
COMMUNITY SERVICE IN THE INDIAN CRIMINAL JUSTICE SYSTEM

Priyal Palak, National Law University Odisha

ABSTRACT

India follows the reformatory theory of punishment. However, the punishments for the crimes committed are harsh which doesn't lead to the required reformation of the criminals. There are various alternatives to these punishments but community service has not been explored enough. With this research paper, the author has assessed the need of bringing in community service as an alternative punishment, its origin and development. The author has also acknowledged the community service models of other nations while attempting to infer the effectiveness and challenges that India can face when dealing with community service.

INTRODUCTION

Throughout the world, granting punishment is at the core of criminal law. The main objective of punishments is to make society a safe haven. This is done by either reforming the criminals or preventing the crimes. The theory of punishment that is presently followed in India is the reformatory theory which is based on the principle that the sin should be hated, not the sinner. According to it, the punishment should be such that it serves the purpose of reformation considering the socio-economical condition of the offender. It should bring positive changes in the offender's personality and way of thinking, which help them become law-abiding citizens and live a normal life once they're done with their punishment. In *TK Gopal v State of Karnataka*, the Supreme Court stated that "The law requires that a criminal should be punished and the punishment prescribed must be meted out to him, but at the same time, reform of the criminal through various processes, despite he having committed a crime, should entitle him to all the basic rights, human dignity, and human sympathy."¹ Under Section 53 of the Indian Penal Code, the various types of punishments are – death, imprisonment for life, rigorous imprisonment, simple imprisonment, forfeiture of property, and fine.² Most of these punishments go against the reformatory theory that India supposedly follows. In recent times, alternatives to these punishments are being adopted by various countries to "reform" criminals. Alternative sentencing is defined by Quakers as options that benefit society and are therefore more useful to the community as a whole than punishment.³ Alternative sentencing may allow a convicted person to contribute as a member of society while also teaching them about good conduct. In certain circumstances, it saves not just the expense of the criminal's incarceration, but also the cost of hiring an employee. Alternative sentencing is a sort of sentence meant to address the issue of prison overcrowding and to give a new means of monitoring convicted offenders. Alternative sentencing for women was established to reduce the expenses of incarceration as well as because female criminals are usually less aggressive and hence provide a lower danger than male offenders. Community service is frequently used as a substitute for jail time and is intended to link criminals to the community so that they learn how their actions impact others. To repay a debt to society, a convict performs community service to help his or her local community.

¹ *TK Gopal v State of Karnataka*, (2000) 6 SCC 168.

² The Indian Penal Code, s 53.

³ Asherry Magalla, 'Alternative Punishments and Their Roles in Improving Socio-Economical and Political Aspects in Tanzania' [2018] SSRN Electronic Journal.

THE NEED

Prisons are considered to be a dangerous place for everyone including the offenders themselves. Moreover, they are not suitable for deterrent or reformatory purposes. They end up making the offenders more anti-social and dangerous to society. Prisons are overcrowded and establishing more prisons would affect the economy. As a result, innovative non-custodial methods and alternatives have gained popularity. According to experts, community service is considered to be a more effective way than prisons. They are particularly successful in decreasing recidivism and preventing the further criminalization of criminals. Instead of giving imprisonment as a punishment, the Court concluded in *R.K Anand v Registrar High Court Delhi*⁴ that it would be more beneficial to keep the offender out and allow him to do activities that would be beneficial to society. The Probation and Pre-trial Services Division of the Administrative Office of the United States Courts issued a report on community service sentences in 2005, encouraging judges to recognize the value of community service as a sentence because it is a flexible, personalized, and humane sanction, and it is a way for the offender to reimburse the community. It also stated that ordering community service is practical, cost-effective, and fair. The court decided in the case of *State of Gujarat v. Hon'ble High Court of Gujarat*⁵ that the major aim of punishment should be reformation and that punishment should be imposed to rehabilitate the criminal and turn a condemned prisoner into a good human being. In *Vishal S Awtani vs. State of Gujarat*, the Gujarat high court categorically addressed whether it is a sentence, punishment, reparation, or reformation. The court concluded that community service is not a punishment in the true sense, but rather a form of reparation.⁶

Several benefits of community service have been outlined by Hudson and Galaway:

- i. Reduces intrusion of the justice system, and reduce recidivism,
- ii. Agencies are benefitted from the labor provided by the offender,
- iii. Increases the community support within the criminal justice system,
- iv. Reduces cost,
- v. Works as an alternative sentence for the courts
- vi. Offenders can also experience the need of others.⁷

⁴ *R.K Anand v Registrar High Court Delhi*, (2009) 10 SCALE 164.

⁵ *State of Gujarat v Hon'ble High Court of Gujarat*, (1998) AIR SC 3164.

⁶ *Vishal S Awtani v State of Gujarat*, R/WRIT PETITION (PIL) NO. 108 of 2020.

⁷ Ken Pease, 'Community Service Orders' (1985) 6 Crime and Justice.

However, Community Service is unjust as it puts society at a risk and the life of the criminal in jeopardy. There is also the issue of determining the length of service. There is also a need for a distinct agency to oversee community service sentences, independent from the courts and jail administration.

COMMUNITY SERVICE: WHERE DID IT ALL START?

Community service can be traced back to 1553 when the House of Correction of Bridewell Palace in London dealt with vagabonds by encouraging labor. It used to be ordered as probation by the judges as per the Alaskan Statute of 1949. In the United States, formal community service programs began in 1966 with the establishment of the Alameda County California program, where municipal court judges sentenced a large number of traffic offenders to free labor or community service. The formal origin of community service happened in England and Wales with the “Wootton Report” or “Non-custodial and Semi-custodial Penalties”. This 1970 report advocated for alternatives to imprisonment, and offenders should be required to perform some type of community service in appropriate instances. Further, it also stressed the reasons for implementing community service as an alternative, stating that it is a constructive and inexpensive option that brings communal restitution. This community service system was found to have the maximum positive outcome of any correctional initiative in England and Wales over the previous three decades. The Criminal Justice Act of 1972, which has become the Powers of Criminal Courts Act 1973, adopted the “Wootton Report” recommendations. The primary characteristics are:

1. An offender above the age of 16 can be sentenced to community service.
2. Must have been accused of a crime that carries a sentence of imprisonment.
3. The probation officer must draft a social inquiry report.
4. 40-240 hours of work in a year

COMMUNITY SERVICE IN OTHER NATIONS

The United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules), encourages its members to adopt alternatives to imprisonment like verbal sanctions, economic sanctions, etc. Similarly, considering the effect of imprisonment, especially on those who serve for a very short time, the Kampala Declaration on Prison Conditions in Africa suggested that further legislation can be introduced to ensure that community service and other non-custodial measures are imposed as an alternative.

In 1992, the Ministry of Social Affairs of Zimbabwe surveyed the jail population and discovered that 60% of the inmates were petty criminals.⁸ Thus, the community service program was introduced in Zimbabwe.

In Russia, when it is realized that the offender should not be segregated from the community, community service is ordered. Furthermore, after setup and maintenance costs, the offender is also given remuneration for the task performed.

In South Africa, community service is practiced as “correctional supervision.”

In the United Kingdom, the Ministry of Justice administers community service. It is described as “payback to the community.” In 2019 alone, 80,039 community service orders were issued in the UK. If someone is convicted of a crime but not sentenced to jail, the court may impose a community service where the convict performs unpaid community service, such as graffiti clearance, as prescribed by the Ministry of Justice. This is known as Community Payback. The option of receiving a term of community service is:

- i. if the court believes that the offender would cease committing crimes rather than go to jail,
- ii. if the offender is a first-time offender, and
- iii. finally, if the offender has a mental illness that influences their conduct.

In Australia, each state has its own criminal justice system and community service schemes because of the federal structure. The community service popularly known as Community Based Corrections can be summarized as:

- i. Community service can last anywhere from 40 to 750 hours and cannot last more than 5 years.
- ii. Probation officers need to analyse the offender's fitness for community service and advise the court on the same.

It can be safely concluded that Community Service as an alternative is working effectively in the jurisdictions analysed and that it has achieved its goal of reducing prison congestion and recidivism.

⁸ Ram Subramanian, 'Zimbabwe: The Promise Of The Community Service Order Is Forestalled...!' (Vera Institute of Justice, 2012) <<https://www.vera.org/news/zimbabwe-the-promise-of-the-community-service-order-is-forestalled-by-court-congestion-and-political-crisis>> accessed 19 April 2022.

DEVELOPMENT IN COMMUNITY SERVICE IN INDIA

According to the report published in 2020 by National Crimes Record Bureau,⁹ the total number of prisons in India is 1,306 with 4,14,033 as its capacity. However, the actual number of prisoners is 4,88,511 which leads to overcrowding of prisons with a 118.0 % occupancy rate. In *Pappu Khan v. the State of Rajasthan*,¹⁰ the issue of the expensiveness of the prison was also mentioned. India is, thus, in dire need of alternatives to imprisonment. Throughout history, many alternatives to imprisonment have been implemented like open prisons, probation, parole, rehabilitation centers, etc. but community service has received little attention.

It was in 1949 that the Pakwasa Committee recognized the importance of community service and proposed that the inmates should be employed as road workers. Through this, the practice of reimbursement for work by prisoners was introduced. The report of the Indian Jail Committee 1980-83 stating the flaws in imprisonment suggested for the Indian government to adopt other alternatives to imprisonment like community service. The Supreme Court of India declared in *Babu Singh v. the State of Uttar Pradesh*¹¹ that restorative measures like community service, meditation practice, and study sessions should be developed to redeem the criminal. Further, the Malimath Committee also suggested the adoption of community service.

Clause 18 of the Indian Penal Code Amendment Bill, 1978 proposed community service along with some other alternatives to imprisonment under Section 53 of the Indian Penal Code, 1860.¹² According to section 74A of this bill, the court can order community service for 40-1000 hours with no remuneration to an offender above the age of 18 who has committed an offense punishable with less than three years.¹³ It was the first formal initiative to include community service as an alternative to punishment in the Indian Criminal Justice system. However, it was rejected by the 156th Law Commission Report claiming that community service isn't practical.

Only the Juvenile Justice Act of 2015 has the statutory provision with respect to community service. As per Section 18(1)(c) of the Juvenile Justice Act, 2015 “where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offense, or a serious offense,

⁹ 'Prison Statistics India | National Crime Records Bureau' (Ncrb.gov.in, 2021) <<https://ncrb.gov.in/en/prison-statistics-india>> accessed 18 April 2022.

¹⁰ *Pappu Khan v State of Rajasthan and Ors.*, (2005) CriLJ 4732.

¹¹ *Babu Singh And Ors v The State Of U.P.*, (1978) AIR 527.

¹² The Indian Penal Code Amendment Bill 1978, cl 18.

¹³ The Indian Penal Code Amendment Bill 1978, s 74A.

or a child below the age of sixteen years has committed a heinous offense, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of the offense, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,— (c) order the child to perform community service under the supervision of an organization or institution, or a specified person, persons or group of persons identified by the Board.”¹⁴ However, Chapter VIII, Sections 106 to 124 of the Criminal Procedure Code (CrPC) also allows alternatives to imprisonment. These laws, on the other hand, will apply either before conviction – when a suspect is asked to explain why he or she should not be sentenced – or after conviction – as a condition for bail or for the offenders' release based on good behavior – and not as a punishment while they are in prison.

The Indian judiciary in many instances has shown its inclination towards community service over sentencing offenders to prison. In *Soleman SK v State of West Bengal*,¹⁵ the Supreme Court ordered the offender who was a juvenile at the time of the crime of attempt to murder to plant 100 trees within a year. The high court in *Azad Khan vs. the State of MP*¹⁶ sentenced the convict charged under section 304 IPC, a community service order to attend the District Hospital Guna. The importance of community service was highlighted in *Sunita Gandharva vs. State of M.P. and Anr.* – “it gives a chance in some cases to melt the ego of an accused who is facing a trial of those offenses which gave psychic gains or peevish pleasures to the accused while committing such crimes...the accused can again be assimilated into the mainstream society and would be accepted by the community...ingrained attributes of Love, Compassion Mercy and Service can be rekindled through the concept of community service.”¹⁷ According to section 437(3) of the CrPC, the court deemed it appropriate to impose community service.¹⁸

EFFECTIVENESS AND CHALLENGES OF COMMUNITY SERVICE IN INDIA

A community service order can prove to be beneficial to both the offender and the community. In the case of *Ramraja v. State of Madhya Pradesh*,¹⁹ the court ordered the offender to serve the hospital in a remote area. Later it was discovered there was a deficiency in providing health

¹⁴ The Juvenile Justice Act 2015, s 18 (1)(c).

¹⁵ *Soleman SK v State of West Bengal*, CRR Appeal No. 2469 of 2007.

¹⁶ *Azad Khan v the State of MP*, MCRC-11928-2017.

¹⁷ *Sunita Gandharva v State of M.P. and Anr.*, Misc. CRL, 22615 of 2020.

¹⁸ The Code of Criminal Procedure 1973, s 437(3).

¹⁹ *Ramraja v State of Madhya Pradesh*, Cr.A.No.1290/2017.

care due to the language barrier. The court directed the hospital to implement a stronger administrative structure. Similarly, it can also aid in the improvement of jail conditions for long-term prisoners. Once the number of convicts is adequate and the prisoners to staff ratio are maintained, the number of prisoners could be lowered and better facilities be supplied to them. It is also very cost-effective. Although the Supreme Court acknowledged that community service is not a real punishment²⁰ (*State Tr. P.S. Lodhi, New Delhi vs. Sanjeev Nanda*), it does create a more reformatory method of punishment. This technique spares the administration, the defendant, and the plaintiff a lot of time and makes the legal system more liberal. Community service helps to clear several cases, which speeds up the administration of justice. This is one of the most cost-effective and time-efficient methods of obtaining justice.

However, this alternative should be authorized in accordance with the gravity of the offense. In *Aniket Anil Jadhav v. the State of Maharashtra*,²¹ five youngsters convicted of sexual assault were sentenced to a month of community work cleaning the streets of Mumbai. Similarly, in another instance *Mahender Singh Alias Sunny & Anr. vs The State & Ors.*,²² the high court ordered the defendants, who were charged with attempted murder, to work for one month at Ram Manohar Hospital. There should be a balance maintained between the community service ordered and the seriousness of the offense to alleviate the idea that a convict can do a grave offense and get away with it by doing an easy community service order.

CONCLUSION

In a country where reformatory theory is followed, reform should be the main objective. Community service is one of the best alternatives to punishment as it not only is cost and time effective but also affects the offender psychologically. Therefore, besides the numerous economical and administrative benefits that community service offers, it becomes imperative for India to adopt community service as a punishment. Alternative punishment, such as community service, has already shown to be quite beneficial in numerous regions of the world. It resulted in a reduction in the jail population and the usefulness of criminals to provide public services. Even though community service as a non-custodial punishment is yet to be studied in India, the Malimath Committee's recommendations and the Indian Penal Code Amendment Bill, 1978 should be taken into consideration. Community Service has been granted by Indian

²⁰ *State Tr. P.S. Lodhi, New Delhi v Sanjeev Nanda*, (2012) 8 SCC 450.

²¹ *Aniket Anil Jadhav v State of Maharashtra*, Criminal Application No. 1325 of 2015.

²² *Mahender Singh Alias Sunny & Anr. v The State & Ors.*, CRL.M.C.852/2021.

courts in several cases, but it is only discretionary; no proper legislation exists. However, progress has been made by including it in the Juvenile Justice Act. Besides proper inclusion of community service into the Indian criminal justice system, there needs to be a proper system for its implementation. The collaboration of many stakeholders within the criminal justice system, such as civil employees, judges, policymakers, and all other relevant stakeholders, is critical for its implementation and long-term viability. Every Indian should regard the implementation of community service as their responsibility, and every effort should be made to make it succeed as a fresh intervention to replace incarceration.