



## Paradigm shift in Indian Penology: Operationalizing community service under the Bharatiya Nyaya Sanhita, 2023 – challenges

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### Abstract

This research article undertakes a doctrinal analysis and critique of the statutory introduction of Community Service (Community Service) as a non-custodial sentence under the Bharatiya Nyaya Sanhita (BNS), 2023, and the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. Effective from July 1, 2024, this reform marks a significant, deliberate shift in the Indian criminal justice system from traditional punitive measures toward a framework prioritizing rehabilitation and restorative justice principles. Utilizing Doctrinal Legal Analysis, the study interprets the new legislation against historical calls for penal reform, such as those found in the Malimath Committee Report and Law Commission recommendations, and synthesizes its findings with comparative operational models employed in jurisdictions like the United Kingdom and Canada.

The core findings indicate that while the BNS successfully formalizes Community Service as a progressive alternative to incarceration, its effective implementation is critically jeopardized by three major systemic deficits. First, the definition and scope of "Community Service" provided in the Explanation to BNSS Section 23 is excessively vague, lacking essential operational details concerning minimum hours, project types, and compliance standards. Second, the entire initiative rests on a severely weakened correctional infrastructure, characterized by a profound nationwide shortage of probation and correctional staff; the national average ratio of correctional officer to prisoner stands at approximately 1:1,617, which makes adequate supervision of community orders logistically impossible. Third, the resulting fragmented state guidelines, evidenced by differing procedural mandates (e.g., geo-tagging in Haryana versus phased reporting in West Bengal), threaten the uniformity and equity of the law across jurisdictions.

The analysis concludes that Community Service presents proven penological benefits, including significant potential for reducing recidivism compared to short-term custody and mitigating the severe crisis of prison overcrowding. However, realizing this potential requires immediate and substantial administrative investment, the mandated issuance of comprehensive national guidelines to standardize procedures, and the adoption of a legally rigorous hybrid monitoring structure that effectively leverages Non-Governmental Organizations (NGOs) and regulated surveillance technology. Failure to bridge the gap between legislative intent and infrastructural capacity risks undermining the foundational promise of this reform.

**Keywords:** Community service, bharatiya nyaya sanhita, judicial system, law

### Introduction

#### Historical Context and the Legislative Leap

The enactment of the Bharatiya Nyaya Sanhita (BNS), 2023, which replaces the Indian Penal Code (IPC), 1860, signals one of the most significant paradigm shifts in India's legal history. This legislative move, effective July 1, 2024, endeavors to modernize the nation's criminal code, consciously steering the justice system away from its colonial-era focus on retribution towards a more contemporary reformatory approach. The introduction of community service (Community Service) as a defined form of punishment under BNS Section 4(f) is a centerpiece of this reformatory agenda.

The contemporary codification of community service is the culmination of decades of reform advocacy that previously went unheeded. Early efforts to incorporate community service were noted in the Indian Penal Code (Amendment) Bill, 1978. Subsequent high-level bodies, including the Indian Jail Committee (1980–1983), the Malimath Committee Report,<sup>[1]</sup> and the 156th Law Commission Report, consistently highlighted the flaws inherent in short-term imprisonment and formally recommended the adoption of alternative, non-custodial sentences such as community service.<sup>[2]</sup> Before the statutory recognition under the BNS, Indian courts occasionally exercised their inherent powers under Section 482 of The Code of Criminal Procedure

(CrPC), 1973, or utilized broad judicial discretion in applying "any other conditions in the interest of justice" under Section 437(3) of the CrPC to impose community service, demonstrating a persistent judicial willingness for this progressive measure. The case *Azad Khan vs. State of Madhya Pradesh* (2020)<sup>[3]</sup> affirmed the court's prerogative to impose innovative, reformatory measures, provided they were aligned with the accused's capacity and willingness.<sup>[4]</sup> The BNS has now formally cemented this option, moving it from the realm of judicial innovation to that of standard statutory sentencing.

#### Community Sentencing

Community service functions as an alternative form of punishment where an offender performs constructive, unpaid work for the benefit of society. Penologically, this aligns squarely with the Reformatory Theory of punishment, which emphasizes rehabilitating offenders to facilitate their successful reintegration into society.

Crucially, community service is a practical application of the principles of Restorative Justice. Restorative justice aims to repair the harm caused by criminal behaviour, focusing on reconciliation between the offender, the victim, and the community. By engaging in tasks such as cleaning public spaces, volunteering in hospitals, or working on community development projects, the offender directly

contributes to the community they have wronged, providing them with an opportunity to acknowledge their transgression and earn a sense of purpose and self-worth.<sup>[5]</sup>

Furthermore, the introduction of community service is a critical strategic necessity to alleviate the profound crisis of systemic overcrowding in Indian prisons. Traditional punitive systems that focus solely on incarceration often overlook the root causes of minor criminal behaviour, exacerbate the cycle of re-offending, and contribute to the immense strain on correctional resources. Community service offers a path to systemic relief by diverting minor, non-violent offenders away from congested jails.

### Scope

The primary research question addressed by this study is: How feasible is the operationalization of Community Service under the BNS/BNSS framework given India's existing legal and correctional infrastructure, and what policy interventions are required to ensure a sustainable and equitable implementation model?

The legislative intent behind the BNS is undeniably progressive and aligns India with leading international practices.<sup>[6]</sup> However, a preliminary analysis suggests that the implementation framework within the BNSS is incomplete. The absence of clear administrative and procedural scaffolding risks producing disparity and potential systemic failure without immediate, targeted policy intervention. Therefore, this article provides a crucial, timely critique of the statutory provisions, analyzes the structural impediments to implementation, and proposes concrete, comparative policy pathways to ensure the success and legitimacy of this landmark penal reform.

### Methodology

This research uses Doctrinal Legal Analysis, a foundational approach for legal scholarship, to analyse existing legal materials, such as statutes, subsidiary legislation, and judicial precedents. The method is suitable for critiquing and recommending reforms to statutory law, allowing for a rigorous interpretation of BNS provisions and addressing procedural issues within the BNSS. Comparative legal analysis, based on operational models from common law jurisdictions like the UK and Canada, helps identify best practices for managing community sentencing in India.

### Statutory Analysis: Legal Findings

#### a. Codification and Scope of Community Service

Community Service has been formally established as a distinct form of punishment under the new criminal code. BNS Section 4(f) introduces Community Service as a legitimate penalty, granting it clear legal standing equivalent to traditional penalties like imprisonment and fine.<sup>[7]</sup> This formal inclusion marks the definitive victory of the reformatory ideology over the previous punitive monopoly. The application of community service is strategically reserved for specific minor offenses, non-violent crimes, and often, first-time offenders. This proportional limitation is critical for maintaining the gravity and credibility of the judicial system. There are at present only two states (Delhi & Tamil Nadu) which gave guidelines as punishment for community services. A gazette notification given by Delhi Government's Home Department stated that High Court of Delhi made a few guidelines for awarding community services as punishment which included 12-point community

services for minor offences. They include cleaning peripheral areas, maintaining hospital wards, cleaning public parks, weeding roadsides, arranging books in public libraries etc. The gazette notification also stated that any other mode of community service does not curtail the court's discretion. The home department also indicated that the extent of community services could range from 40 hours to 240 hours or one day to 31 days.<sup>[8]</sup> The Tamil Nadu government on Aug 23 2025 has officially announced 16 kinds of community service as penalties for minor offences, proposing courts as an alternative to short jail terms and fines.<sup>[9]</sup> The Governor approved this move which was framed by the home department with an intention to make punishments reformatory, beneficial to public facilities and ensure that it is social useful. Examples of offenses where community service can be imposed include BNS Section 355 (misconduct in public by a drunken person) and BNS Section 356(2) (defamation), typically alongside or in lieu of minor imprisonment or fine. This careful restriction ensures that the punishment remains proportionate to the harm caused, aligning the reform with fundamental principles of justice.

#### b. The Vague Mandate of the BNSS

While the BNS provides the statutory authority for community service, the procedural framework, which dictates how the sentence is implemented, monitored, and completed, resides within the Bharatiya Nagarik Suraksha Sanhita (BNSS). The definition of "Community Service" is located in the Explanation to BNSS Section 23.

A first-order finding of this doctrinal critique is the critical vagueness of this procedural lacuna. The BNSS explanation fails to specify essential operational details necessary for judicial consistency and administrative execution.<sup>[10]</sup> These missing elements include: clear guidelines on the minimum and maximum hours to be served, the specific schedule for completion, acceptable types of work that qualify as constructive societal benefit, and, most crucially, a transparent mechanism for monitoring compliance and certifying successful completion.

This legislative incompleteness carries immediate consequences for the criminal justice system. By introducing a new sentencing category without adequate procedural scaffolding, the legislature has effectively delegated the complex task of creating comprehensive operational rules back to the judiciary and disparate state authorities. The inherent vacuum guarantees non-uniform application across various benches and jurisdictions. When vague statutory definitions interact with necessary judicial discretion in sentencing, the outcome is guaranteed inconsistency.<sup>[11]</sup> This lack of uniformity directly undermines the foundational constitutional mandate for "even-handed and non-discriminatory" justice, eroding the legitimacy and social trust in institutionalized punishment. The BNSS's procedural vagueness is thus an accelerant for judicial disparity.

#### c. Discretionary Power and the Risk of Disparity

Judicial discretion remains an essential element of sentencing, allowing judges to tailor punishment to the unique facts of the offense, the circumstances of the case, and the background of the offender. This flexibility is inherently necessary for constructive and innovative solutions.<sup>[12]</sup>

However, the conjunction of high judicial discretionary power and the ambiguous statutory definitions found in the BNSS creates a significant legal risk. In jurisdictions lacking standardized guidelines, there is documented evidence that sentencing outcomes can be influenced by the offender's social characteristic Community Service, including race or socioeconomic status, leading to actual or perceived discriminatory application of state power. To prevent the new community service regime from exacerbating these disparities, it is imperative that the ambiguity in the BNSS be neutralized by the introduction of strong, standardized, and mandatory national guidelines that restrict the scope of judicial discretion only concerning the operationalization of the sentence, not the power to impose it.<sup>[13]</sup>

### Comparative Jurisprudence

Examining established community service regimes in other common law nations provides crucial context for operational feasibility and risk mitigation in India. Two contrasting models—the highly structured UK system and the highly discretionary Canadian system—offer valuable lessons.

#### a. The UK Model

The United Kingdom provides a model of strong, structured community sentence management through its His Majesty's Prison and Probation Service (HMPPS). Offenders are typically placed on Community Orders (COs) or Suspended Sentence Orders (SSOs), which are managed rigorously by probation practitioners.

The defining characteristic of the UK model is its focus on accountability and centralized quality control. Management is governed by detailed Policy Frameworks that outline mandatory actions for practitioners concerning supervision, performance monitoring, quality assurance, and external auditing. Compliance is overseen by Regional Probation Directors (RPDs) and verified through external inspections by bodies such as HMI Probation. This systematic approach ensures that community orders are executed consistently across regions, minimizing the non-uniformity that plagues India's current nascent state guidelines. The UK's emphasis on mandatory administrative accountability provides a vital blueprint for India to overcome its regulatory fragmentation problem.

#### b. The Canadian Model

In contrast, Canada historically lacks national sentencing guidelines or a sentencing commission, leading to a system characterized by high judicial discretion in sentencing. While discretion is fundamental to judicial independence, the lack of standardized measures has been criticized for making it difficult to collect data necessary to assess disparities in sentencing across the country.

For India, the risks associated with the Canadian model are immediate. Given India's deep resource deficits, adopting a high-discretion, low-guideline approach would inevitably amplify the risks of inconsistent application and disparate sentencing outcomes discussed previously. India requires robust, centralized guidelines precisely because its infrastructural constraints cannot support fragmented judicial interpretation.

#### c. Efficacy and Fiscal Justification

The shift to community sentencing is globally validated by clear data demonstrating its superior penological and fiscal efficacy compared to short-term custody. International evidence, such as data from the UK, strongly validates the reformative shift under the BNS.

Offenders sentenced to immediate, short-term custody exhibit a dramatically high re-offending rate of 55.5% within one year of release. This rate is significantly higher than the overall proven reoffending rate of 25.5% and the rate for those sentenced to a Community Order, which is comparatively lower.<sup>[14]</sup> The data illustrates that short-term incarceration is socially counterproductive, failing to rehabilitate and often institutionalizing minor offenders further.

Furthermore, imprisonment incurs a higher cost than community supervision, providing a clear fiscal argument for reform. This economic necessity is often supported by public opinion; surveys in countries like Canada show that the majority of Canadians favor alternatives such as community service or probation over jail for non-violent offenses.<sup>[15]</sup>

The evidence reveals that short-term incarceration is detrimental, both socially (due to high recidivism) and fiscally (due to high cost). Therefore, the successful implementation of the BNS community service provisions is not merely a laudable social reform, but an essential economic and public safety strategy. This foundational argument provides the strongest possible justification for the substantial budgetary allocation necessary to fund the critical probation infrastructure detailed in the subsequent section.

### Implementation And Monitoring Challenges

The foundational difficulty in operationalizing community service in India is not legislative or theoretical, but deeply infrastructural. The progressive vision of the BNS is currently undermined by administrative and logistical realities.

#### a. The Critical Staffing Deficit: A Structural Impediment

The successful implementation of community service orders inherently depends on a robust framework for supervision, monitoring, and verification of compliance a prerequisite that India fundamentally lacks.

The data reveals a severe national crisis in correctional infrastructure. The ratio of correctional staff, including probation and welfare officers, to prisoners is critically low. The national average stands at approximately one correctional officer for every 1,617 prisoners.<sup>[16]</sup> This ratio stands in stark contrast to the Model Prison Manual's requirement of one correctional officer for every 200 prisoners, and the international standard, which is closer to one officer for every 30 to 70 cases.<sup>[17]</sup>

The deficiency is particularly acute in major states. For instance, data indicates ratios of 1:50,649 inmates per correctional staff in Uttar Pradesh and 1:15,089 in Gujarat. Furthermore, across India, there is a severe shortage of probation officers, with estimates suggesting only one probation officer available for every 500–700 cases internationally, let alone the burgeoning caseload under the new BNS regime.

This evidence demonstrates that the BNS introduced a substantial new demand for community supervision without

addressing the chronic, decades-old supply crisis in the correctional sector. This oversight renders the community service reform purely *de jure* (in law) but ineffective *de facto* (in practice). Without immediate and massive manpower investment, every community service order risks being unsupervised or inadequately monitored. This scenario will inevitably lead to high breach rates, undermining the sanctity of the judicial order and resulting in the total failure of the reformative objective. The systemic staffing deficit is the single greatest structural impediment to the BNS reform.

### b. Regulatory Fragmentation

The absence of a clear, standardized procedural protocol within the BNSS has forced state governments to create their own monitoring and enforcement guidelines, resulting in regulatory fragmentation. This patchwork approach immediately violates the principles of equitable justice.

The disparate guidelines across states illustrate this lack of uniformity. West Bengal guidelines mandate that offenders report to a probation officer for supervision. In contrast, Haryana's notification emphasizes the use of geo-tagging and digital monitoring for compliance verification.<sup>[18]</sup> Furthermore, timelines for community service vary significantly: states like Assam and Delhi prescribe a flexible range (e.g., 40–240 hours), while West Bengal mandates a phased schedule (up to 100 hours within three months).

This regulatory patchwork creates unequal application of the law, where the administrative burden and procedural requirements for an offender sentenced to Community Service vary dramatically depending on their geographical location. This jurisdictional lottery fosters disparity and undermines the legitimacy of state-sponsored punishment, violating the principles of social justice and uniformity. For the ethos of the reform to take hold, as cautioned by former Chief Justice of India UU Lalit, legislative refinement is required to standardize implementation.<sup>[19]</sup>

### c. Mitigation vs. Surveillance

Community service is intended to foster rehabilitation and reduce the social stigma often associated with incarceration. However, the success of this objective relies heavily on public perception. If community service orders are poorly monitored or compliance is lax, the public may perceive the sentence as "getting off easy" rather than understanding its reformative purpose, thereby undermining trust in the justice system.

To address the profound supervision deficit, technology, specifically electronic monitoring (EM) systems like geo-tagging utilized in Haryana or similar systems in New Zealand and the United Kingdom, offers a viable solution for verifying the offender's presence at the site during mandated hours. However, relying heavily on technology introduces critical legal and ethical challenges. The implementation of electronic monitoring must be adopted with extreme caution, as the necessary surveillance raises significant concerns regarding the data privacy and fundamental rights of the sentenced individual. Strict legal protocols regarding data storage, access, and sharing must be developed to ensure the data is not misused and that constitutional privacy safeguards are maintained.<sup>[20]</sup>

## Suggestions

The successful operationalization of community service under the BNS is contingent upon immediate, targeted policy interventions addressing the structural deficiencies in supervision and regulation.

### a. Structural and Manpower Augmentation

The correctional staffing crisis necessitates emergency measures. The government must initiate immediate, nationwide hiring campaigns specifically targeting probation officers, social workers, and correctional staff. To attract and retain qualified personnel especially those with expertise in law, social work, and criminology competitive pay packages and career progression opportunities must be offered.<sup>[21]</sup>

Furthermore, professionalization is mandatory. Specialized training programs must be developed in partnership with law schools, social work organizations, and judicial academies. These programs should standardize the curriculum for probation officers and judicial personnel alike, ensuring consistent philosophical application of restorative justice principles and proper procedural adherence when supervising community orders.

### b. Mandatory National Guidelines

To eliminate the regulatory fragmentation that risks judicial disparity, the Union Government must issue a unified, comprehensive national framework, either through an amendment to the BNSS or via detailed subordinate legislation.

This unified protocol must detail:

- 1. Scope and Definition:** A clear schedule of admissible community service tasks (e.g., environmental clean-up, social service in medical facilities) and a defined range of minimum and maximum hourly commitments for various offense types.
- 2. Monitoring Protocols:** Standardization of supervision mechanisms, ideally adopting a hybrid model (discussed below), to ensure uniform compliance verification nationwide.
- 3. Breach Mechanism:** A mandatory, standardized system of graduated sanctions for non-compliance must be defined. This must include clear statutory rules for remedial actions, such as repetition of the work order, and ultimately, the defined process for converting the community service sentence into a custodial sentence to maintain the judicial order's sanctity and deterrent effect.

### c. The Necessary Hybrid Monitoring Model

Given the insurmountable challenge of immediately filling the chronic manpower gap, a reliance on non-state actors and technology is a mandatory, if complex, solution.

- 1. Integrating Non-State Actors (NGOs):** Accredited Non-Governmental Organizations (NGOs) must be formally integrated into the community service supervision framework to bridge the infrastructural gap. NGOs possess unique experience in social service provision and community development. They should be leveraged for three essential functions: (a) acting as placement centers for constructive social work; (b) imparting essential value education and support to offenders; and (c) co-monitoring and verifying the

offender's progress alongside the designated government supervisor. To ensure accountability, the final completion report prepared by the official supervisor must be verified by the involved NGO.

2. **Regulated Technology Use:** The careful adoption of electronic monitoring (EM) systems, such as geo-tagging, is necessary to ensure surveillance efficiency where human resources are sparse. However, because involving non-state actors in judicial sentence execution and using surveillance technology raises profound legal issues regarding the delegation of state power and constitutional privacy rights, this technology must be implemented under an immediate and stringent legal framework. Legal protocols detailing data storage, access rights, retention limits, and independent oversight mechanisms must be meticulously drafted and enshrined in law to ensure accountability and prevent human rights abuses or misuse of collected data.

### Conclusion

The Bharatiya Nyaya Sanhita, 2023, represents a watershed moment in the history of Indian criminal justice. By providing statutory backing for community service, the BNS formalizes a restorative and reformatory sentencing option that decades of previous committees, bills, and Law Commission reports failed to implement (NLIU Law Review, 2024). This law aligns the nation with global best practices in penology, offering a viable, cost-effective alternative to short-term custody and providing a critical tool to combat severe prison overcrowding.

However, the analysis demonstrates that while the legislative intent is progressive, the structural foundation for implementation is structurally fragile. The confluence of the ambiguous procedural framework in the BNSS and the catastrophic, chronic failure in the probation and correctional infrastructure renders the reform highly vulnerable to failure. This administrative deficit translates directly into a risk of inconsistent, discriminatory sentencing practices across jurisdictions, undermining the core objective of social justice.

For the BNS's promise to be fulfilled, the state must treat the required administrative overhaul not as an incidental cost, but as a mandatory prerequisite for realizing the legal objectives. This necessitates immediate and substantial investment in manpower, the legalization of a unified, comprehensive national guideline, and the careful institutionalization of a hybrid monitoring system leveraging both civil society organizations and regulated surveillance technology. The potential for BNS to revolutionize Indian penology and successfully rehabilitate minor offenders is immense, provided that the necessary bridge between progressive law and administrative reality is constructed without delay.

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