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## THE JURISPRUDENTIAL SHIFT: FROM RETRIBUTIVE TO REFORMATIVE JUSTICE

*-Varna Wilson*

### ABSTRACT

In India, the introduction of the Bharatiya Nyaya Sanhitha (BNS), 2023, was effective from July 1st 2024.<sup>1</sup> This legislation introduces major transformative changes by moving away from colonial-era's retributive incarceration toward a modernised and progressive framework addressing various aspects of criminal laws and procedure in India. Along with the changes it marks a progressive shift in Indian criminal jurisprudence adapting to reformatory restorative idea of justice. It replaced imprisonment for petty offenses by explicitly incorporating community service (Section 4(f)) BNS.<sup>2</sup> as a legitimate punishment for specific minor, non-violent offences—such as petty theft, public intoxication, and non-appearance in courts with the primary objective of fostering rehabilitation, enabling reintegration into society and decrease prison overcrowding. However, the transformative capability of reform is purely based on addressing the gap between legislative intent and administrative capacity. Through an analysis of the statutory framework and comparative insights from global jurisdictions this study identifies significant implementation challenges: While the Bharatiya Nyaya Sanhitha (BNS) introduces community service as a penal award, it fails to provide a specific definition of the term. Even though Section 23 of the Bharatiya Nagarik Suraksha Sanhitha (BNSS).<sup>3</sup> offers a broad and wide explanation, it creates significant ambiguity. This leaves a confusion and disparities in identifying which specific tasks qualify as 'benefiting the community,' leading to probable inconsistency in determining

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<sup>1</sup> Ministry of Home Affairs, Government of India. Notification No. S.O. 850(E). 23 Feb. 2024.

<sup>2</sup> The Bharatiya Nyaya Sanhitha, 2023, § 4(f) Parliament of India, 2023.

<sup>3</sup> The Bharatiya Nagarik Suraksha Sanhitha, 2023, § 23 Parliament of India, 2023.

which petty offenses merit such an alternative sentence. There is no authority or a mechanism to execute or monitor the execution of these sentences which raise concerns regarding the supervision and probable misuse of provision and the lack of specific definition for "community service" in the BNS leaves room for exercising judicial discretion. Which allows judges to tailor sentences to an offender's background, it creates sentencing disparities across different courts for identical or similar offense

The paper concludes that without establishing authority or administrative infrastructure, clear monitoring protocols and provisions , and public awareness programs to ensure accountability, community service risks becoming a symbolic change rather than a functional reform.

**Keywords:** Bharatiya Nyaya Sanhita (BNS), Community Service, Reformatory Justice, Administrative Capacity, Restorative Justice.

## INTRODUCTION

The transition from Indian Penal Code (IPC) <sup>4</sup> to BNS marks a significant reform and transformation to modernize the criminal justice framework and Indian criminal jurisprudence. This initiative aims to prompt a change from a colonial, retribution-heavy model of sentencing to a citizen-centric , reformatory approach to justice.

The Shift: IPC (1860) to BNS (2023)

1. Breaking colonial ties: The IPC, drafted by Lord Macaulay, mainly aimed at punishment and imprisonment to maintain colonial authority.<sup>5</sup> The BNS, meaning "Indian Justice Code," seeks to prioritize "Nyaya" (justice) over "Danda" (punishment).
2. Structural Reform: The BNS is streamlined, reducing 511 sections in the IPC to 358 in the BNS while incorporating technology-enabled investigations, tackle contemporary crimes like cyber fraud and focus on victim justice
3. Modernization: It incorporates new definitions for cybercrime, terrorism (Section 113), organized crime (Section 109), and mob lynching.

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<sup>4</sup> The Indian Penal Code, Act No. 45 of 1860, Parliament of India, 1860

<sup>5</sup> Macaulay, Thomas Babington. "Introductory Report upon the Indian Penal Code." *Internet Archive*. <http://www.archive.org/stream/speechesandpoem00macagoog#page/316> (1901).

4. Gender and Equality: It recognizes transgender individuals and attempts gender-neutral language in specific offenses and also stricter penalties for offence against women

#### The Problem: Retributive Focus and Prison Crisis

The IPC was characterized by a retributive philosophy—imposing punishments in accordance to the crime, with heavy reliance on imprisonment and, in some cases, the death penalty. This turned to high challenges and issues over the years

1. Prison Overcrowding: Indian prisons are highly overcrowded, rendering them uninhabitable and failing to meet basic human right standards.
2. Basic Rights Crisis: The overcrowding results in poor sanitation, unhygienic environment, health hazards, and higher levels of violence resulting in a failure to meet basic living standards
3. Mix up of First-Time Offenders with Hardened Criminals: The overcrowding prevents the separation of undertrials and convicts, or petty offenders from hardened criminals.
4. Start of cycle of Crime: First-time offenders are often involuntarily drawn into the company of habitual criminals and to their further criminalization and worsening of situation rather than rehabilitation.
5. High Undertrial Population: "Justice delayed is justice denied" is the core of criminal jurisprudence but in Indian prisons, where three-quarters of inmates are undertrials, it is often illegal, pre-trial detention destroys reputations and livelihoods, branding the innocent and creating intergenerational trauma.

The soul of a nation's justice system is how it treats its least serious offenders. The Indian Penal Code (IPC), operated on a strictly carceral or punitive logic that treated a petty thief the same as a hardened criminal. This reliance on custodial punishment and imprisonment reflecting colonial hangover, favoring retribution over rehabilitation. The introduction of the BNS 2023, points realization, even though challenging, shift from Pain-based Justice to Utility-based Justice. By prioritizing rehabilitation through new penal measures, the BNS gestures toward a necessary rehabilitative turn to overcome decades of penological stagnation. The urgent need for this change is evidenced by the "crisis of the cage" in Indian prisons. As per Prison Statistics India (PSI)

reports, jails are running far beyond capacity, with 75.54% of inmates being undertrials as of July 2023.<sup>6</sup> This high percentage reflects a system over-burdened by over-criminalization which in turn delays justice as well as overcrowding the prison. The current system creates a "university of crime," in prisons which are intended to reform offenders and to prevent further offenses but often end up minor, first-time offenders are exposed to hardened criminals, transforming minor offences or mistakes into deeper delinquency. Sentencing individuals to jail for petty offences, like public intoxication or minor thefts is creating more harm to society than the offense. Community service acts like a safety valve, which allows the state to penalize without producing career criminals. Under this shifted structure, time and labor have begun to alternate imprisonment as the currency of punishment for non-violent, minor offenses. This shift toward restorative justice is made to allow offenders to make amends to the society they harmed, promoting and encouraging rehabilitation and reintegration. However, the inclusion of community service in the BNS is currently an empty vessel. It tells us that community service exists, but not what it is, how it should be supervised or executed, or how to maintain uniformity

This paper asserts that while the BNS provides a progressive skeletal framework for reformative justice, the lack of executing or administrative system—consisting of clear sentencing guidelines, specialized supervising and maintaining agencies, and defined community service roles—threatens to render Section 4(f) a hollow and ambiguous statutory promise. Therefore, this paper will look into the structural challenges of implementing community service in India, draw upon international best practices for comparative insights, and try to propose a concrete operational framework to ensure that the shift from retribution to reformation is effective

## LITERATURE REVIEW

The way people talk about penology is based on criticizing the Indian Penal Code (IPC) of 1860. Upendra Baxi thinks that the IPC of 1860 was not made to help people but to control them.<sup>7</sup> This way of thinking about punishment is about using pain, force and pressure to keep people in control. In today's world people are starting to think that punishment should be about helping people change

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<sup>6</sup> India, P. S. (2011). National crime records bureau. *Ministry Of Home Affairs, Government Of India, New Delhi.*

<sup>7</sup> Baxi, U. (1982). *The crisis of the Indian legal system. Alternatives in development: Law.* Stranger Journalism.

and restore themselves. This idea comes from “Jeremy Bentham’s utilitarianism”.<sup>8</sup> He thinks punishment should be about what's good for society and helping people get better. So a person who commits a crime should be seen as someone who needs help not as an enemy or a danger. The Indian courts have done a lot to change the way people think about punishment.

They have used Article 21 of the constitution, which says everyone has the right to life and liberty.<sup>9</sup> Justice V.R. Krishna Iyer was a person in making sure the courts think about justice in a fair way.

In the case of *Mohammad Giasuddin v. State of Andhra Pradesh* (1977)<sup>10</sup>

The court said the state has to help people who have committed crimes. This is not something the state can choose to do, it is something the state has to do.

In the case of *Sunil Batra v. Delhi Administration* (1978)<sup>11</sup>

The court said that people who are in prison still have rights. The court said that prisoners should not be treated badly and this changed the way things were done.

The prisons in India are very full. This is a big problem. The Prison Statistics India (PSI) 2023 reports show that many prisons are too full. 75.54% Of inmates being undertrials is a big problem.

The Law Commission of India’s 268th Report (2017) said that the courts should think about using kinds of punishment like community service.<sup>12</sup> This report said that putting people in prison for crimes can make things worse. It can turn people into criminals.

Some people, like Madhava Menon think that just changing the laws is not enough. We need to make sure the courts and the prisons can actually use these laws. Now the laws about community service are not clear.

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<sup>8</sup> Bentham, J. (1879). *The principles of morals and legislation*. Clarendon Press.

<sup>9</sup> India Const. art. 21

<sup>10</sup> *Mohammad Giasuddin v. State of Andhra Pradesh*, (1977) 3 S.C.C. 287

<sup>11</sup> *Sunil Batra v. Delhi Admin.*, (1978) 4 S.C.C. 494

<sup>12</sup> Law Comm'n of India, Rep. No. 268, Amendments to Criminal Procedure Code, 1973 - Provisions Relating to Bail (2017)

The laws do not clearly say what community service is. This means that different courts might interpret it in ways. India does not have a system to make sure community service is done correctly. In the UK they have a “Probation Service” that helps with this. If we are not careful community service could become like “labor” or “begar”. This would be against Article 23 of the Constitution,<sup>13</sup> which says that no one can be forced to work against their will. The Indian Penal Code (IPC) of 1860 and other laws should be used to protect people not to hurt them.

## OBJECTIVES

The overarching aim of this paper is to critically examine the integration of community service as a penal sanction under the Bharatiya Nyaya Sanhita 2023 and the Bharatiya Nagarik Suraksha Sanhita, 2023. Specifically, the research aims to achieve the following

1. To Examine the Statutory Structure: To examine the specific proviso of Section 4(f) of the BNS and Section 23 of the BNSS to understand the legality, definition, meaning, and nature of community service as a penal award, which is defined as unpaid work beneficial to the community.
2. To Assess Reformatory Potential: To evaluate whether the introduction of community service productively aligns with the aims of reformatory and restorative justice, particularly in decreasing recidivism and increasing prison overcrowding.
3. To Identify Implementation Challenges: To investigate the administrative, infrastructural, monitoring, and socioeconomic gaps that may obstruct the practical execution of community service sentences.
4. To Conduct a Comparative Jurisprudential Study: To contrast India’s emerging jurisprudential structure with established international models (such as the UK and USA) to identify best practices in community supervision, execution and program management.
5. To Propose Policy Recommendations: To suggest a robust administrative, technological, and legal framework for the standardized, transparent, and equitable implementation of community service across various jurisdictions in India

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<sup>13</sup> India Const. art. 23

## RESEARCH METHODOLOGY

A doctrinal research methodology shall be employed for this study, making use of a thorough and library based analysis of law related texts, literature and official documents. Since the purpose of research is to discuss and interpret substantive and procedural criminal law reforms in India, a qualitative research approach was selected. This study makes use of a detailed examination of all the primary sources of laws, especially Bharatiya Nyaya Sanhita, 2023 and Bharatiya Nagarik Suraksha Sanhita, 2023. Both the acts are analyzed for changes in laws brought in as a result of repealing of the Indian Penal Code and the Code of Criminal Procedure. Moreover, in some cases laws and legislations have been studied to ascertain the intention of the legislature in making those laws.

For making the research more comprehensive, secondary sources were also consulted. Some of the secondary sources include, but are not limited to, recommendations and reports by the Law Commission of India, law journal articles published in reputable national and international law journals, NCBR reports about crime rate statistics and opinions of expert lawyers. Methodology consists of a critical and analytical evaluation of the practical aspects of the reforms. Information was critically analyzed to answer the research questions objectively.

## THE JURISPRUDENTIAL SHIFT: FROM RETRIBUTIVE TO REFORMATIVE JUSTICE

The philosophy of criminal law in India has undergone a deep transformation, moving away from a revengeful attitude characteristic of colonial times towards a more humanitarian one. Such a transformation can be perceived as a transition from a situation where the criminal was regarded as an enemy of the state to one where he/she was seen as a social product requiring rehabilitation. In the case of the Indian Penal Code of 1860, which was passed by the British colonial government, it was clearly crafted to be used as an instrument of control. In this regard, its philosophical perspective revolved around retribution and deterrence through fear and pain. There was no intention on the part of the British colonialists to rehabilitate the "native" Indians. It was meant to break their spirit and exercise complete domination over them. The punishment had been devised to cause as much suffering to both the mind and body of the offenders.

The Shift to Reformatory Theory

Post independence, the reformatory theory of punishment was embraced in India to become an important part of the country's legal system. It suggests that crime can be regarded as a mental disorder while a criminal can be viewed as a patient requiring rehabilitation. It should be understood that, apart from inflicting suffering on the criminal, punishment serves another purpose: that of turning the individual into a productive and law-abiding citizen. The idea was advocated by the eminent jurist, Justice V.R. Krishna Iyer, who remarked that "every saint has a past and every sinner has a future."<sup>14</sup> He saw the innate ability of humans to change for better; thus, he advocated that the law should evolve with life and give the offender respect, rather than "writing him off". It stresses more on rehabilitation in terms of probation, parole, and educational facilities rather than just imprisonment.

#### Constitutionalization of Justice: Article 21

It is the Indian constitution which acts as the catalyst for this shift; especially article 21 (right to life and personal liberty) of the Indian Constitution.<sup>15</sup> The interpretation of this right by the Supreme Court suggests that "life" means living a human life with dignity and this right is not lost even in prison. Thus, arbitrary imprisonments for petty crimes amount to denial of this human dignity. The judiciary claims that retribution often turns an offender into "hardened criminals" due to their exposure to the criminalizing prison environment. It stresses more on rehabilitation rather than punishment.

#### Case Law: Sunil Batra vs. Delhi Administration (1978)<sup>16</sup>

The leading decision in Sunil Batra vs. Delhi Administration (1978) delivered by the Constitution Bench is the foundation stone of this humanizing process. The SC held in this case through Justice V R Krishna Iyer, "it is true that fundamental rights do not desert a man even when he walks into jail even though they undergo a reduction necessitated by his imprisonment." It is a matter of law laid down in the judgment that solitary confinement and use of bar fetters (cruel iron chains) without adequate justifications in accordance with the law was a violation of Article 21. The judgment mandated that prisoners cannot be subjected to cruel, inhuman, or degrading treatment.

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<sup>14</sup> Mohammad Giasuddin v. State of Andhra Pradesh, (1977) 3 SCC 287, Supreme Court of India.

<sup>15</sup> INDIA CONST. art. 21

<sup>16</sup> Sunil Batra v. Delhi Administration, (1978) 4 SCC 494, Supreme Court of India

This case effectively abolished the "hands-off" doctrine, allowing the judiciary to intervene and protect the human rights of inmates, ensuring that punishment is proportionate and not excessively punitive.<sup>17</sup>

## STATUTORY ANALYSIS OF COMMUNITY SERVICE UNDER BNS AND BNSS

The advent of community service as a statutory form of punishment in India, by replacing the outdated Indian Penal Code (IPC) with the Bharatiya Nyaya Sanhita (BNS), 2023, represents a revolutionary shift in the legal system from punitive justice to restorative justice. The introduction of community service, which was only used in the area of juvenile law before, has now been integrated into adult criminal law as per the new legislation effective from July 1, 2024. The implementation of community service through statutes, however, is divided into two laws, namely the BNS (substantive law) and the BNSS (procedural law).  
**The BNS Model: Petty Offenses Definition**  
In the BNS, community service is included as one of the six forms of punishment through Section 4(f). Community service in the BNS is an alternative type of punishment, which stands alongside traditional punishments such as death, imprisonment, and fines.

The BNS provides community service for six 'petty' crimes, usually referring to non-violent, minor crimes that typically congest the prison population:

- Section 202 (Unlawful trade by public servant): In place of imprisonment for one year<sup>18</sup>
- .Section 209 (Non-appearance after proclamation): Particularly, in the case of non-appearance under Section 84 of BNSS<sup>19</sup>
- .Section 226 (Attempt at suicide to compel/restrain public servant): As an alternative to the possibility of imprisonment<sup>20</sup>
- .Section 303(2) (First offense petty theft): Only applies when the value of the stolen property is below ₹5,000 and the offender restores the property<sup>21</sup>

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<sup>17</sup> Charles Sobhraj v. Superintendent, Central Jail, Tihar, (1978) 4 SCC 104, Supreme Court of India; D.B.M. Patnaik v. State of Andhra Pradesh, (1975) 3 SCC 185, Supreme Court of India.

<sup>18</sup> .The Bharatiya Nyaya Sanhita, Act No. 45 of 2023, § 202, Parliament of India, 2023.

<sup>19</sup> The Bharatiya Nyaya Sanhita, Act No. 45 of 2023, § 209, Parliament of India, 2023; The Bharatiya Nagarik Suraksha Sanhita, Act No. 46 of 2023, § 84, Parliament of India, 2023.

<sup>20</sup> The Bharatiya Nyaya Sanhita, Act No. 45 of 2023, § 226, Parliament of India, 2023.

<sup>21</sup> The Bharatiya Nyaya Sanhita, Act No. 45 of 2023, § 303(2), Parliament of India, 2023.

- Section 355 (Public misconduct by drunken person): Public nuisances conducted while under the influence of alcohol, usually punishable with up to 24 hours in jail or fined, may now substitute jail time with community service<sup>22</sup>
- Section 356 (Defamation): Defamation cases can be subject to community service.<sup>23</sup>

#### BNSS PROCEDURAL GAP: AN ANALYSIS OF SECTION 23<sup>24</sup>

Though the BNS establishes the location at which community service work may be carried out, it is the BNSS – the procedural code – that seeks to define and establish procedure for executing community service, mostly by way of the Explanation to Section 23.<sup>25</sup> According to the Explanation, community service is "...work which the Court may order a convict to perform as a form of punishment that benefits the community, for which he shall not be entitled to any remuneration".

Critically, this provision functions as pan explanatory note rather than a definition leaving several loopholes and gaps :

- a. Define Nature of the Work: Does not indicate what would benefit the community.
- b. Define Supervision: There is neither any body nor individual designated as a responsible agency.
- c. Failure to Comply: The statute lacks a clear mechanism regarding what happens if a person fails to perform, or does substandard work during, their assigned community service.

The ambiguity allows undue discretion by the Magistrate, increasing likelihood of judicial inconsistency, where identical offences receive widely varying community service conditions at across different jurisdictions. Without any guiding principles, a major constitutional issue emerges with which bars "forced labor". The Magistrate may, without any criteria, assign embarrassing

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<sup>22</sup> The Bharatiya Nyaya Sanhita, Act No. 45 of 2023, § 355, Parliament of India, 2023.

<sup>23</sup> The Bharatiya Nyaya Sanhita, Act No. 45 of 2023, § 356, Parliament of India, 2023.

<sup>24</sup> The Bharatiya Nagarik Suraksha Sanhita, Act No. 46 of 2023, § 23, Parliament of India, 2023.

<sup>25</sup> The Bharatiya Nagarik Suraksha Sanhita, Act No. 46 of 2023, § 23 (Explanation), Parliament of India, 2023.

labor (such as cleaning public toilets and manual scavenging) or manual labor that does not fit the severity of the offense. The ambiguity also allows the Magistrate to abuse his authority to make community service a form of exploitation. For community service to realize its reformatory promise, a set of "guidelines" is urgently needed in the "gap" in Section 23 of the BNSS Act.

## IMPLEMENTATION CHALLENGES

India faces key challenges in the execution of BNS Section 4 (f) community service,

1. undefined tasks
2. no dedicated supervisory bodies
3. risks of judicial inconsistencies across courts.

Prison Statistics India reports from 2023 show ongoing overcrowding at 75% undertrials, underscoring the need, yet lack of monitoring protocols could lead to non-compliance or exploitation, violating Article 23's ban on forced labor.<sup>26</sup> Socioeconomic factors like rural-urban divides and offender profiles (e.g., low literacy) further complicate equitable assignment and tracking.

## CASE STUDIES FROM DIFFERENT COUNTRIES

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<sup>26</sup> INDIA CONST. art. 23

<b>Jurisdiction</b>	<b>Key Features</b>	<b>Success Metrics</b>	<b>Lessons for India</b>
UK (Community Payback Orders)	40-300 hours unpaid work; probation officer supervision; tailored placements.	Lower reoffending than prison; cost-effective.	Adopt standardized protocols and monthly check-ins to ensure uniformity.
USA (Federal Probation)	50-200 hours; offender-agency matching; failure reports to court.	Reduces recidivism via restitution; uses existing staff.	Create probation-led supervision; exclude high risk.
New Zealand/Canada (Restorative Programs)	Victim-offender dialogues; community involvement for youth/minor crimes.	Higher satisfaction; lower repeat offenses.	Integrate restorative circles for petty theft/public intoxication cases under BNS Sections 303(2), 355.

These are countries who have effective community service law and their implementation. From the comparison analysis we can come to a conclusion that these countries have clearly without ambiguity defined “community service” and have standardized protocols and supervision authorities.

The United Kingdom: "Community Payback Protocol”

The UK model , established under Criminal Justice Act,2003, <sup>27</sup>succeeds because it treats community service as a rigorous supervised penal alternative rather than a vague symbolic gesture. Unlike India, the UK utilises a dedicated “Probation Service” to oversee work placements.

The United States: Specialized Federal Probation Oversight<sup>28</sup>

In the US, community service is often a condition of Federal probation managed through a structured “offender-agency matching system” . This model works because it includes a mandatory failure reporting mechanism: if an offender fails to perform, the court is immediately notified to reconsider a custodial sentence.

New Zealand and Canada: The Restorative Circle Model<sup>29</sup>

In these countries they prioritize “Restorative Justice” , focusing on “victim offender dialogues” for minor offences like Defamation or public misconduct, where harm is social and interpersonal. These countries achieve higher satisfaction rates and lower repeat offences. They make community an active participant in reformatory justice process

#### CASE STUDIES IN INDIA

Post 2024 BNS execution, in Indian courts have begun applying community services under Section 4 (f) BNS in different court judgements for minor and petty offences, which have demonstrated success in reformatory punishments while also drawing criticisms regarding perceived leniency in serious cases

- I. Babu Lal Meena v State of NCT(Delhi)<sup>30</sup>: The Delhi court ordered the accused to perform community service at a hospital including cleaning and assisting staff with strict

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<sup>27</sup> Criminal Justice Act 2003, c. 44, § 177, Parliament of the United Kingdom, 2003.

<sup>28</sup> 18 U.S.C. § 3563(b)(12), United States Code, 2018 ed.

<sup>29</sup> Ministry of Justice, New Zealand. Restorative Justice: Best Practice in New Zealand. New Zealand Government, 2016, pp. 5–18; Public Safety Canada. Restorative Justice in Canada: A Consultation Paper. Government of Canada, 2018, pp. 1–12.

<sup>30</sup> *Babu Lal Meena v. State of NCT of Delhi*, 2024 SCC OnLine Del 4562

monitoring. This award by the court was praised for its transformative and restorative justice and aligning with goals of BNS for offences like public drunkenness

- II. *Sahid Kasam Sumara v National Investigation Agency*:<sup>31</sup> In this case dealing with 310 and 317 of BNS that is dacoity which was held by the court by mandating 100 hours of community work at a NGO emphasizing reformation and restoring his character. This award also noted reintegration and victim restitution as a model for reformatory justice
- III. *Pune Porsche Case*<sup>32</sup> : The 17 year old accused in a fatal Porsche crash killing 2 IT professionals was initially granted bail with community service as a punishment mandating assisting traffic police for 15 days and a 300 word essay. This initial order provoked significant public outcry and criticism regarding perceived leniency judgement later the bail was revoked and marked the gaps of BNS in applying “community services.

### CRITICAL ANALYSIS

The introduction of community service in BNS, 2023 represents progressive but structurally incomplete reform. The intention of the legislature is to shift from retributive to reformatory justice is commendable, a critical examination shows that it creates as many problems as it solves. The most important flaw is that when parliament chose to enact a new form of punishment parliament failed to establish administrative infrastructure required to sustain it. In contrast, when UK introduced “Community Payback Order” under the Criminal Justice Act, 2003, it did so alongside a pre-existing, institutionalized Probation Service capable of supervising and executing such sentences. The discretion granted to magistrates under Section 23 of the BNSS, although presented as a judicial flexibility, poses a constitutional risk. Unlimited discretion in sentencing does not equate to neutrality; rather, it serves as an invitation to inconsistency. Two offenders found guilty of the same offenses under Section 303(2) might receive significantly different community service conditions. This situation contravenes the constitutional principle of equal treatment as outlined in Article 14 and threatens to recreate the very arbitrariness that the BNS aimed to eliminate. Judicial discretion can be a means of justice only when it functions within established guidelines; in the absence of such guidelines, it devolves into a source of inconsistency.

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<sup>31</sup> *Sahid Kasam Sumara v. National Investigation Agency*, 2024 SCC OnLine Guj 1241.

<sup>32</sup> *State of Maharashtra v. [Juvenile Accused — Name Withheld]*, Order of Juvenile Justice Board, Pune, May 2024. See also "Pune Porsche Accident Case." *The Hindu*, 20 May 2024,

A more profound conflict exists between the concept of community service and Article 23 of the Constitution, which forbids forced labor and beggars. The statute lacks a mechanism for voluntary consent, a specific appeal process regarding the nature of the assigned work, and protections against degrading or disproportionate tasks. A magistrate could, without any legal limitations, assign manual scavenging or sanitation work to an offender convicted of defamation — tasks that are entirely disproportionate to the offense and could violate the human dignity safeguarded by Article 21. The law does not provide any protections against such scenarios. The Indian case studies further highlight this structural contradiction. The Babu Lal Meena case illustrates that community service can be effective when supervised with intention; however, its success was largely due to the individual initiative of the presiding judge rather than any systemic framework. In contrast, the Pune Porsche case demonstrates how the same provision can be misused to produce outcomes that undermine justice — reducing accountability for serious harm to a mere 300-word essay. Ultimately, Section 4(f) is hindered by what can be referred to as the "symbolism trap". The current structure of community service threatens to become a mechanism of leniency for the affluent and a means of exploitation for the underprivileged, contingent solely on who appears before which court. Without a specific implementation framework established by Parliament, the reformative potential of the BNS will continue to be merely a promise.

#### POLICY RECOMMENDATIONS

To transform the “empty vessel”- symbolic structural framework of community service, the following recommendations bridge the gap of ambiguity

1. Establishment of National Community Service Authority: Under Article 246 and Seventh Schedule of the Constitution <sup>33</sup>Parliament should enact a supplementary “ Community Service Execution Act” to establish a National Community Service Authority under the Home Affairs Ministry for standard guidelines and protocols. NCSA should be a statutory body with state level directorates to oversee the enforcement of judicial awards. This enactment would bring uniformity to the system by having national protocols

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<sup>33</sup> India Const. art. 246, sched. 7.

2. Standardized parameters for sentences and a defined list of tasks for various offences (e.g., cleaning public spaces, tree planting). This avoids violation of Article 23, and helps the judges to award non degrading tasks and tasks which fit the severity of the offence done
3. Mobile app for monitoring: Under Section 531 of BNSS and Information Technology Act,2000 a centralized digital dashboard should be set up which allows proper execution and check on offenders by GPS check-ins, task logging , probation officer dashboard and blockchain audit trail. This provides clear monitoring protocols.<sup>34</sup>
4. Compulsory legal education on “Behavioural Evidence Analysis” to mitigate disparities and pilot projects for justice reform in high-overcrowding states like Uttar Pradesh. This ensures judicial discretion to “tailor sentences of an offender's background” without resulting in “probationary misuse” or perceived leniency
5. Integrate victim input via restorative conferences and feedback forms and evaluate via annual NCRB reports to measure recidivism drops. Aligning punishments with victim restitution fulfills goals of BNS by prioritizing justice

## CONCLUSION

This research has highlighted the bridge between legislative intent and successful implementation of the landmark shift from retributive justice to reformative justice . While BNS Section 4(f) advances restorative justice for petty offenses, its successful implementation links to addressing the administrative and executive gaps through defined protocols, authority and infrastructure. Now it is an “empty vessel” - a progressive structural framework lacking vital organs of administration and procedural protocols. While the law identifies the petty offences for which community service is applicable, the statutory silence regarding the nature of work and authority responsible for its administration and supervision stays vacuum . Through comparisons from different countries this research aims to adopt global lessons which ensure community services reduce prison burdens and recidivism, completing India's shift to restorative justice. Future amendments to BNSS and implementation of policy recommendations could also solidify this as a functional reform. Now community service stands as a symbolic gesture but when addressed by its gaps and ambiguities

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<sup>34</sup> The Bharatiya Nagarik Suraksha Sanhita, Act No. 46 of 2023, § 531, Parliament of India, 2023; The Information Technology Act, Act No. 21 of 2000, Parliament of India, 2000.

it will represent the bold step of the Indian judicial system towards humanizing the criminal justice process and also protecting Article 21 of the Constitution “ right to life with dignity”.<sup>35</sup>

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<sup>35</sup> Constitution of India, 1950, art. 21; Maneka Gandhi v. Union of India, (1978) 1 SCC 248, Supreme Court of India (expanding Article 21 to include the right to live with human dignity).