



ISSN: 2583-7753

LAWFOYER INTERNATIONAL JOURNAL OF DOCTRINAL LEGAL RESEARCH

[ISSN: 2583-7753]

Volume 4 | Issue 1

2026

DOI: <https://doi.org/10.70183/lijdlr.2026.v04.60>

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COMMUNITY SERVICE AS A PUNISHMENT UNDER THE BHARATIYA NYAYA SANHITA, 2023: A STEP TOWARD REFORMATIVE SENTENCING IN INDIA

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I. ABSTRACT

The Bharatiya Nyaya Sanhita, 2023 introduces community service as a formal sentencing option in Indian criminal law, marking a cautious but meaningful transition from a predominantly incarceration-oriented system toward a more reformatory and restorative framework. Traditionally, the Indian penal structure has relied heavily on imprisonment and monetary penalties, particularly in cases involving minor offences. This overdependence has contributed to persistent prison overcrowding, stigmatization of low-risk offenders, and limited opportunities for constructive behavioural reform. The statutory incorporation of community service seeks to address these structural concerns by providing courts with a proportionate, flexible, and socially productive alternative. This paper adopts a doctrinal and analytical methodology to examine the conceptual basis, statutory positioning, objectives, advantages, and practical challenges associated with the use of community service under the Bharatiya Nyaya Sanhita. It situates the reform within established penological theories and evaluates its consistency with global trends in non-custodial sentencing. The study argues that community service reflects the principles of proportionality, rehabilitation, and restorative justice, thereby aligning Indian criminal policy with contemporary developments in sentencing philosophy. At the same time, the paper identifies significant implementation concerns, including the absence of detailed operational guidelines, uneven probation infrastructure across states, potential sentencing inconsistencies, and issues relating to public perception and enforcement. The paper concludes that while the legislative recognition of community service is both timely and progressive, its long-term effectiveness will depend substantially on institutional preparedness, judicial sensitivity, technological monitoring mechanisms, and coordinated involvement of local authorities and community bodies. If implemented with clarity and seriousness, the provision has the potential to reduce unnecessary incarceration, humanize

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sentencing practices, and facilitate constructive offender reintegration. However, without sustained administrative support, comprehensive rule-making, and clear procedural frameworks, the reform risks remaining underutilized. The study therefore argues that the true success of community service in India will depend less on its statutory recognition and more on the seriousness of its institutional implementation.

II. KEYWORDS

Community Service; Bharatiya Nyaya Sanhita, 2023; Reformative Sentencing; Non-Custodial Punishment; Restorative Justice.

III. INTRODUCTION

Indian criminal jurisprudence has traditionally leaned toward retributive and deterrent thinking, with imprisonment emerging as the most commonly used penal response across a wide range of offences. While custodial punishment remains indispensable for serious and violent crimes, its routine use in cases involving minor offences has increasingly been questioned. In recent years, concerns regarding prison overcrowding and the limited reformative impact of short-term incarceration have intensified the search for credible non-custodial alternatives. Short-term imprisonment often produces limited reformative value and may, in certain cases, contribute to further criminalization by exposing petty offenders to hardened prison environments.

Empirical prison data in India consistently reveals overcrowding and resource strain. A substantial proportion of inmates are either undertrials or persons convicted of relatively minor offences. Against this backdrop, the introduction of community service in the Bharatiya Nyaya Sanhita, 2023 represents a noteworthy attempt to diversify sentencing options and align Indian penal policy with contemporary global trends.

Community service requires the offender to perform unpaid work beneficial to the public. The measure seeks to balance accountability with rehabilitation by ensuring that punishment remains visible yet constructive. Importantly, it provides courts with

an intermediate sentencing tool between fine and imprisonment an option long considered necessary in Indian sentencing discourse.

This paper evaluates whether the recognition of community service under the BNS constitutes a meaningful step toward reformatory justice or merely a symbolic legislative innovation.

A. Research Objectives

The present study seeks to examine the role and implications of community service as a sentencing mechanism under the Bharatiya Nyaya Sanhita, 2023. Specifically, the study pursues the following objectives:

1. To examine the conceptual foundations and theoretical justification of community service as a form of punishment.
2. To analyse the statutory recognition of community service under the Bharatiya Nyaya Sanhita, 2023.
3. To evaluate the potential advantages of community service in promoting reformatory and restorative justice.
4. To identify the institutional and practical challenges associated with implementing community service in India.
5. To assess whether the introduction of community service represents a meaningful reform in sentencing policy or merely a symbolic legislative development.

B. Research Questions

The study addresses the following central research questions:

1. Does the introduction of community service under the Bharatiya Nyaya Sanhita, 2023 represent a substantive shift toward reformatory sentencing in India?
2. To what extent can community service function as an effective non-custodial alternative to short-term imprisonment for minor offences?

3. What institutional and administrative challenges may affect the practical implementation of community service in India's criminal justice system?

C. Research Methodology

The present study adopts a doctrinal and analytical research methodology. The doctrinal component involves the examination of statutory provisions contained in the *Bharatiya Nyaya Sanhita, 2023*, relevant judicial decisions of the Supreme Court of India, and authoritative secondary sources relating to sentencing theory and criminal justice reform.

The analytical component evaluates the conceptual foundations and policy implications of community service as a non-custodial sanction. The study also undertakes a limited comparative analysis of international practices, particularly in jurisdictions such as the United Kingdom, the United States, Canada, and Australia, where community service has been institutionalized as part of sentencing policy.

Through this combined approach, the paper seeks to assess both the theoretical legitimacy and the practical feasibility of introducing community service within India's sentencing framework.

D. Literature Review

Existing scholarship on sentencing theory and non-custodial sanctions provides important insights into the role of community service within modern criminal justice systems. Andrew Ashworth's work on sentencing emphasizes proportionality and the need for diversified penal responses beyond imprisonment. Similarly, Michael Tonry's research on community penalties highlights the growing reliance on non-custodial sanctions in contemporary criminal justice policy.

Julian V. Roberts has examined the comparative development of community sentences across jurisdictions, demonstrating that structured supervision and clear guidelines are essential for effective implementation. Earlier criminological scholarship by Roger Hood and Richard Sparks also underscores the importance of reformatory and rehabilitative approaches within penal systems.

Within the Indian context, reform proposals advanced by the Law Commission of India and the Malimath Committee have long recommended the expansion of alternatives to incarceration for minor offences. However, despite these recommendations, community service remained largely absent from the formal statutory framework until the enactment of the Bharatiya Nyaya Sanhita, 2023.

The present study builds upon this body of literature by examining whether the statutory recognition of community service in India represents a meaningful advancement in reformatory sentencing or merely a symbolic legislative reform.

IV. CONCEPTUAL FOUNDATIONS OF COMMUNITY SERVICE

A. Meaning and Essential Characteristics

Community service is a court-mandated, non-custodial sanction requiring a convicted person to perform unpaid labour for the benefit of the community. It is generally imposed where the offence is not grave enough to justify imprisonment but sufficiently serious to warrant more than a nominal fine.

Its defining features include:

1. Compulsory and legally enforceable nature.
2. Absence of monetary remuneration.
3. Identifiable public benefit; and
4. Supervision by an authorized authority.

Unlike fines, which may disproportionately burden economically weaker offenders, community service imposes a time-based obligation that is comparatively equitable and socially productive.

B. Theoretical Basis

The intellectual legitimacy of community service derives from modern theories of punishment.

1. **Reformatory Theory:** The Supreme Court has repeatedly emphasized that punishment should aim at reformation where possible. In *Mohd. Giasuddin*

v. State of A.P., the Court stressed that a humane sentencing approach is integral to a civilized legal system. Community service operationalizes this philosophy by encouraging constructive behavioural change.

2. **Restorative Justice:** Restorative models focus on repairing the harm caused by crime. By contributing labour to community welfare, the offender symbolically restores social equilibrium.
3. **Proportionality in Sentencing:** Modern criminal law requires punishment to be proportionate to the gravity of the offence. Community service provides a calibrated response for low-level criminality.
4. **Reintegrative Shaming:** The sanction holds the offender accountable without permanently stigmatizing them, thereby facilitating reintegration.

C. Position in India Prior to the BNS

Prior to the Bharatiya Nyaya Sanhita, Indian penal law did not formally recognize community service as a structured punishment. Courts occasionally experimented with creative sentencing—such as directing offenders to perform social work particularly in cases involving youthful offenders. However, these directions lacked a uniform statutory foundation.

The Probation of Offenders Act, 1958 provided for release on probation and admonition, but it did not institutionalize compulsory community labour. The Law Commission of India and the Malimath Committee (2003) repeatedly recommended the introduction of diversified non-custodial sanctions. The BNS provision can therefore be viewed as the legislative culmination of long-standing reform proposals.

V. STATUTORY FRAMEWORK UNDER THE BHARATIYA NYAYA SANHITA:

A. Legislative Recognition

The Bharatiya Nyaya Sanhita, 2023 formally includes community service as one of the recognized punishments under Section 4(f) of the statute. This explicit statutory enumeration marks a significant doctrinal shift from the earlier penal framework

under the Indian Penal Code, 1860, which did not formally recognize community service as a structured sentencing option.

The legislative intent appears twofold: first, to reduce unnecessary incarceration in cases involving relatively minor offences; and second, to promote reform-oriented sentencing consistent with contemporary penological principles emphasizing proportionality, rehabilitation, and restorative justice.

B. Scope of Application

Although the Bharatiya Nyaya Sanhita does not establish a universal sentencing formula, it prescribes community service for several specific offences of relatively limited gravity. The statute identifies the following offences where courts may impose community service as punishment:

1. Section 202 – Public servant unlawfully engaging in trade.
2. Section 209 – Non-appearance in response to a proclamation.
3. Section 226 – Attempt to commit suicide with the intent to restrain a public servant from performing official duty.
4. Section 303(2) (Proviso) – First-time theft involving property valued below ₹5,000.
5. Section 355 – Misconduct in public by a drunken person; and
6. Section 356 – Defamation.

These provisions collectively indicate that community service is primarily intended for offences involving relatively low levels of harm, where the offender does not pose a significant threat to public safety and where the prospects of reform are considered favourable. The sentencing option therefore functions as an intermediate sanction between fines and custodial punishment, reflecting the principle of proportionality in modern sentencing policy.

Notably, the Bharatiya Nyaya Sanhita itself does not provide a statutory definition of community service. However, guidance may be drawn from the Explanation to Section 23 of the Bharatiya Nagarik Suraksha Sanhita, 2023, which defines community

service as work ordered by the court as punishment that benefits the community and for which no remuneration is paid to the convict.

During the legislative scrutiny process, the Parliamentary Standing Committee on Home Affairs (2023) recommended that the definition of community service be incorporated directly within the Bharatiya Nyaya Sanhita in order to ensure clarity and uniformity in implementation. Parliament ultimately did not incorporate this recommendation, leaving the statute without an internal definition.

This omission has potential implications for the consistent operationalization of community service across jurisdictions.

1. **Judicial Discretion:** The power to impose community service is discretionary. Courts must consider the nature of the offence, antecedents of the offender, and the broader interests of justice. In *State of Punjab v. Prem Sagar*, the Supreme Court underscored the importance of individualized sentencing based on relevant factors. The availability of community service strengthens this individualized approach.
2. **Nature of Work Assigned:** Though detailed rules are still evolving, the work assigned must be socially useful, non-exploitative, and proportionate. Tasks that are degrading or unrelated to public welfare would undermine the reformative purpose of the provision.

C. Objectives Behind Introducing Community Service

1. **Reduction of Prison Overcrowding:** Indian prisons frequently operate beyond sanctioned capacity. Diverting minor offenders to community service can significantly ease custodial pressure.
2. **Promotion of Rehabilitation:** Short-term imprisonment often fails to produce meaningful behavioural change. Community service, by contrast, encourages discipline and social responsibility.
3. **Advancement of Restorative Justice:** Community service transforms punishment into a socially productive exercise, aligning with victim- and community-centric justice models.

4. **Economic Efficiency:** Non-custodial sanctions are comparatively economical and reduce the financial burden on the state.
5. **Minimization of Criminogenic Effect:** In *Soman v. State of Kerala*, the Supreme Court highlighted the need for sentencing practices that avoid unnecessary harshness. Community service reduces exposure to criminogenic prison environments.
6. **Greater Sentencing Flexibility:** The provision enables courts to impose more nuanced and proportionate punishments.

VI. ADVANTAGES OF COMMUNITY SERVICE

Community service presents both practical advantages and important normative benefits. It humanizes punishment by avoiding unnecessary incarceration while still ensuring accountability, while also allowing offenders to maintain employment and family ties that are essential for long-term rehabilitation. Empirical and comparative research from several jurisdictions indicates that properly supervised non-custodial sanctions can contribute to lower rates of recidivism among minor offenders. In addition, community service produces visible public benefit, thereby strengthening public confidence that accountability is being meaningfully enforced without resorting to unnecessary imprisonment.

Importantly, the reform also aligns India with the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), which encourage member states to expand alternatives to incarceration.

Comparative International Perspective

Several common-law jurisdictions have successfully integrated community service into their sentencing frameworks.

In the United Kingdom, community orders involving unpaid work are supported by a robust probation service and structured sentencing guidelines. In the United States, community service is widely used in juvenile and minor offence cases, with strict consequences for non-compliance. Canada and Australia frequently combine community service with restorative conferencing.

The comparative experience suggests that three elements are critical for success: strong supervision, clear statutory guidance, and institutional coordination. These lessons are highly relevant for India.

VII. IMPLEMENTATION CHALLENGES IN INDIA

Despite its promise, the effective operationalization of community service under the BNS faces several structural challenges.

First, detailed procedural rules are still limited, creating scope for uneven application across courts. Second, India's probation infrastructure remains under-resourced in many states. Third, administrative coordination between courts, local authorities, and supervising agencies may prove difficult, particularly in rural areas.

There is also a perceptual challenge. In a legal culture historically accustomed to custodial punishment, community service may initially be viewed as a lenient option unless properly explained. Finally, wide judicial discretion without structured sentencing guidelines may produce regional disparities.

VIII. RECOMMENDATIONS

For community service to emerge as a meaningful sentencing tool, several measures are necessary.

The government should frame comprehensive rules specifying service hours, permissible work categories, and monitoring procedures. Probation services must be strengthened through training and technological support. Judicial sensitization programmes can promote consistent sentencing practices. Digital tools such as biometric attendance and periodic reporting may enhance compliance. Partnerships with municipal bodies and accredited NGOs should be institutionalized. Finally, the law must clearly specify consequences for non-compliance to preserve deterrent value.

A. Critical Evaluation

The incorporation of community service in the Bharatiya Nyaya Sanhita represents a progressive step consistent with contemporary penological thinking. It acknowledges

that excessive reliance on imprisonment is neither economically sustainable nor socially optimal for minor offences.

However, India's past experience with probation and other alternatives demonstrates that legislative innovation alone is insufficient. The success of community service will depend on administrative capacity, judicial commitment, and public acceptance. If poorly implemented, the provision risks becoming symbolic. If executed seriously, it could substantially reduce prison congestion and promote rehabilitative justice.

Nevertheless, the mere inclusion of community service within the statutory framework should not be overstated. Without consistent judicial engagement, adequate supervisory infrastructure, and public awareness, the provision may remain symbolically progressive but practically underutilized.

IX. CONCLUSION

The recognition of community service as punishment under the Bharatiya Nyaya Sanhita, 2023 marks an important milestone in the evolution of Indian criminal law. By moving beyond an exclusively incarceration-driven model, the legislature has embraced a more balanced approach incorporating reformatory and restorative principles.

Community service has the potential to reduce prison overcrowding, preserve the social stability of minor offenders, and enhance public confidence in proportionate sentencing. Nevertheless, its long-term success will depend on detailed rule-making, strengthened probation infrastructure, judicial consistency, and active community participation.

The true measure of this reform will ultimately lie not in its legislative promise but in its sustained and principled application across the criminal justice system.

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