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## An Analysis of Community Service as a Form of Punishment in India: Findings from the Bharatiya Nyaya Sanhita, 2023

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### Abstract

The concept of punishment in India has evolved over time, focusing on retribution, deterrence, rehabilitation, and community protection. Sentence concepts have evolved to strike a balance between these objectives while considering justice and equity. The Indian Penal Code (IPC) and the Bharatiya Nyaya Sanhita, 2023, are two examples of different shifting nature of penalties. Community service has been a significant form of punishment throughout history, first introduced in the 1978 Indian Penal Code (Amendment) Bill and later examined in the 1997 156th Law Commission Report. The Bharatiya Nyaya Sanhita, 2023, explicitly incorporates community service as a mode of punishment under Sections 202, 209, 226, 303, 355, and 356, covering various offences and reinforcing its legitimacy as an alternative to imprisonment, emphasizing its effectiveness as an alternative to imprisonment for various offenses. The justification for community service is its ability to reform offenders, alleviate prison overcrowding, and contribute to society's betterment. However, challenges such as compliance, effective supervision, and addressing societal stigmas remain. Reforming punishment systems is crucial to improve their effectiveness and fairness within India's changing legal framework. Ongoing efforts to reform community service and other forms of punishment are crucial to improve their effectiveness and fairness within India's changing legal framework.

**Keywords:** community service, Bharatiya Nyaya Sanhita, 2023, reformation, alternative punishments

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## 1. Introduction

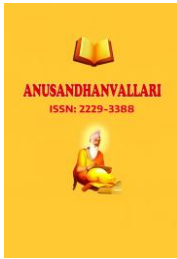
### 1.1. Prelude

Punishment in India has evolved over millennia, influenced by ancient legal systems, religious doctrines, and colonial legacies. Ancient texts like the Manusmriti and Arthashastra prescribed various forms of punishment (Umashankar, 2022), reflecting the social norms and values of their time. Concepts such as danda (justice), dharma (righteousness), and karma (action and consequence) shaped early notions of punishment.

The object and scope of punishment in India are integral components of the country's legal system, deeply rooted in its historical, cultural, and constitutional framework. These principles guide the imposition of penalties for unlawful actions, serving multiple purposes that extend beyond mere retribution. Understanding the objectives and scope of punishment in India requires an exploration of its legal foundations, societal goals, and the evolving nature of criminal justice.

### 1.2. Objectives of Punishment:

The objectives of punishment are to deter future crimes, impose just punishments, to reform offenders, incapacitate people to protect society, and to make reparations to victims. Below, we will discuss the key objectives of punishment.



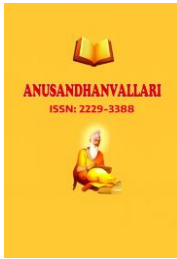
- a. **Deterrence:** One primary objective of punishment is deterrence, aiming to dissuade individuals from committing crimes by imposing penalties for unlawful actions. Deterrence encompasses both specific deterrence, aimed at discouraging the offender from repeating the offense, and general deterrence, intended to prevent others from engaging in similar conduct. (Altman, 2021).
- b. **Rehabilitation:** Punishment seeks to reform offenders, facilitating their rehabilitation and reintegration into society. Rehabilitation measures may include counselling, vocational training, education, and other forms of support aimed at addressing the underlying causes of criminal behaviour (Khan et al., 2023).
- c. **Retribution:** Punishment serves the function of retribution, ensuring that offenders face consequences for their actions and society expresses its condemnation of wrongdoing (Dillof, 2020). This aspect emphasizes accountability and the need to uphold societal norms and values.
- d. **Restitution:** In the context of punishment, restitution aims to provide reparation to victims for the damage and losses inflicted as a result of criminal activities. This approach entails offenders providing direct reimbursement to victims, compensating for both monetary and emotional harm, and promoting accountability. This methodology not only facilitates victim restoration, but also fosters offenders' comprehension of the repercussions of their behaviour while advocating for restorative justice (Hershenov, 2010).

### 1.3. Principles of Sentencing:

The Principles of Sentencing consist of individualization, which ensures that sentences are tailored to the specific circumstances of each case; proportionality, which ensures that the severity of punishment corresponds to the seriousness of the offence; fairness, which guarantees impartial and equitable treatment; and emphasis on restitution and restoration, which prioritise compensating victims and rehabilitating offenders. These principles are discussed below:

- a. **Individualization:** Sentencing takes into account the unique circumstances of each case and offender, recognizing that one size does not fit all. Factors such as age, mental health, socioeconomic background, and remorse may influence sentencing decisions (Krasnostein and Freiberg, 2013).
- b. **Proportionality:** The severity of punishment should be commensurate with the seriousness of the offense, ensuring that punishment is neither too lenient nor excessively harsh (Goh, 2013).
- c. **Fairness:** Sentencing should be fair and impartial, reflecting the principles of equality and due process. Discrimination based on factors such as race, religion, caste, or gender is prohibited (Easton and Piper, 2012).
- d. **Restitution and Restoration:** In cases involving victims, offenders may be required to provide restitution or compensation for harm caused (Lollar, 2014). Restorative justice approaches aim to repair the harm done to victims and communities, promoting healing and reconciliation.
- e. **Legislative Framework:** The Indian Constitution, adopted in 1950, embodies the principles of justice, equality, and the rule of law. It enshrines fundamental rights and directive principles that inform the object and scope of punishment. Article 21, guaranteeing the right to life and personal liberty, imposes limitations on the severity of punishment, emphasizing principles of proportionality and human dignity.

The Indian Penal Code (IPC), enacted in 1860, forms the cornerstone of India's criminal law. It defines various offenses and prescribes punishments for them, including fines, imprisonment, and, in certain cases, the death penalty (P. Singh, 2023). Additionally, special laws address specific types of offenses, such as the Narcotic Drugs and Psychotropic Substances Act (Wani, 2023) and the Prevention of Corruption Act. The new law Bharatiya Nayaya Sanhita Act 2023 (Sharma and Singh, 2023) in this context is worth mentioning.



f. **Judicial Interpretation:** Courts interpret and apply the law, considering factors such as the nature and gravity of the offense, the culpability of the offender, mitigating and aggravating circumstances, and principles of proportionality. Judicial discretion plays a crucial role in determining the appropriate punishment in individual cases (Bhattacharjee, 2020).

g. **Sentencing Guidelines:** While imposing punishment, courts adhere to sentencing guidelines aimed at ensuring consistency, fairness, and the promotion of rehabilitation and reintegration. These guidelines may be statutory or based on judicial precedent and aim to balance the interests of justice with the rights of the accused and the needs of society (Y. P. Singh, 2023).

#### 1.4. Types of Punishments

The Indian Penal Code (IPC) lays down the various types of punishments that can be imposed by the judiciary, including (Kaushal, 2020):

1. **Capital Punishment:** Also known as the death penalty, it is reserved for the most heinous crimes such as murder, terrorism-related offenses, and certain cases of rape. While controversial, it is upheld as a means of delivering the highest form of deterrence and retribution.

2. **Imprisonment for life:** The expression “imprisonment for life” describes a punishment where the offender is required to serve out their whole natural lifetime behind bars.

3. Imprisonment:

a. **Rigorous Imprisonment:** In the context of punishment, the term “rigorous imprisonment” refers to a kind of confinement in which the convicted individual is also obliged to undertake laborious tasks as part of their sentence.

b. **Simple Imprisonment:** Does not involve hard labour. Imprisonment serves both as a deterrent and a means of incapacitating the offender.

4. **Fines:** Monetary penalties imposed either as standalone punishment or in conjunction with imprisonment.

5. **Forfeiture of Property:** The offender’s property is seized by the state as a punitive measure.

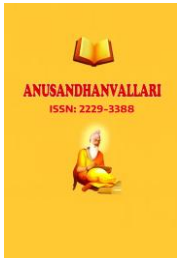
6. **Detention and Preventive Detention:** Used in cases where the state believes an individual poses a threat to public order or security.

Apart from these types of punishments, Bharatiya Nayaya Sanhita 2023 has introduced a kind of punishment known as community service under Chapter II, Section 4(f). This paper deals with the historical development of community service as a mode of punishment, along with its advantages and rationality.

## 2. Historical evolution of community service as a punishment in India:

India’s use of community service as a form of punishment has its origins in long-standing customs and traditions. Community work was frequently utilised in old Indian society as a kind of atonement or penance for transgressions.

Hindu philosophy’s “Karma Yoga” theory can be linked to one of the first recorded cases of community work being required as a form of punishment in India. Karma Yoga places a strong emphasis on the value of selfless service and the notion that doing good deeds for others helps cleanse oneself. (Mulla and Krishnan, 2008)



In India, the use of community service as a means of punishment is relatively new. In the past, the main tools of punishment used by the Indian criminal justice system were fines and incarceration. Nonetheless, the necessity for substitute punishments that may aid in rehabilitation and reintegration into society began to become apparent in the latter half of the 20<sup>th</sup> century.(Agrawal, 2017)

In the 1970s, community service was introduced as a new form of punishment in India. The concept of “socially useful productive labour” was initially embraced by the Indian Supreme Court in 1976 as a way to impose penalties for certain offences. This was based on the belief that individuals who have committed wrongdoings should be compelled to make positive contributions to society as a way to make amends (Palak, 2023).

Community service in India is a growing trend, with the Juvenile Justice Act, 2015 allowing for community service for child offenders but not for adult offenders. The proposed Indian Penal Code (Amendment) Bill, 1978, also suggested community service but failed to pass. The 156th Law Commission Report favours open prisons over community service. Despite lack of legislative action, courts sometimes use discretionary powers to mandate community service, acknowledging its potential benefits in rehabilitation and reducing prison population (Agarwal, 2019).

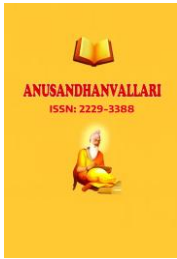
Usually, individuals who are required to complete community service orders must dedicate a set number of hours to unpaid labour. This may involve tasks like tidying up public spaces, assisting in medical facilities or educational institutions, or participating in other activities that contribute to the betterment of society. The goal is to help the offender reintegrate into society, promote rehabilitation, and instill a sense of responsibility.

In India, the idea of community service as a form of punishment has been developing due to the impact of colonial-era legal systems as well as local customs. Here is a quick overview of the past:

- a. **Indigenous Traditions:** India has a long history of using community-based judicial systems, wherein conflicts were frequently settled through restitution and mediation within the community. Rather than emphasising punitive actions, these traditions focused on restoration and reconciliation (Mishra, 2022).
- b. **Colonial Influence:** India’s legal system saw substantial modifications during British control. Western legal concepts were brought by British colonial administrators, who also formalised courts and criminal laws. These rules’ sentencing guidelines frequently called for fines, incarceration, or physical punishment with little focus on community service (Singh and Kumar, 2019).
- c. **Post-Independence:** Following its 1947 declaration of independence, India set about creating its own legal framework by fusing aspects of British law with customs from the native people. The foundation for criminal justice in the nation was established by the enactment of the Indian Penal Code (IPC) and the Code of Criminal Procedure (CrPC). But at this time, community service was not commonly used as a formalised form of punishment (Jina and Kumar, 2022).
- d. **Emergence of Alternative to Incarceration:** As time went on, people became more aware of the drawbacks of the conventional punitive methods, particularly when it came to dealing with small and non-violent crimes. This prompted the investigation of alternatives to prison terms, such as community service (Shikhar and Bhardwaj, 2024).

**Legal changes:** To encourage rehabilitation and lessen jail congestion, India has implemented legal changes in recent decades. Courts now have the authority to impose community service as a penalty for a number of offences, including those committed by minors, according to the Bharatiya Nayaya Sanhita 2023.

- e. **Challenges in Implementation:** Despite being acknowledged by legal legislation; community service has encountered difficulties in its execution. Infrastructure, surveillance, and public awareness are a few of



these concerns. Governmental and non- governmental organisations have worked to solve these issues and advance community service as a significant and useful tool for rehabilitation and punishment (Sharma, 2021).

The evolution of community service as a means of punishment in India highlights the transition of the criminal justice system towards restorative approaches, influenced by global legal reform movements and local traditions.

### **3. Existing provisions for Community service as a Punishment in India:**

The following are some salient details regarding community service as a kind of punishment in India:

#### **3.1. Legal areas:**

The legal foundation for community service orders as an alternative to sentencing in India is established by the Probation of Offenders Act, 1958, and its subsequent amendments in 2008. This Act grants judges the authority to mandate community service as an alternative to imprisonment for individuals found guilty of crimes carrying a maximum prison sentence of three years.

The Juvenile Justice Care and Protection Act of 2015 also includes the provision for community service as a form of punishment. According to Section 18(1)(c) of the Juvenile Justice Care and Protection Act of 2015, if a child is found to have committed a petty, serious, or heinous offence, the Board has the authority to order the child to perform community service under supervision. This decision is based on various factors, such as the nature of the offence, the need for supervision or intervention, the findings of the social investigation report, and the child's past conduct. Prior to the implementation of the Juvenile Justice Care and Protection Act, 2000, there was already a provision in place for community service as a form of punishment.

“Community Service” is described as an unpaid labour that individuals are required to perform as a consequence for an action committed under this Act, as stated in Section 2(4A) of the Motor Vehicles Act, 1988. This work is imposed upon an individual as a kind of punishment.

#### **3.2. Types of Community Service:**

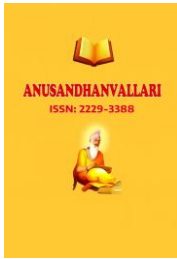
Community service orders typically require individuals to perform unpaid labour for a specified duration. Prime instances of community service include activities such as maintaining cleanliness in public spaces, assisting at hospitals or schools, coordinating plantation campaigns, and engaging in other initiatives that promote the welfare of the community at large.

#### **3.3. Introduction of Community service as a punishment in Bharatiya Nyaya Sanhita, 2023:**

Community service as an alternative method of punishment has been recognised by the Bharatiya Nyaya Sanhita, 2023, signifying a notable progress in Indian law. This represents a significant shift away from the typical punishments for minor offences, placing greater emphasis on a more inclusive and community-oriented approach to promoting justice. Furthermore, community service as a kind of sanctions has the power to reshape offenders' outlooks by promoting reintegration into society, individual responsibility, and restorative justice, in addition to its groundbreaking legal implications.

#### **3.3. Understanding Community service as a punishment in context of Bharatiya Nyaya Sanhita, 2023:**

**a. Path-breaking introduction of Community Service:** Setting a new precedent, the Bharatiya Nyaya Sanhita, 2023 introduces community work as a form of punishment, marking a significant development in Indian history. Section 4 of the Sanhita discusses the various punishments that can be imposed on offenders. One of the forms of punishment mentioned in clause (f) of this section is “community service.” This shift towards more progressive



approaches reflects a mindset that aligns with global trends in alternative justice and rehabilitation.

**b. Examples of Crimes for Which Community Service is Allowed:** According to the Bharatiya Nyaya Sanhita, 2023, there are a variety of crimes that may result in the person being forced to perform community service. They are comprised of, but are not limited to, the following:

a. **Public servant unlawfully engaging in trade (Section 202):** Section 202 of the Bharatiya Nyaya Sanhita, 2023, stipulates that a public servant who unlawfully engages in trade, despite being legally prohibited from doing so, faces penalties including simple imprisonment up to one year, a fine, or both, or community service.

b. **Nonappearance in response to a proclamation under section 84 of Bharatiya Nagarik Suraksha Sanhita, 2023 (Section 209):** Section 209 of the Bharatiya Nyaya Sanhita, 2023, mandates that failure to appear as required by a proclamation under Section 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023, can result in up to three years of imprisonment, a fine, or both, or community service, and if declared a proclaimed offender under sub-section (4), the punishment extends to up to seven years of imprisonment and a fine.

c. **Attempt to commit suicide to compel or restrain exercise of lawful power (Section 226):** Section 226 of the Bharatiya Nyaya Sanhita, 2023, prescribes that attempting to commit suicide to compel or restrain a public servant from performing their official duties is punishable with up to one year of simple imprisonment, a fine, or both, or community service.

d. **Theft (Section 303):** The proviso of Section 303(2) of the Bharatiya Nyaya Sanhita, 2023, stipulates that for first-time theft offenders where the stolen property is valued at less than five thousand rupees, the punishment will be community service, provided the offender returns or restores the stolen property.

e. **Misconduct in public by a drunken person (Section 355):** Section 355 of the Bharatiya Nyaya Sanhita, 2023, mandates that anyone who, while intoxicated, behaves in a manner causing annoyance in a public place or a place where they are trespassing, faces up to twenty-four hours of simple imprisonment, a fine up to one thousand rupees, both, or community service.

f. **Defamation (Section 356):** Section 356(2) of the Bharatiya Nyaya Sanhita, 2023, states that anyone who defames another person can be punished with up to two years of simple imprisonment, a fine, both, or community service.

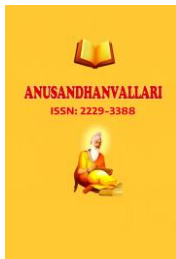
**c. Address Minor Offences First:** Given the nature of minor law-breaking, community service is typically the most appropriate course of action. For minor offences, the legal system aims to foster a fair and rehabilitative form of justice by offering an alternative to traditional punishments (Sharma, 2021).

#### 4. The rationale for community service as punishment

Addressing obstacles and considerations in community service as punishment involves fair treatment, protecting offenders' dignity, and implementing effective supervision and evaluation to accurately measure success and ensure compliance (Kahan, 1997).

a. **Fulfilling Volunteer Tasks for the Community:** Community punishment essentially consists of having a person perform unpaid labour for the community during their free time, within a set time frame. This idea deviates from conventional punishing methods by highlighting the offender's constructive contributions to society.

b. **Community Service Philosophy:** Community service concept is consistent with Punishment by resocialization Special Preventive Objective. The goal is to reintegrate the offender into society as a responsible



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and productive person, not just to punish them. Participating in community service provides a way to improve yourself and take responsibilities.

c. **Individual Accountability and Restorative Justice:** Community service must be in line with the concepts of restorative justice. The focus on individual accountability pushes criminals to own up to their mistakes and actively work to mend their ways by giving back to the communities they may have damaged.

## 5. The Effect of Community Service on the Mentalities of offenders:

Community service significantly influences offenders' behaviour and thought processes by encouraging responsibility, reflection, compassion, and reintegration into society. It helps break past mistakes, rebuild community connections, and transform self-perception.

a. **Modifying the Framework:** The use of community service as a form of punishment signifies a profound change in how society views justice. The introduction of community service challenges preconceived beliefs and develops a more comprehensive understanding of the repercussions of an offence for offenders used to traditional disciplinary tactics (Maruna and King, 2013).

b. **Encouraging Individual Responsibility:** The development of personal accountability is one of the main effects of community service. Because of their direct involvement in community- beneficial activities, offenders are more aware of the social repercussions of their acts (Gelsthorpe, 2013).

c. **Promoting introspection and compassion:** Community service gives criminals a chance to think back on their actions. Empathy may grow when they see firsthand the beneficial effects of their efforts on the community. A shift in viewpoint has the potential to drive human growth (Hart et al., 2006).

d. **Resocialization by Beneficial Inputs:** The goal of resocialization is supported by community service, which gives criminals an opportunity to reintegrate into society by making constructive contributions (Sekera, 2009). Engaging in community improvement initiatives firsthand may foster a feeling of mission and camaraderie.

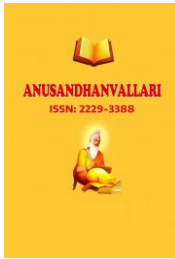
e. **Self-identity reinvention and positive reinforcement:** For criminals, community service acts as a kind of positive reinforcement. They may reevaluate who they are as a result of being recognised and valued for their achievements. Offenders could start to perceive themselves as important contributors to society with the capacity for improvement (Rudes et al., 2012).

**Ending the Recidivism Cycle:** Community service has the power to halt the cycle of recidivism by addressing the underlying causes of criminal behaviour and promoting recovery. A safer and more inclusive society may result from offenders who actively participate in their communities (Paulson, 2013).

f. **Making amends and mending bridges:** The emphasis on reparation in community service is indicative of its restorative justice component. Through their proactive efforts to improve the community, offenders help mend connections that may have been damaged by their past behaviour (Bazemore and Stinchcomb, 2004).

## 6. Obstacles & Consideration:

Community service as punishment requires fair treatment, addressing stigma, and proper supervision to ensure effectiveness and fairness, while addressing potential negative societal reactions and assessing compliance within the justice system.



- a. **Guaranteeing Parity and Justness:** The use of community service as a form of discipline must be informed by the values of justice and equality. It is important to provide equitable access to community service opportunities for people from diverse socioeconomic backgrounds (Raynor, 2013).
- b. **Addressing Possible Stigmatisation:** It's important to address any potential stigma that community work may bring. In order to mitigate the possibility of prejudice or judgement from the public, efforts should be taken to inform people about the community punishment's therapeutic value (Carr and Neimantas, 2022).
- c. **Supervision and evaluation effectiveness:** Sufficient oversight and assessment systems must be established to guarantee that criminals faithfully carry out their community service commitments (Latessa and Schweitzer, 2019). The effectiveness of this approach depends on having a strong framework for monitoring and evaluating contributions.

## 7. Challenges and Reform:

In the realm of punishment, the Indian criminal justice system encounters a multitude of obstacles. These include the frustratingly slow resolution of cases, the overcrowding of prisons, unequal access to justice, and worries about the fair treatment of vulnerable groups like women, children, and marginalised communities. Efforts at reform aim to tackle these challenges by improving access to justice, encouraging alternative dispute resolution methods, bolstering rehabilitation programmes, and guaranteeing fair and compassionate treatment for everyone involved in the criminal justice process.

The purpose and extent of punishment in India demonstrate an intricate balance of legal, social, and moral factors. While punishment serves various objectives, its scope is determined by constitutional principles, legislative frameworks, judicial interpretation, and sentencing guidelines. Through careful consideration of these elements, the Indian criminal justice system strives to maintain the integrity of the legal framework, ensure fairness, and safeguard the well-being and respect of individuals in society.

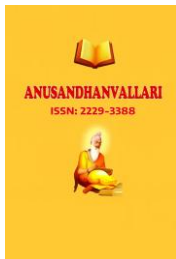
In the Bharatiya Nyaya Sanhita, 2023, a notable change has been made to the justice system in India by introducing community service as a form of punishment. In addition to the legal considerations, community service has a profound impact on the mental well-being of reformed individuals. Engaging in community service has the potential to transform individuals who have made mistakes into valuable members of society. It encourages them to take responsibility for their actions, prompts them to reflect on their choices, and provides opportunities for them to make positive contributions.

There are numerous uncertainties within the legal system, making it crucial to tackle issues and ensure that community service is administered with fairness and equality. By accomplishing this, India has the

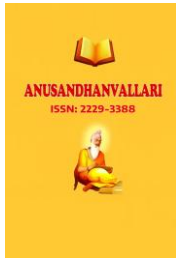
opportunity to take the lead in creating a justice system that goes beyond punishment and focuses on transformation, promoting the reintegration of individuals into their communities and their rehabilitation. As the impact of community service becomes more evident and shapes the future of justice in India, there is a path ahead that involves exploration and learning.

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