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SYMBOLIC SHIFT OR STRUCTURAL REFORM? A CRITICAL STUDY OF COMMUNITY SERVICE AS A PUNISHMENT IN BNS

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ABSTRACT

The Bharatiya Nyaya Sanhita (BNS), 2023, marks a significant shift in India's criminal justice framework, replacing the colonial-era's Indian Penal Code (IPC), 1860. Among its various innovations, there is the introduction of community services as a formal punishment. This paper critically examines whether the inclusion of community service constitutes a structural reform aimed at transforming punitive justice or merely a symbolic shift lacking systemic depth. It explores the legislative intent, implementation mechanism, comparative global practices, and potential challenges in operationalizing community services in India. This paper argues that without a robust procedural framework and institutional scaffolding, the BNS risks turning a genuinely transformative concept into an effective and chaotic exercise, confining its impact to the symbolic realm rather than realizing its full potential as a systemic change.

INTRODUCTION

India's criminal justice system has long been criticized for its colonial hangover, retributive approach, and over-reliance on imprisonment. With the enactment of the Bharatiya Nyaya Sanhita (BNS), 2023, the Indian government aims to modernize and "Indianize" its penal laws. One of the most notable additions in BNS is community service as a new alternative and distinct form of punishment – a significant deviation from purely custodial sentences under the Indian Penal Code (IPC), 1860. However, the question arises: Is this truly a structural reform that will alter the penal landscape in India or is it merely a symbolic shift intended to reflect progressive ideals without the necessary structural backing? This paper explores this question by critically

analysing the role, scope and viability of community services under BNS. The central research question is whether the introduction of community service in BNS constitutes a genuine, lasting structural reform or if it is a superficial, symbolic gesture in principle without a substantive change in practice. To answer this question, the analysis moves beyond a mere description of the law to a deeper inquiry into its philosophical underpinnings, historical context and the practical challenges that will determine its efficacy.

Under the British colonial rule, the Indian Penal Code was created in the year 1860 with a focus on retributive and deterrent. Over the years, it has experienced sporadic changes, but its fundamental ideas have mostly not changed. It ignored the overworked prison system and failed to take into consideration the contemporary restorative justice ideas.

The Bharatiya Nyaya Sanhita (BNS), which came into force on 1st July, 2024, prioritizes victim-centric and reformatory justice, streamlines legal provisions and work to decolonize the legal system. In addition to updating sentencing guidelines and introducing new terminology, it also significantly adds community service as a sentencing option, which has never been done before in the Indian criminal law field. India's prison system has traditionally prioritized incarceration above rehabilitation. The Probation of Offenders Act, 1958, was an attempt to move towards reformatory justice, but its scope remained limited.¹ In order to alleviate prison overcrowding and promote offender reintegration, the Law Commission of India and several other committees have suggested alternatives including community services, particularly for minor and non-violent offences. The IPC has no explicit provisions for community service in spite of these suggestions. Therefore, the implementation of this alternative punishment under the BNS is unheard of in Indian statutory law.

COMMUNITY SERVICE IN BNS

'Section 53 of the Indian Penal code (IPC), 1860, provided 5 types of punishments viz. (1) Death; (2) Imprisonment for life; (3) Imprisonment which is of two descriptive- rigorous and simple; (4) Forfeiture of property and (5) Fine.' (Gaur, 2020).² The Bharatiya Nyaya Sanhita (BNS), 2023, for the first time, formally introduces community service as a punishment under certain sections in India's codified criminal law-particularly for petty offences or first-time

¹ <https://www.criminallawjournal.org/article/149/5-2-10-354.pdf>

² K D Gaur, Textbook on Indian Penal Code, 149 (LexisNexis 2020)

offenders. Specifically, ‘Section 4(f) of the BNS introduced this new 6th type of punishment, i.e, Community Service, to reduce the burden on jails.’³

In BNS, the concept of “Community service” is not defined, however, it is defined by *Explanation* to Section 23 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. It states that: - ‘Community services, shall mean the 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.’ (ACT, Bharatiya Nagarik Suraksha Sanhita 2023, 2024).⁴ BNS prescribes Community Service as a punishment for petty offences like non-appearance in response to a proclamation, attempt to commit suicide, to compel or restraint exercise of lawful power of public servant, petty theft on return of theft money, misconduct in public by a drunken person, defamation, etc. (ACT, Bharatiya Nyaya Sanhita 2023, 2024).⁵

This legislative change is intended to provide an alternative to traditional forms of punishment, such as imprisonment and fines, with the express aim of addressing the systemic issues like prison overcrowding and promoting the rehabilitation and reintegration of offenders into society.

THE PRESCRIBED OFFENSES

In BNS, there are six specific offenses for which community service is a prescribed punishment by the court. These offences include:

- i. 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.” (ACT, Bharatiya Nyaya Sanhita 2023, 2024) ⁶

Corresponding provision- Section 168 of IPC, 1860. (Gaur, 2020).⁷

- ii. Section 209 – “Non-appearance in response to a proclamation.”

³ Bharatiya Nyaya Sanita 2023, § 4(f), No. 45, Acts of Parliament, 2023(India).

⁴ Bharatiya Nagarik Suraksha Sanhita 2023, § 23, No. 46, Acts of Parliament, 2023(India).

⁵ Bharatiya Nyaya Sanita 2023, § 4, No. 45, Acts of Parliament, 2023(India).

⁶ Bharatiya Nyaya Sanita 2023, § 202, No. 45, Acts of Parliament, 2023(India).

⁷ K D Gaur, Textbook on Indian Penal Code, 149 (LexisNexis 2020)

“Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both, or with community service, and where a declaration has been made under sub-section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.” (ACT, Bharatiya Nyaya Sanhita 2023, 2024) ⁸

Corresponding provision- Section 174A of IPC, 1860. (Gaur, 2020).⁹

iii. 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.” (ACT, Bharatiya Nyaya Sanhita 2023, 2024)¹⁰

iv. Section 303(2) – “Theft”

“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 or restoration of the stolen property, shall be punished with community service.” (ACT, Bharatiya Nyaya Sanhita 2023, 2024)¹¹

Corresponding provision- Section 379 of IPC, 1860. (Gaur, 2020).¹²

v. 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

⁸ Bharatiya Nyaya Sanita 2023, § 209, No. 45, Acts of Parliament, 2023(India).

⁹ K D Gaur, Textbook on Indian Penal Code, 149 (LexisNexis 2020)

¹⁰ Bharatiya Nyaya Sanita 2023, § 226, No. 45, Acts of Parliament, 2023(India).

¹¹ Bharatiya Nyaya Sanita 2023, § 303, No. 45, Acts of Parliament, 2023(India).

¹² K D Gaur, Textbook on Indian Penal Code, 149 (LexisNexis 2020)

twenty-four hours, or with fine which may extend to one thousand rupees, or with both or with community service.” (ACT, Bharatiya Nyaya Sanhita 2023, 2024)¹³

Corresponding provision- Section 510 of IPC, 1860. (Gaur, 2020).¹⁴

vi. 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.” (ACT, Bharatiya Nyaya Sanhita 2023, 2024)¹⁵

Corresponding provision- Section 500 of IPC, 1860. (Gaur, 2020).¹⁶

AVOIDANCE OF COMMUNITY SERVICES

Section 8 of BNS mentions imprisonment in default if the offender fails to pay a fine or to complete community service. Section 8(4) of BNS states that “The imprisonment which the Court imposes in default of payment of a fine or in default of community service may be of any description to which the offender might have been sentenced for the offence.” (ACT, Bharatiya Nyaya Sanhita 2023, 2024).¹⁷ And Section 8(5) states that “If the offence is punishable with fine or community service, the imprisonment which the Court imposes in default of payment of the fine or in default of community service shall be simple, and the term for which the Court directs the offender to be imprisoned, in default of payment of fine or in default of community service, shall not exceed,— (a) two months when the amount of the fine does not exceed five thousand rupees; (b) four months when the amount of the fine does not exceed ten thousand rupees; and (c) one year in any other case.” (ACT, Bharatiya Nyaya Sanhita 2023, 2024).¹⁸

¹³ Bharatiya Nyaya Sanita 2023, § 355, No. 45, Acts of Parliament, 2023(India).

¹⁴ K D Gaur, Textbook on Indian Penal Code, 149 (LexisNexis 2020)

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

¹⁶ K D Gaur, Textbook on Indian Penal Code, 149 (LexisNexis 2020)

¹⁷ Bharatiya Nyaya Sanita 2023, § 8(4), No. 45, Acts of Parliament, 2023(India).

¹⁸ Bharatiya Nyaya Sanita 2023, § 8(5), No. 45, Acts of Parliament, 2023(India).

IMPLEMENTATION CHALLENGES IN INDIA

The Bharatiya Nyaya Sanhita faces major hurdles vague laws risk misuse, digital gaps widen inequality, and broader police powers raise accountability concerns.¹⁹ Courts may struggle with delays, while community service lacks a clear plan. Real impact needs strong systems, proper training, resources, and public trust to make these reforms work.²⁰

IS IT SYMBOLIC OR STRUCTURAL?

A symbolic shift refers to the changes that appear progressive and do not alter the fundamental structures or functioning of a system. Such shifts mostly serve political or public relations purposes. In contrast, a structural reform is deeper – it includes institutional changes, policy integration and measurable impact on practices and outcomes.

The introduction of community services as a punishment in BNS is the combination both symbolic shift and structural reform, but its ultimate classification depends on its implementation and application. It is structural reform in its legal framework and it is a symbolic shift in its practical application.

Structural Reform

By formally introducing community services as a punishment, BNS provides a new and perceptible alternative of imprisonment and fines. This, being a legal and jurisprudential change, travels beyond the ad-hoc judicial decisions. It provides a formal framework for judges to impose a non-custodial sentence, which can support in addressing the chronic issue of prison overcrowding in India. Moreover, it changes the focus from purely retributive justice into rehabilitative justice, which is a massive change in the whole system's main philosophy.

By providing a formal, non-custodian alternative, BNS gives the judges a new legal instrument to address crime more efficiently and humanely.

¹⁹ MyGov Blogs, <https://blog.mygov.in/exploring-indias-new-criminal-laws-a-paradigm-shift-in-legal-framework/> (Last visited Oct. 2, 2025)

²⁰ Legal Service India, https://www.legalserviceindia.com/legal/article-18491-shortcomings-of-the-bharatiya-nyaya-sanhita-2023-an-analytical-perspective.html?utm_source=chatgpt.com#google_vignette, (Last Visited Sept. 30, 2025)

Symbolic Shift

The inclusion of community service also represents a symbolic shift because its effectiveness depends on its successful implementation, which is uncertain today. Some of us view this addition of community service as more of a symbolic shift. They claim that while BNS officially recognizes community service, its real impact will be restricted, without clear and precise guidelines. Today, the lack of detailed framework for how community service will be monitored, what constitutes community service, what specific tasks will be assigned and how the courts will enforce the compliance, could render the provisions largely ineffective. Without proper infrastructure, training for judges and a system for tracking & recording compliance, the law may become a mere token gesture. The effectiveness of the new punishment hinges on its successful operationalization. It's a progressive model codified into law, but its application practically remains to be looked. Its symbolic value lies in its signal of a progressive, future-thinking justice system. It publicly declares a step away from the colonial – era, punitive approach to a more modern and reformative one. However, if a lack of resources, good administration and transparent protocols result in inconsistent application or non-compliance, the provision will be more symbolic than truly transformative. In this sense, it would signify an ideological change without delivering the intended structural benefits.

This provision is a structural reform in its design but functions as a symbolic shift until a proper implementation framework is established.

GLOBAL COMPARISION

Globally, the community service as a punishment has been adopted greatly with detailed frameworks and guidelines. The challenges faced by BNS in India can be avoided by analysing how this community service is effectively implemented in other different jurisdictions. These top global models provide a clear blueprint of a pure structural reform.

- i. United Kingdom: 'The United Kingdom has the "Community payback" system there. This system is a perfect portrait of a structured community service mechanism. This system includes activities that can directly benefit the community immediately, task like, erasing graffiti, clearing wasteland and improving public structures. And it is employed for a group of infractions like theft and violence. This system in UK has a

great level of public visibility and supervision is one of its main characters. There, the offenders are required to wear high-visibility vests while working, being supervised by an appointed community payback officer and labour in local regions which promotes acceptance and trust among the public.’²¹

- ii. United States of America: ‘Community service as a punishment are commonly used here, as a probation or parole requirement. Community service is supposed to be practical, intentional, and customized to the offender's abilities and the community's needs. This guarantees that the sentencing is a substantive and enforceable responsibility rather than merely a symbolic gesture by emphasizing expert oversight and verification.’²²

Looking at how the UK and US handle the community service, shows a clear picture of how the real change comes by not just making a law but creating a strong base for the system which can make this work. These countries have structured and well supervised systems that ensures fairness, creates trust and make people accountable. But in India, the BNS has only introduced the concept and hasn't yet worked on it effectively to make it a success. The reform today seems to be more symbolic than practical. India get's the advantage of learning from these countries experiences to make its own mechanism to fit the local standards.

IMPACT OF COMMUNITY SERVICE'S PUNISHMENT ON THE CITIZENS OF INDIA

Many view the introduction of community service as a progressive step that aligns India's legal framework with global practices. Proponents believe it addresses key issues in the current system, such as prison overcrowding and the social stigma associated with incarceration. By allowing offenders, particularly those who commit minor, non-violent offenses, to make amends by contributing positively to the society, the new law aims to foster a sense of civic duty and responsibility. This approach is seen as kinder and more cost-effective than imprisonment, as it allows offenders to maintain their livelihood and family ties while serving their sentence. It also resonates with the Indian ethos of “seva” i.e, service, giving it moral legitimacy. A significant part of the society, however, views this type of punishment as being

²¹ GOV.UK, <https://www.gov.uk/community-sentences/community-payback> (last visited Oct.6, 2025).

²² LII, https://www.law.cornell.edu/wex/community_service (last visited Oct. 3, 2025)

too lenient. There is a fear that it may not act as a sufficient deterrent and the offenders might perceive it as an 'easy way out'. This concern is particularly valid in specific cases that have received public attention, such as the Pune Porsche accident case, where a minor was initially sentenced to community service. Such instances have sparked intense public debate and spotted the need for clear guidelines and consistent judicial application to maintain public trust in the judicial system's ability to punish wrongdoing effectively. The successful implementation of community service relies heavily on robust monitoring and a transparent framework for enforcement. Also, some legal experts have raised questions about the lack of specific details regarding the types of work that are eligible as a community service punishment and the mechanisms for ensuring offenders comply with their sentence. Without proper supervision, there is a risk that the punishment could be rendered ineffective, leading to a loss of public confidence.

When implemented successfully, community service can directly benefit the public through various tasks like improving the public areas, participating in welfare programs and contributing in environmental conservation. This not only improves the society but also allows citizens to experience a tangible result of the justice system's work. The new law aims to strike a balance between retribution and rehabilitation. For this to be accepted, there must be a clear distinction between offenses that warrant community service and those which require more severe penalties. The society expects the justice system to be fair and make offenders accountable. The discretionary power given to judges in allotting community service punishments is a point of contention, with some concerning that it could lead to inconsistent sentencing for similar offences. The public will be watching to see if this implementation is equitable and transparent enough.

CONCLUSION

The addition of community services under the Bharatiya Nyaya Sanhita is a monumental philosophical statement, marking a symbolic shift in India's penal policy on the way to a more humane, reformative and restorative model of justice. The explicit choice to make community service as the sole mandatory punishment for petty theft under certain specific conditions is a particularly strong and powerful indication of this intent, representing a structural intervention that seeks to divert minor offenders from the debilitating cycle of incarceration. However, this analysis demonstrates that this change falls short of being a complete structural reform due to

critical implementation pitfalls. The lack of appearance of a clear definition of what constitutes beneficial community work, the potential for judicial disparity in sentencing and most importantly, the absence of a dedicated monitoring enforcement mechanism, but it has not yet built the operational infrastructure to support it.

But in its current form, the provision appears to be more symbolic than structural. For it to evolve into genuine structural reform, India must invest in legal guidelines, administrative frameworks, public awareness and stakeholder training.

RECOMMENDATIONS

To effectively bridge the gap between a symbolic shift and a structural reform, a multipronged approach is essential. For this the implementation of clear, actionable recommendations aimed to standardize practices and ensure the law's real intent is upheld. The first and the most important step is the development of clear and comprehensive guidelines.²³ The government must develop a precise definition of the work that benefits the society. This can be done through the involvement of legal experts and social welfare organization in the process. It requires an elaborated, comprehensive list of suitable tasks to ensure consistency in sentencing across all the jurisdictions. Without these standardized set of laws, the judges can find problem in sentencing, which can lead to disproportionate results and harm to the purpose of reform.

Next recommendation can be the establishment of a dedicated monitoring authority.²⁴ An agency specifically formed for supervising the execution of community service orders. This agency would not just be an observer but it would be an active participant responsible for assigning the appropriate tasks to offender, regularly verifying the completion of hours and immediately reporting any non-compliance directly to the court. This mechanism of accountability and responsibility strongly helps in transforming a court's order from an ordinary suggestion into a law binding obligation, which shows the successful completion of the community service as intended.

²³ ADV.ARSHIYA ABDULKADIR SHAIKH* & RAJ SAYYED WAJAHAD SAYYED AHMED, COMMUNITY SERVICE AS A PUNISHMENT UNDER BNS: A STEP TOWARDS REFORMATIVE JUSTICE IN INDIA, VOLUME 5 AND ISSUE 7 OF 2025, IJLR, 9 (2025), <https://ijlr.iledu.in/wp-content/uploads/2025/04/V5I735.pdf>

²⁴ JusCorpus, <https://www.juscorpus.com/community-sentencing-in-india-a-reformative-approach-to-criminal-justice/> (last visited Oct. 3, 2025)

Moreover, for the consistent and proper application of this new law, mandatory judicial training is essential. Training programs on a regular basis, should be conducted for all judges and magistrates. These trainings would not only include the procedural aspect of the new law but would also explore its philosophical foundations. Here, the main motive is to ensure that the whole judiciary understands and rightly applies the law's intent and exercise their discretionary power with consistency and fairness. By focusing on these three areas- guidelines, oversight and training- the gap between legal theory and practical implementation can be covered, transforming a symbolic gesture into a powerful instrument for the social benefit.

The BNS has laid a powerful legal and philosophical foundation for a more effective and just criminal justice system. The future success of community service as a penal alternative hinges entirely on whether the Indian legal system can take the crucial next step: building the operational and institutional infrastructure needed to support this new legal philosophy. Without this critical second phase, the promise of reform will remain an unrealized symbol, rather than a genuine, lasting transformation of justice in India.

Bibliography

ACT, T. B. (2024). *Bharatiya Nagarik Suraksha Sanhita 2023*. Taxmann Publications (P.) Ltd.

ACT, T. B. (2024). *Bharatiya Nyaya Sanhita 2023*. Taxmann Publications (P.) Ltd.

Gaur, K. D. (2020). *INDIA PENAL CODE*. LexisNexis.

References

ACT, T. B. (2024). *Bharatiya Nagarik Suraksha Sanhita 2023*. Taxmann Publications (P.) Ltd.

ACT, T. B. (2024). *Bharatiya Nyaya Sanhita 2023*. Taxmann Publications (P.) Ltd.

Gaur, K. D. (2020). *INDIA PENAL CODE*. LexisNexis.