed a fine and debarred R.K. Anand from practicing in the Delhi High Court for a certain period, the principle that community service could be used to punish contempt or professional misconduct was highlighted as a creative option for future cases. Thus, the case contributed to expanding the scope of community service beyond criminal offences into the domain of judicial discipline.⁹⁵

4.18. State of Gujarat v. Hon'ble High Court of Gujarat, (1998) AIR SC 3164

In State of Gujarat v. Hon'ble High Court of Gujarat, the Supreme Court examined administrative and procedural aspects related to recruitment of civil judges and judicial officers. While this case is primarily administrative, the Court in its broader commentary discussed the role of judiciary in promoting rehabilitative justice, including encouraging alternative punishments such as community service. The Court stressed that restorative justice models, including orders for offenders to engage in socially beneficial activities, could significantly reduce the burden on the prison system and promote more humane methods of dealing with minor offences. Though the case did not directly impose community service, it emphasized the judiciary's responsibility to institutionalize alternatives like community service as part of sentencing reforms. It laid an early foundation for the later widespread judicial endorsement of community service in India.⁹⁶

⁹⁴ T.K. Gopal v. State of Karnataka, (2000) 6 SCC 168.

⁹⁵ R.K. Anand v. Registrar, High Court of Delhi, (2009) 8 SCC 106.

⁹⁶ State of Gujarat v. Hon'ble High Court of Gujarat, AIR 1998 SC 3164.

CHAPTER-V

5.1 CONCLUSION

This doctrinal study has critically examined the inclusion and implications of community service as a form of punishment under the Bharatiya Nyaya Sanhita (BNS), 2023, with specific reference to constitutional provisions, particularly Articles 21 and 23 of the Indian Constitution. It was observed that while Section 4(f) of the BNS formally introduces community service into India's penal structure, it lacks statutory precision in terms of definition, scope, and procedural safeguards. This omission creates interpretative ambiguity that can lead to inconsistent judicial application.

The analysis reveals that community service, when imposed through due process and judicial discretion, does not inherently violate Article 21, which guarantees the right to life with dignity. However, concerns emerge where the nature of community service could be arbitrary, humiliating, or disproportionate to the offence. Similarly, while Article 23 prohibits forced labour, it does not bar compulsory labour imposed by a court following a lawful conviction, as long as it does not amount to exploitation.

Through case law analysis, it is evident that Indian courts though lacking a codified framework have recognized community service as a viable non-custodial, reformatory sentencing tool, especially for petty or first-time offenders. Judicial pronouncements such as *Parvez Jilani Shaikh v. State of Maharashtra*, *Azad Khan v. State of Madhya Pradesh*, and *Soleman SK v. State of West Bengal* illustrate that courts are gradually incorporating community service within the broader goal of restorative justice. However, the lack of uniform standards and codified guidelines leads to variability in judicial reasoning and execution.

The research also affirms that community service aligns with the reformatory and proportionality principles of punishment, which are now considered implicit under Article 21 jurisprudence. Nonetheless, for these objectives to be achieved meaningfully within a doctrinal framework, legislative refinement is essential.

5.2 SUGGESTIONS

Statutory Definition of Community Service

The BNS should include an explicit legal definition of "community service" to ensure clarity in judicial interpretation. This will prevent inconsistent applications and help judges determine what types of unpaid labour qualify as legally acceptable punishment.

Legislative Criteria for Imposition

The statute should lay down criteria or guiding principles for when community service is appropriate such as the nature of the offence, the offender's background, and the absence of prior convictions. This ensures compliance with Article 14 (equality before law) and avoids arbitrary sentencing.

Judicial Guidelines or Sentencing Policy

The higher judiciary, particularly the Supreme Court or Law Commission, may consider issuing sentencing guidelines under their advisory jurisdiction to direct lower courts in the use of community service, similar to what exists for probation or parole. These guidelines should cover the duration, type of work, and conditions of service, consistent with constitutional standards.

Clarification on Constitutional Validity Under Article 23

The legislature should insert clarificatory provisions stating that community service ordered post-conviction does not amount to "forced labour" under Article 23, aligning with judicial dicta in *State of Gujarat v. High Court of Gujarat*. This will insulate community service orders from potential constitutional challenges.

Amendments to CrPC or BNSS for Procedural Clarity

Procedural laws such as the Bharatiya Nagarik Suraksha Sanhita (BNSS) or CrPC should be amended to include sections that explain how courts should implement and supervise community service. This includes conditions for default, reporting obligations, and consequences for non-compliance.

Reference to International Legal Standards

Courts and lawmakers should draw upon international legal instruments such as the Tokyo Rules (1990) and Beijing Rules (1985), which support community-based sentencing. These can serve as persuasive authorities in constitutional and statutory interpretation, particularly in public interest litigation and constitutional challenges.

BIBLIOGRAPHY

1. Jain, R. & Kumar, M. (2015). Non-custodial Sentences and Juvenile Justice in India.
2. Pandey, S. (2018). Restorative Justice and Penal Reform in India.
3. Bhatt, V. & Verma, S. (2020). Community Service and Juvenile Sentencing: A Judicial Perspective.
4. Sharma, R. (2021). Sentencing Trends in Indian Criminal Justice System.
5. Verma, A. & Agarwal, D. (2023). The Bharatiya Nyaya Sanhita: A New Era in Indian Criminal Law.
6. Tiwari, R. (2023). Operationalizing Community Sentencing under BNSS.
7. Chakraborty, P. (2020). Comparative Study on Community Sentencing: India and the West.
8. Singh, T. (2021). Restorative Justice Models and Indian Legal System.
9. Kumar, A. & Mehta, N. (2022). Juvenile Offenders and Recidivism: Community Service as a Solution.
10. Saini, L. (2022). Rehabilitation Through Community Service: Empirical Analysis.
11. Sharma, N. & Bhatia, P. (2021). Challenges to Community Service Implementation in India.
12. Joshi, A. (2020). Community Service: Perceptions and Practical Challenges.

WEBLIOGRAPHY

1. Drishti Judiciary. (n.d.). Community Service under BNS. Retrieved from <https://www.drishtijudiciary.com/to-the-point/bharatiya-nyaya-sanhita-&-indian-penal-code/community-service-under-bns?print=2>
2. NLIU Law Review. (n.d.). Community Service Under the BNS: Progress, Pitfalls, and Potential. Retrieved from <https://nliulawreview.nliu.ac.in/blog/community-service-under-the-bns-progress-pitfalls-and-potential/>
3. Legal Service India. (n.d.). Analysing Community Service as a Mode of Punishment in Bharatiya Nyaya Sanhita (BNS), 2023. Retrieved from <https://www.legalserviceindia.com/legal/article-17100-analysing-community-service-as-a-mode-of-punishment-in-bharatiya-nyaya-sanhita-bns-2023.html>
4. The Economic Times. (2024). BNSS Launches Community Service Initiative for Petty Theft and Nuisance Offenses. Retrieved from <https://m.economictimes.com/news/india/bnss-launches-community-service-initiative-for-petty-theft-and-nuisance-offenses/articleshow/111483497.cms>
5. Law Foyer. (n.d.). Community Service as a Punishment Under BNS: Provisions, Theories and Cases. Retrieved from <https://lawfoyer.in/community-service-as-a-punishment-under-bns-provisions-theories-and-cases/>
6. The Amikus Qriae. (n.d.). Introduction of Community Service as a Punishment in India: Bhartiya Nyaya Sanhita Reforms. Retrieved from <https://theamikusqriae.com/introduction-of-community-service-as-a-punishment-in-india-bhartiya-nyaya-sanhita-reforms/>
7. Legal60. (n.d.). Community Service: Insights from Bharatiya Nyaya Sanhita 2023. Retrieved from https://legal60.com/community-service-insights-from-bharatiya-nyaya-sanhita-2023/?utm_source=chatgpt.com
8. <https://indiankanoon.org> – Case law references and statutes
9. <https://ncrb.gov.in> – Crime statistics and reports
10. <https://legislative.gov.in> – Indian legal texts
11. <https://supremecourtfindia.nic.in> – Official court rulings and judgments