



# COMMUNITY SERVICE UNDER BNS;” CONCEPT AND LEGALFRAMEWORK OF COMMUNITY SERVICE UNDER BNS”

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**ABSTARCT:** The Bharatiya Nyaya Sanhita, 2023 introduces community service as a formally recognised punitive framework of the past. This chapter critically analyses the conceptual evolution, statutory design, doctrinal foundations, and practical implications of this reform. It explores how community service aligns with contemporary sentencing philosophies, particularly restorative justice and proportional punishment. The discussion further examines statutory provisions under the BNS that incorporate community service, alongside procedural support under the Bharatiya Nagarik Suraksha Sanhita. Judicial trends both prior to and following codification are analysed to trace the transition from informal judicial innovation to structured statutory recognition. The chapter also evaluates key challenges in enforcement, including infrastructural deficits, monitoring issues, lack of supervision and doctrinal ambiguities, judge do not know how to give a judgement and the hours, and time are not clearly stated. It concludes that while community service has the potential to transform sentencing practices in India, its success depends on consistent application, institutional support, and principled judicial discretion.

**INTRODUCTION:** The introduction for the Bharatiya Nyaya Sanhita, 2023 brings a major change in how justice is delivered in India, especially by promoting alternative like community service, moving from the 1860 Indian Penal Code to the 2023 Bharatiya Nyaya Sanhita isn't just swapping rules - it shifts how justice shapes lives. The older model leaned on stiff punishments built to shock or match wrongdoing yet offered little space to change. Fixed terms piled up like stone, though healing slipped quietly aside. Time inside hardened into routine, while transformation waited somewhere offstage.

Now fairness changes because real solutions spread wider, bringing people along. Local service becomes required by court order if wrongdoing fits smaller crimes. This path holds steady - jails stay full beyond capacity across the country, over 130 percent packed, wrecking lives while fixing little. Locking up isn't always right, especially when actions aren't severe. So, courts lean on duty instead of detention.

Later, comes sweeping roads, lending a hand where people sleep rough, or showing kids how to read after something small like grabbing things not yours or arguing in public. If the situation fits under parts 4(h) or 23 of BNSS, then these paths open. What tipped the balance The harmed person's words. Then again, how the one accused carried themselves earlier plays weight too. Built right in, fairness isn't added later it shapes choices from the start, thanks to Bharatiya Nagarik Suraksha Sanhita.

This shift seems to breathe a little more like people do. It holds folks accountable without crushing them, takes weight off newcomers stumbling through errors, softens the cost when things go wrong. In places such as Britain or certain corners of Oceania, walking this road has cut repeated slip-ups anywhere from 10 to almost 20 percent. Nearby, strain on lockups could loosen, healing gets room to spread, streets take on quieter rhythms, tipping justice toward repair instead of just penalty. Given enough years, hearing rooms may slowly turn into spots where fresh tries count - all while keeping watch on harm.

## CONCEPT AND DEFINITION OF COMMUNITY SERVICE UNDER BNS:

Community service, as a penal sanction, refers to compulsory, unpaid work assigned by a court for the benefit of the public. Its defining attributes include the absence of monetary compensation, the element of legal compulsion, and its orientation toward societal benefit. Unlike traditional punishments such as imprisonment or fine, community service operates within the social sphere rather than removing the offender from it. the conceptual significance of community service lies in its dual function. First, it imposes a burden on the offender, thereby fulfilling the punitive aspect of criminal law. Second, it facilitates constructive engagement with society, enabling the offender to contribute positively. This dual character distinguishes it from purely retributive sanctions. From a theoretical perspective, community service reflects a calibrated approach to punishment. It acknowledges that criminal liability does

not always necessitate incarceration and that alternative sanctions can achieve the objectives of justice more effectively in certain contexts. The focus shifts from inflicting suffering to promoting accountability through socially beneficial conduct

## **LEGAL FRAMEWORK UNDER BHARATIYA NYAYA SANHIYA, 2023:**

### **Statutory Recognition of Community Service:**

The formal recognition of community service is embedded in Section 4 of the Bharatiya Nyaya Sanhita, which enumerates the categories of punishment available under the statute. Notably, community service is included alongside imprisonment, fine, and other conventional penalties, thereby granting it equal normative status within the penal framework. This inclusion is a significant legislative development, as it transforms what was previously a discretionary judicial practice into a codified legal sanction. The provision reflects a conscious policy choice to diversify sentencing options and reduce over-reliance on custodial punishment.

### **Offences Incorporating Community Service:**

The BNS adopts a selective approach by prescribing community service primarily for minor offences. These include misconduct by public servants, non-compliance with lawful authority, public intoxication, defamation, and petty theft involving low monetary value. In certain cases, such as petty theft committed by first-time offenders, community service operates as a preferred alternative to imprisonment. This reflects a legislative intent to prevent unnecessary incarceration and promote rehabilitative outcomes.

### **Procedural Integration with BNSS:**

The effectiveness of community service as a punishment depends on procedural clarity. The Bharatiya Nagarik Suraksha Sanhita, 2023 provides the procedural framework necessary for implementing such sentences. Courts are empowered to determine the nature, duration, and conditions of community service, ensuring that the punishment is tailored to the circumstances of each case. State governments have also begun formulating guidelines specifying the types of permissible community service activities, such as maintaining public spaces, assisting in public institutions, and supporting social welfare initiatives.

## **DOCTRINAL FOUNDATION OF COMMUNITY SERVICE:**

### **Restorative Justice:**

Restorative justice emphasises repairing harm rather than merely punishing wrongdoing. Community service embodies this principle by requiring offenders to engage in activities that benefit society. Instead of isolating the offender, the punishment integrates them into the community, fostering a sense of responsibility. This also helps them to socialise easily, and offence will not be repeated.

### **Doctrine of Proportionality:**

The principle of proportionality requires that punishment correspond to the seriousness of the offence. Community service provides a flexible mechanism to achieve this balance. For minor offences, it offers a proportionate alternative to imprisonment, thereby preventing excessive penal consequences.

### **Reformative Theory of Punishment:**

The reformative approach views punishment as a means of transforming the offender rather than merely penalising them. Community service aligns with this theory by encouraging constructive behaviour and reducing the likelihood of recidivism. It enables offenders to develop a sense of discipline and social awareness.

### **Social Reintegration:**

Social reintegration focuses on restoring the offender's position within society. Unlike imprisonment, which often leads to marginalisation, community service maintains social ties and reduces stigma. It facilitates a smoother transition back into society, thereby enhancing long-term rehabilitation.

## **JUDICIAL INTERPRETATION AND EVOLUTION**

### **Pre-BNS Judicial Trends:**

Even before statutory recognition, Indian courts demonstrated an inclination toward alternative sentencing. In several cases, courts directed offenders to perform socially beneficial tasks as part of their punishment. These decisions were often grounded in constitutional principles, particularly the emphasis on dignity and fairness. The judiciary recognised that incarceration was not always the most effective response to minor offences. Instead, courts experimented with innovative remedies that balanced punishment with rehabilitation.

### **Post-BNS Developments:**

The enactment of the BNS has provided statutory legitimacy to these judicial practices. Courts now possess explicit authority to impose community service, reducing the need for interpretative innovation. Recent developments indicate an increasing reliance on community-based penalties, particularly in cases involving minor misconduct. The formalisation of community service has also led to greater consistency in sentencing, as courts operate within a defined legal framework rather than relying solely on discretion.



## CASE LAW ANALYSIS OF THIS STUDUY

### 1. Mohd. Giasuddin v. State of Andhra Pradesh (1977)

**Facts:** The accused was convicted of a relatively minor offence.

**Issue:** Whether sentencing should emphasise punishment or reform.

**Reasoning:** The Supreme Court stressed the importance of rehabilitation and criticised excessive reliance on imprisonment.

**Holding:** Sentencing must incorporate reformative principles.

**Relevance:** This case laid the conceptual foundation for community-based penalties.

### 2. State of Punjab v. Prem Sagar (2008)

**Facts:** The case addressed inconsistencies in sentencing practices.

**Issue:** Whether judicial discretion in sentencing requires structured guidance.

**Reasoning:** The Court highlighted the absence of uniform standards and emphasised the need for principled sentencing.

**Holding:** Sentencing must be guided by rational and consistent principles.

**Relevance:** Community service under BNS provides a structured alternative aligned with this reasoning.

### 3. Soman v. State of Kerala (2013)

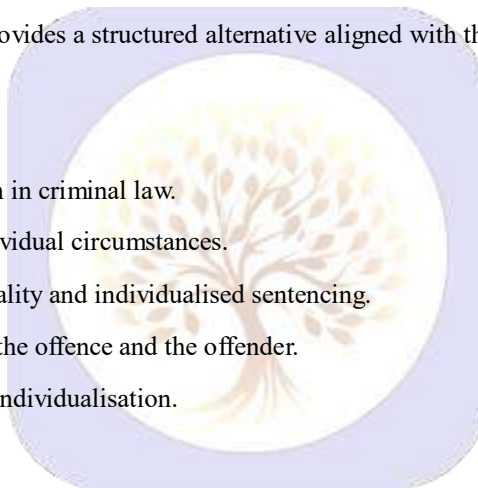
**Facts:** The case involved sentencing discretion in criminal law.

**Issue:** Whether punishment should reflect individual circumstances.

**Reasoning:** The Court emphasised proportionality and individualised sentencing.

**Holding:** Sentencing must be tailored to both the offence and the offender.

**Relevance:** Community service enables such individualisation.



### 4. M.H. Hoskot v. State of Maharashtra (1978)

**Facts:** The case concerned fairness in criminal procedure.

**Issue:** Whether sentencing must align with constitutional values.

**Reasoning:** The Court emphasised humane treatment and access to justice.

**Holding:** Sentencing must reflect constitutional principles.

**Relevance:** Supports the legitimacy of non-custodial punishments.

### 5. State of Gujarat v. High Court of Gujarat (1998)

**Facts:** The issue involved judicial creativity in sentencing.

**Issue:** Whether courts can impose unconventional punishments.

**Reasoning:** The Court acknowledged judicial innovation but stressed statutory limits.

**Holding:** Courts must act within legislative boundaries.

**Relevance:** Highlights the importance of statutory recognition now provided by the BNS

## JUDICIAL DETERMINATION

### ✓ **Enforcement Mechanisms:**

Courts play a central role in determining the nature and extent of community service. Judicial discretion ensures that the punishment is proportionate and context specific.

### ✓ **Administrative Framework:**

implementation requires coordination between courts, local authorities, and government institutions. State-issued guidelines specify the types of permissible activities and ensure uniformity in execution.

### ✓ **Monitoring and Compliance:**

Supervision mechanisms are essential to ensure compliance. Authorities such as probation officers and local administrative bodies may be tasked with monitoring performance and reporting completion.

### ✓ **Duration and Structure:**

Community service is typically structured in terms of hours or days, with flexibility to adapt to the nature of the offence. This ensures both consistency and adaptability.

## CHALLENGES IN IMPLEMENTATION

### • **Institutional Limitations:**

A major obstacle is the lack of infrastructure for supervising community service. Without adequate institutional support, enforcement may become inconsistent.

### • **Absence of Uniform Standards:**

Variations in state-level guidelines may lead to disparities in sentencing practices. A lack of national standards could undermine the principle of equality before law.

### • **Enforcement and Compliance Issues:**

Ensuring that offenders complete assigned tasks remain a practical challenge. Weak monitoring mechanisms may reduce the effectiveness of the punishment.

### • **Judicial Discretion and Variability:**

While discretion is necessary, excessive variation in its exercise may lead to arbitrariness. Clear guidelines are required to maintain consistency.

### • **Perception and Legitimacy:**

Public perception of community service as a lenient punishment may affect its acceptance. Conversely, if implemented improperly, it may also be perceived as degrading.

### • **Constitutional Concerns:**

Questions may arise regarding whether compulsory community service constitutes forced labour. However, since it is imposed through judicial process, it is likely to withstand constitutional scrutiny.

## CONCLUSION:

The incorporation of community service into the Bharatiya Nyaya Sanhita represents a progressive shift in Indian criminal law. By recognising non-custodial sanctions as legitimate forms of punishment, the law moves toward a more balanced and humane approach to justice.

The statutory framework, supported by procedural provisions and guided by established legal doctrines, provides a strong foundation for this reform. Judicial interpretation has further reinforced its legitimacy, aligning it with constitutional values and contemporary theories of punishment.

However, the success of this innovation depends on effective implementation. Addressing challenges related to infrastructure, monitoring, and uniformity, maintainability is essential to ensure that community service achieves its intended objectives.

If implemented with care and consistency, community service has the potential to redefine sentencing practices in India, promoting a system that is not only punitive but also restorative, reformatory, and socially constructive.



In addition, community service helps offenders understand the impact of their actions on society. Instead of isolating them through imprisonment, it allows them to stay connected with their families and communities while taking responsibility for their mistakes. This approach not only reduces the burden on overcrowded prisons but also encourages positive behavioural change.

### SUGGESTION:

- ✓ A more practical and people-focused approach should be followed while applying community service under the BNS. Instead of using it only as an alternative punishment, it should be designed in a way that creates real value for society. Courts can assign tasks that match the nature of the offences such as public cleanliness work, helping in government institutions or participating in social welfare activities. This makes the punishment more meaningful and easier for offenders to understand their responsibility. It also helps them stay connected with society, learn discipline and develop a sense of accountability through their actions.
- ✓ This is how BNS sections such as 4(h), 8(c), and 23 handle small offenses might feel different than methods in places like the UK or Australia. Instead of just listing laws, notice time caps on detention, who keeps track of those charged, yet also whether any of it deters further slips. While one system leans on strict clocks, another bets on supervision - but results that part often hides between lines.
- ✓ Since 2024, someone could follow what judges do by checking court records from places like Delhi or Tamil Nadu. Cases pulled that way might show whether rulings line up when setting work hours. Sometimes those decisions include what victims say under BNSS guidelines instead of sticking only to time-based penalties.
- ✓ Out here, actual problems pile up fast. Take India's shortage of probation workers - it shows hard numbers when you check state reports. Tech fixes? Some crash right after launch, say in Kerala where digital tools fail quietly. Rural spots lag behind urban centers, and prison trial data proves it. Numbers tell that tale clear.
- ✓ Maybe look at how well this lines up with restorative justice's aim to repair harm for all involved. Highlight the unclear parts - such as what truly means helping the public - and touch on why clearer guidance matters for judges. The gaps show where learning needs to go deeper.
- ✓ Picture those overcrowded jails - running past full, stuck at 130%. Swap short sentences for community work. See what drops when minor charges skip lockup. Pull old stats, then new ones - NCRB data tells the shift post-BNS.
- ✓ Someone trying this out for the first time might get more from it than others. Look at the courtroom steps early - clear lists help people follow through. Nearly a third walk away in certain cases when things feel unclear. Staying on track often means better work chances later. Getting support after helps keep momentum going.
- ✓ Start with BNSS protections - say, victim interviews or appeal options - then match them to usual rules from the top court. Hours might run fifty up to three hundred depending on what happened.
- ✓ Start with lessons from places like South Africa or Canada - pair up with local groups, use mobile alerts - not just copying, but adapting so oversight holds together. Ends when trust builds slowly through small steps.

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