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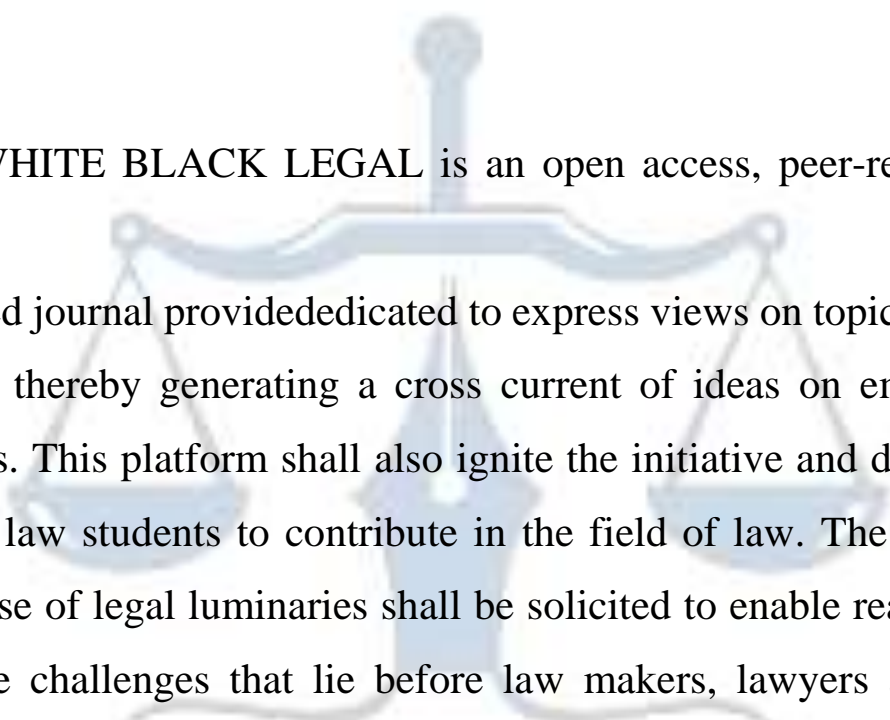


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With this thought, we hereby present to you

COMMUNITY SERVICE SENTENCE- A PARADIGM SHIFT IN THE CRIMINAL JUSTICE ECOLOGY

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ABSTRACT

“Where there exists good, there exists bad” like the two sides of a coin. The prevalence of crime in a society is a harsh truth irrespective of a prosperous society. Citizens are the cornerstone of a society and any deviance by them must be punished. The threshold of punishment and sentencing is *sine qua non* in infliction of punishment upon the offender. The penal system of a country determines the spirit of punishment it adopts, like in India the Reformatory theory of punishment is emphasised on. The notion of reformation is amalgamated with the concept of Restorative Justice, which is the driver repairing the best possible as against the harm done. Community Service is an approach towards restorative justice, aiming to pay back to the victim as well as the community following the expiatory approach of the punishment. The modalities of community service can be incorporated in the after sentencing process as well, where the guilty on account of good conduct and as a measure to reintegrate them in the society can be awarded community service sentencing. The adoption of Community Service sentencing in India explicitly in the criminal justice administration is a key stone to punish the offenders apart from imprisoning them for petty/ less serious offences.

Keywords- Community Service, Restorative Justice, Reintegration, Criminal Justice Administration

INTRODUCTION

Realisation of justice is the ultimate role the penal laws of a country. Criminal justice system of a country comes to its fruition when the goal of the penal policy is the attainment of satisfaction of the victims, society and the persons on whom the incidence of crime has an impact. Administration of justice is truly achieved when the penal policy incorporates a multiple approach theorem towards the justification of punishment.

Punishment is a means to punish those who are guilty of committing an offence. Punishment is a measure of deterrence to create and set an example for the future criminals to abstain from doing the crime. Categorically, the reasoning of punishment is achieved when it creates deterrence to the criminal along with creating a sense of penance in him/her for the crime committed.

With the onset of new criminal laws on 25th December 2023, the ambit of punishment in the penal policy of India is widened with the incorporation of “Community Sentence”. Community Service is a tool adopted by the penal policy of India explicitly to deter those who are guilty of commission of crime but also to let them repay them to the society, i.e. the tenets of the *expiatory theory of punishment* is incorporated expressly.

RESEARCH PROBLEM

Community Service Sentence is a newly incorporated provision in the new criminal law, though its manifestation was earlier there like in the Juvenile Justice Act, 2015 and many *hon'ble* judges adopted this in an implied manner. The Indian penal policy aims to cater the criminals to reintegrate with the society. Generally, the sentence is operational for petty offences or the offences of very less gravity/ non-serious offences *per se*. “Section 4(f)”¹ of the Bharatiya Nyaya Sanhita, 2023 [BNS, henceforth] provides for the community service sentence. The main challenge before the courts is the undetermined aspect of the quantum and the nature of the community service it could be.

RESEARCH OBJECTIVES

1. To discover the ambit and realisation of Community Service.
2. To investigate the challenges the court might face in relation to community service sentencing.
3. To decipher the implementation aspects of the community service.
4. To determine the impact of the community service sentence on the society and the criminals.
5. To ascertain whether it will reintegrate the criminals with the society.

¹ Bharatiya Nyaya Sanhita, 2023, §4(f), No.45, Acts of Parliament, 2023 (India).

HYPOTHESIS

Community Service Sentencing is acknowledged to be a new approach towards reintegration, re-amalgamation and restoring the offender/criminal into the society. The inducement of community sentence is very subjective and is at its nascent stage in Indian context. The notion of having community sentence as a punishment for petty offences is that it saves the offender from going to prison where he could come in contact with others that might influence him towards criminal behaviour or where he is asked to pay fine which in due course not put an integrative impact on the mind-set of the offender towards generating a feeling of giving to the society.

“The crucial problem today is whether a criminal is to be regarded by society as a nuisance to be abated or an enemy to be crushed or a patient to be treated or a refractory child to be disciplined? Or should he be regarded as none of these things but simply be punished to show to others that anti-social conduct does not finally pay.”² The object of punishing the offender is many, but the question that stands is whether the punishment does justice towards the nature of crime. In the earlier penal system of India before enactment of the new criminal laws in 2023, imprisonment/fine was being granted for petty offence. The transition of the criminal justice administration towards social reintegration of the offender is an artistic step to amalgamate him with the society and also to instil the society that the penal policy is designed in such a way that it pays back to the society.

“The only current recognition of community sentencing is Section 18(1)(c) of the Juvenile Justice (Care and Protection of Children) Act 2015, which provides for community sentencing for convicted minors.”³ ***Honourable Justice Anand Pathak*** of the Madhya Pradesh High Court is profoundly known for using *community service in spirit though not in letter*, where in the cases of bail, he used to ask the accused to plant a tree and thereby take care of it as a condition for bail. Due diligence has to be done while sentencing for community service as it is solely on the discretion of the court to provide it. Not defining community service will be a task for the court to identify which type of community service to give as itself it is an inclusive concept.

The notion of community service was earlier crystallised in the developed nations like the USA

² Dr. N.V. Paranjapee, Criminology & Penology (including Victimology) 305 (Central Law Publications, 2019).

³ Rituraj Kumar, Community Sentencing; a Positive Shift in the Indian Criminal Justice System.

but India is now having its focal shifted towards community sentencing in achieving restorative justice.

RESEARCH QUESTIONS

1. Whether Community Service is viable option for the Indian Penal Policy?
2. Whether there is a positive footprint of the Community Service Sentence/ Community Sentence?
3. Does community service sentence have a defined nature and ambit?
4. Whether Community Service can prevent the recidivism?
5. Is community service sentence a manifestation of restorative justice?
6. Whether community service sentence is a cradle of human rights?

RESEARCH METHODOLOGY

The research is doctrinal type of research adopting Bluebook 20th edition as its citation mechanism. It emphasises on analysing possible explanations and outcomes from various texts, articles and findings, so as to demystify the problems that seem prevalent. The research further entrenches itself into the legislations and further encompasses itself on relevant subject matter literature.

COMMUNITY SERVICE SENTENCING: A SUPPLEMENTAL INGREDIENT TO IMPRISONMENT

Man is an integrative part of the society and crime is an integral part of the society as it has far reaching impact that is against the society. Introduction of community service is an important prospect that is devised to achieve positive resultant among the criminals committing petty offences. The modalities of community service sentencing incorporate an open ended line left by the Legislature of India. The notion of such service is considered as that of repenting with giving back to the society. Since, crime is an embedded emotion in the deep grooves of the society, assisting the society in many ways can pacify the social order for the crimes that are petty. Corrective justice is formalised in every nation's penal policy but instilling the roots of *restorative justice* is a gateway towards the *integrative approach* of sentencing. "In case of community sentencing, various types of work of social importance like cleaning, gardening,

painting, teaching, etc., are assigned to the offenders according to their skills and suitability.”⁴ “Punishment necessarily implies some kind of pain inflicted upon the offender or loss caused to him for his criminal act which may either be intended to deter him from repeating the offence or may be an expression of society’s disapprobation for his anti-social conduct or it may also be directed to reform and regenerate him and at the time protect the society from law-breakers.”⁵ “The need of the day is for a rehabilitative programme for all inmates with a substantial diminution in the use of imprisonment and incarceration.”⁶

Community service sentencing is not a popular notion that is prima facie available in India. It was only in the Juvenile Justice Act of 2015⁷ that it was mentioned. “The Madhya Pradesh High Court in the case of *Azad Khan* gave community service sentence to the convicted person to attend the Guna District hospital.”⁸ “To repay a debt to society, a convict performs community service to help his or her local community.”⁹ The sentencing policy of a country must cohort to a manner which serves the purpose and nature of crime depending upon the case. In the case of *State of U.P. v. Sanjay Kumar*¹⁰, the Supreme Court held that-

“22. Ultimately, it becomes the duty of the courts to award proper sentence, having regard to the nature of the offence and the manner in which it was executed or committed, etc. The courts should impose a punishment befitting the crime so that the courts are able to accurately reflect public abhorrence of the crime. It is the nature and gravity of the crime, and not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. Imposition of sentence without considering its effect on social order in many cases may be in reality, a futile exercise.”

⁴ Mitali Agrawal, *Beyond The Prison Bars: Contemplating Community Sentencing in India*, 12 NUJS L. Rev. 119, 121 (2019).

⁵ Dr. N.V. Paranjapee, *Studies in Jurisprudence and Legal Theory* 267 (Central Law Agency, 2019).

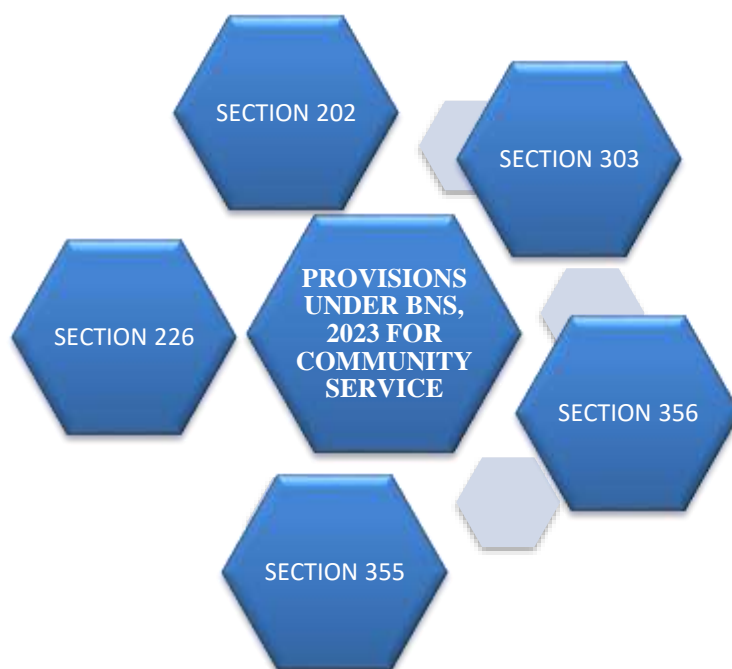
⁶ Dr. N.V. Paranjapee, *Studies in Jurisprudence and Legal Theory* 275 (Central Law Agency, 2019).

⁷ Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2016 (India).

⁸ *Azad Khan v the State of MP*, MCRC-11928-2017

⁹ Priyal Palak, *COMMUNITY SERVICE IN THE INDIAN CRIMINAL JUSTICE SYSTEM*, 3 Indian Journal of Integrated Research in Law 1, 2 (2023), <https://ijirl.com/wp-content/uploads/2023/01/COMMUNITY-SERVICE-IN-THE-INDIAN-CRIMINAL-JUSTICE-SYSTEM.pdf>.

¹⁰ *State of U.P. v. Sanjay Kumar*, (2012) 8 SCC 537.



The crimes eligible for sentencing **community service** under BNS, 2023 are-

1. Section 202- Public Servant unlawfully engaging in trade

“Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, 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.”¹¹

2. Section 226- Attempt to commit suicide to compel or restrain exercise of lawful power

“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.”¹²

3. Section 303 (2)- Theft

“Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both and in case of second or subsequent conviction of any person under this section, he shall be punished with rigorous imprisonment for a term which shall not be less than one year but which may extend to five years and with fine.

Provided that in cases of theft where the value of the stolen property is less than five thousand rupees, and a person is convicted for the first time, shall upon return of the value of property

¹¹ Bharatiya Nyaya Sanhita, 2023, § 202, No.45, Acts of Parliament, 2023 (India).

¹² Bharatiya Nyaya Sanhita, 2023, § 226, No.45, Acts of Parliament, 2023 (India).

or restoration of the stolen property, shall be punished with community service.”¹³

4. Section 355- Misconduct in public by a drunken person

“Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to one thousand rupees, or with both or with community service.”¹⁴

5. Section 356 (2)- Defamation

“Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both or with community service.”¹⁵

The 156th Law Commission of India report recommended adding Community Service as a form of punishment in the repealed Indian Penal Code. “Punishment and sentencing occupy an important place in the administration of criminal justice system, while punishment is a matter of substantive law sentencing forms the part of procedural laws it is an award of the actual punishment to the offender or convict by the judge exercising his judicial discretion.”¹⁶

WHY COMMUNITY SERVICE IS AN IMPORTANT INTERVENTION TOWARDS A NEW CRIMINAL JUSTICE ORDER IN INDIA?

Community service promotes a restorative justice approach, aiming to repair the harm caused by an offense. “Offenders actively contribute to the community, helping to rebuild trust and relationships.”¹⁷ “It offers rehabilitation opportunities by allowing offenders to reflect on their actions and make amends.”¹⁸ “Engaging in positive, productive activities within the community can contribute to personal growth and development.”¹⁹ “By involving offenders in community service, there is a chance for them to become positively integrated into society.”²⁰ “This can help break the cycle of criminal behaviour by fostering a sense of responsibility and belonging.”²¹

¹³ Bharatiya Nyaya Sanhita, 2023, § 303(2), No.45, Acts of Parliament, 2023 (India).

¹⁴ Bharatiya Nyaya Sanhita, 2023, § 355, No.45, Acts of Parliament, 2023 (India).

¹⁵ Bharatiya Nyaya Sanhita, 2023, § 356(2), No.45, Acts of Parliament, 2023 (India).

¹⁶ SSRN, <https://www.ssrn.com/index.cfm/en/> (last visited Sept. 9, 2024).

¹⁷ Ankita Roy, Community Service Sentencing And Its Significance In The Indian Criminal Justice System, Live Law (Feb. 6, 2024, 9:00 AM), <https://www.livelaw.in/articles/community-service-sentencing-and-its-significance-in-the-indian-criminal-justice-system-248589?fromIpLogin=646.7180850992848>.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

The incorporation of community service in the sentencing policy will have the following ramifications-

1. Bolstering the soul and spirit of *empathetic undertone* in the psyche of the offender.\
2. A potential tool to *decrease over-crowding* of the prisons with providing community sentence to those who are offenders for committing petty offences.
3. It will bring around a *sense of being* in the offender towards the society as a whole.
4. Instilling the *good conscience* of the offender towards the society.
5. The restoration and reintegration of the offenders is an *easy* task as it is provided for petty offences.
6. *Accountability* in the individual capacity towards the society will increase.
7. Involving in the community service will give a *positive overtone* to the offender of the crime, as it acts as a supplement to imprisonment.
8. It acts as a cradle for the positive involvement and protection of *human rights* of the offender with an approach to cater to the society for the wrongs done by him.
9. It is considered as a viable tool to *prevent recidivistic* tendencies.

The adoption of community service in India aligns with broader global trends in restorative justice and a shift away from solely punitive measures.²² “The character of Community Service was prevalent in India but only in the Juvenile Justice Act, 2015.”²³ Honourable Justice Anand Pathak of High Court of Madhya Pradesh used impliedly the concept of community service while granting wherein under ‘any other condition in the interest of justice’²⁴, he encapsulated the notion of community service.

In the *Sunitagandharva case*, Honourable Justice Anand Pathak, held-

“Section 437(3) and other two related provisions of Section 438(2) and 439(1) give scope of Community Service as a bail condition and Community Service has both; the social and the cognitive benefits and it can serve not only as an alternative to Post Trial but also to Pre Trial reforms and in fact inclusion of Community Service as Post Inquiry measure in the Section 18(1)(c)(2) of the Juvenile Justice (Protection & Care of Children) Act, 2015 indicates the importance of this concept. The 42nd Report of the Law Commission of India of June, 1971 for Revision of Penal Code, 1860 incorporated some discussion in this regard and thereafter an

²² Ankita Roy, Community Service Sentencing And Its Significance In The Indian Criminal Justice System, Live Law (Feb. 6, 2024, 9:00 AM), <https://www.livelaw.in/articles/community-service-sentencing-and-its-significance-in-the-indian-criminal-justice-system-248589?fromIpLogin=646.7180850992848>.

²³ Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2016 (India).

²⁴The Code of Criminal Procedure, 1973, § 437(3), No.2, Acts of Parliament, 1974 (India).

amendment bill was introduced in the Parliament but left out due to the proclamation of Emergency. Later on Law Commission in its 156th Report of August, 1997 stretched upon the need and scope of implementing the punishment of Community Service in the Indian Penal System. Even Justice Malimath Committee in year 2002 also recommended community service as a mode of punishment.”²⁵

*“Shri Vijay Dutt Sharma, learned counsel appearing as Amicus Curiae relied upon history of bail, 36th Law Commission of India report of December, 1967 and amended Cr.P.C. of 1973 as well as amendment caused in Cr.P.C. in 2005, with its aims and objects to submit that any other interpretation would lead to miscarriage of justice. He also addressed on the expression “any other conditions” as contained in Section 437(3) of Cr.P.C. by taking this Court to the concept of bail and 36 report of Law Commission of India.... .”*²⁶

*In State V. Sanjeev Nanda, it was held that “the accused would do community service for two years which will be arranged by the Ministry of Social Justice and Empowerment within two months. On default, he will have to undergo simple imprisonment for two years.”*²⁷

In India, the approach of community sentence is new and is solely based on the discretion of court and moreover the nature/ typology of the community service are not stipulated. The direction of India in adopting the community service is to enable a restoration of the criminal i.e. by integrating the offender back into the society along with restoring the victim of the crime as well.

CONJECTURE BEHIND COMMUNITY SERVICE SENTENCING

VIS-À-VIS RESTORATIVE JUSTICE

The ideals of justice are not only pursued by imprisonment or imposition of fine but by taking effective measure to return to the society for the damage caused. Community Service also ignites the wings of human rights, where earlier due to imprisonment generally for petty offences were not felt at an equivalent edifice. Community service is a beacon of hope to satisfy the victim of the crime and instils a sense of cooperation on the part of offender towards the society.

Restorative justice is a concept that aims to restore the offender back to the society along with victim of the crime. This step is crucial and here lies the importance of community sentencing

²⁵ Sunitagandharva V. State of M.P., 2020 SCC OnLine MP 2193.

²⁶ Sunitagandharva V. State of M.P., 2020 SCC OnLine MP 2193.

²⁷ *State v. Sanjeev Nanda*, (2012) 8 SCC 450

where these are made punishable for petty offences and generally these offences are those which have the capacity to restore or bring back the old disposition to the victim of the crime. The character of restorative justice aims to re-integrate not only the victim, offender but also the stakeholders i.e. the society as well. The policy of restorative justice is being followed in the prison administration by allowing the offenders probation, parole, and open jail sentencing. The approach that could be used is meant to reintegrate and restore them back to the community and thereby serving penance so to justify their crime as against the victim. In Mohd. Firoz v. State of M.P., the Supreme Court held that-

*“One of the basic principles of restorative justice as developed by this Court over the years, also is to give an opportunity to the offender to repair the damage caused, and to become a socially useful individual, when he is released from the jail. The maximum punishment prescribed may not always be the determinative factor for repairing the crippled psyche of the offender.”*²⁸

In State of U.P. v. Sanjay Kumar, the Supreme Court emphasised the issue of sentencing in the following regards-

“21. Sentencing policy is a way to guide judicial discretion in accomplishing particular sentencing. Generally, two criteria, that is, the seriousness of the crime and the criminal history of the accused, are used to prescribe punishment. By introducing more uniformity and consistency into the sentencing process, the objective of the policy, is to make it easier to predict sentencing outcomes. Sentencing policies are needed to address concerns in relation to unfettered judicial discretion and lack of uniform and equal treatment of similarly situated convicts. The principle of proportionality, as followed in various judgments of this Court, prescribes that, the punishments should reflect the gravity of the offence and also the criminal background of the convict. Thus, the graver the offence and the longer the criminal record, the more severe is the punishment to be awarded. By laying emphasis on individualised justice, and shaping the result of the crime to the circumstances of the offender and the needs of the victim and community, restorative justice eschews uniformity of sentencing. Undue sympathy to impose inadequate sentence would do more harm to the public system to undermine the public confidence in the efficacy of law and society could not long endure under serious threats.”

²⁸ Mohd. Firoz v. State of M.P., (2022) 7 SCC 443.

Restorative Justice is not only a concept but a phenomenon that is driven by preventing crime by enabling the offender to restore in the society. The mode of restoration for those who are imprisoned heavily can be- probation, parole, community service, open jails; while for those who are to be punished for petty offences they can directly be given community service that will instil the sense of them being a responsible citizen to the society and on the mind-set of the community it will set an example to satisfy any vengeance that may arise.

India is now in a nascent stage of evolution of community service as a sentencing measure. Minimal efforts can be seen by the policy makers to introduce Community service in the system, the only statutory provision which is available in India is under the Juvenile Justice Act, 2015 under section 18 (1)(c) which provides that the juvenile offenders can be awarded community service if the Juvenile Justice Board deems it fit.²⁹

India is pursuing reformatory theory of punishment where the reformation of an offender is given prime importance, amalgamating the conceptualization of reformation with restorative policies would cater a new dawn and momentum to the criminal justice ecology. Sentencing framework of India must try to shift its inclination towards an approach that is determined by the notion of corrective and restorative justice.

COMMUNITY SERVICE SENTENCE – A FUTURISTIC PANORMA **WITH SHIFTING POINT OF INCIDENCE**

Community service sentence is a great tool that can be used not only for petty offences but for the civil offences as well which disturb the collective conscience of the society. The use of it can be incorporated in many offences like for intoxicated driving, rash driving, etc. It can also be used for corrective purposes by the Prison authorities wherein the prisoners who have good conduct can engage in activities that might render fruitful to the society. In order to crystallize the concept of Community Service, a set of rules and regulations needs to be jotted down by the Parliament of India to provide a guiding light to the judiciary to work on the mechanism and thereby it should also be laid as to how an infrastructure is needed to overlook the functioning of the grass root level implementation of the sentencing.

The adoption of community service sentencing would not only be beneficent toll for the

²⁹ SSRN, <https://www.ssrn.com/index.cfm/en/> (last visited Sept. 9, 2024).

restoration but it will also shift the incidence away from imprisonment and will also reduce the overcrowding in the prisons. The idea behind community service is to demarcate a positive shift and balance to a new justice modal that will allow the offenders to develop a sense of being by catering and giving their services. “Act of giving” is considered the biggest blessing one could have and by this way if an offender pursues giving he is already repenting and compensating for his sins.

SUGGESTIONS

1. In order to have an optimistic understanding and implementation of the newly incorporated sentencing policy in India, it is imperative to include the basic bare minimum infrastructure to channelize its implementation, like an **agency** that could overlook upon the persons/guilty undergoing community service sentencing.
2. **Specialized policing agents** should be recruited from police to overlook the offenders being awarded community sentence.
3. Community sentence should be set a norm for **traffic offenders**, to provide and overlook the traffic management for 1 week or as per their repeated rule breaking, which can also be given by a Traffic Police office officially.
4. Prisoners can be made a subject of community sentencing where they would render their community services during their **probation/parole** time; like maintenance work in orphanages, NGO’s, or cleaning work, etc.
5. Incorporation of community service can be done in sentencing policy by allowing the offenders once they have completed the tenure of their imprisonment to perform task of **community service for 3 months**, which will set an example of them ready to reintegrate into the society. It will also aid the society to accept them as well.

CONCLUSION

The advent of a new system is brewing in India with the incorporation of Community Service formally in the penal provisions mainly, enlarging the scope for restorative justice to come to its bloom. “The range of community service work will have to be defined and ring fenced.³⁰ “It could include working in the social service arena such as services at hospitals or rehabilitation centres, or require performance of manual or non-manual work, or may require

³⁰ Fauzia Shakil, ‘Community Service’ Under the BNS- An Incomplete Yet Promising Penological Advancement (July 5, 2024, 9:58 AM), <https://www.livelaw.in/articles/community-service-under-bhartiya-nyaya-sanhita-262322?fromIpLogin=15112.910223767107>.

serving non-profit organizations for social services, or require assisting in government awareness programs etc.”³¹

“The police would particularly play a major role in the implementation of community sentencing and would require proper sensitisation regarding its effectiveness in the process.”³² Moreover, the judiciary would have to play the role of a vanguard to ensure strict compliance with the orders.”³³

The court has wide discretion in deciding the quantum and nature of the community service to be given. The court has to be mindful in the sentencing process so as to reach a balance focal point of fulfilling the ideals of punishment and restoration. The future with the embedded system of community sentence would be enlightened when more offences are brought under its ambit and a social order is set into motion which is giving and postulates for re-integrative blooms of the penal policy of India.



³¹ Fauzia Shakil, ‘Community Service’ Under the BNS- An Incomplete Yet Promising Penological Advancement (July 5, 2024, 9:58 AM), <https://www.livelaw.in/articles/community-service-under-bhartiya-nyaya-sanhita-262322?fromIpLogin=15112.910223767107>.

³² Mitali Agrawal, Beyond The Prison Bars: Contemplating Community Sentencing in India, 12 NUJS L. Rev. 119, 121 (2019).

³³ Mitali Agrawal, Beyond The Prison Bars: Contemplating Community Sentencing in India, 12 NUJS L. Rev. 119, 121 (2019).