

Community Service: As a Part of Sentence in India

- Priyanshi Gupta*

Introduction:

“Without community service, we would not have a strong quality of life. It is important to the person who serves as well as the recipient. It is the way in which we ourselves grow and develop.”

- Dorothy Height

Sentencing an offender to punishment comes after the post-trial stage of the Criminal Justice system, if the accused is convicted for an offence committed by him by a court of law he is brought before the judge for a sentencing hearing where the verdict of punishment is announced by a judge, this verdict is called sentencing. Hence, a sentence is a punishment or penalty ordered by the court. The primary goals of sentencing are punishing, deterrence, incapacitation, rehabilitation and restoration. It must be noted that the most critical stage in the criminal justice administration is sentencing. Any disparity in sentencing not only offends the principles of justice but it also but it also negatively impacts the rehabilitative process of an offender and create problems inside the prisons.¹ Under the Indian Criminal Justice system, Indian Judges are bestowed with the responsibility and discretion to determine the form and quantum of punishment as a form of punishment to the convicts.

As far as community service is concerned, it is a form of punishment beyond the bars of prison, sometimes referred to an alternative to imprisonment. A western concept as it is community service is accepted as a part of sentencing in various criminal justice systems and jurisdictions across the globe, which is also being acknowledge in the Indian Criminal Justice system at its own pace, limitations and inhibitions. Community service is treated as an option for the court to order the person convict of a crime to perform a number of hours of unpaid work for the benefit of the community or public. At the onset Community Service was considered as an alternative to short term imprisonments in England, the courts may

*Priyanshi Gupta, LLM, Nirma University, priya15_gupta@rediffmail.com

¹ Paul W. Tappan, *Crime, Justice and Correction* (McGraw-Hill, New York, 1st edn., 1960).

decide to waive imprisonment and offer an alternative sentence of unpaid voluntary community service for 40-240 hours to any person above the age of 17. On the face of it Community service as a form of punishment seen against the traditional form of punishment but since it is awarded by the court it is considered to be a form of punishment.² The Community Service program as defined by Harris means – “a program through which convicts are placed in unpaid positions with non-profit or tax-supported agencies to serve a specified number of hours performing work or service within a given time limit as a sentencing option or condition.”³ Carter, Cocks and Glaser in their work define Community Service on similar lines as – “a court order authorizing an offender to perform a specific number of hours of unpaid work or service for a non-profit community organization, or tax supported agency.”⁴

Community service as such is not a part of the statute books in India, originally it is not the law of the law, but it is in continuous debate to include it under the sentencing policy under the Indian Criminal Justice system. The paper aims to study the origin and purpose of Community service as an alternative sentence, various models as seen in other jurisdiction of UK, America and Australia, the types of punishment under the Indian Penal Code (IPC), community sentencing as seen and understood in India in the light of judgment of the courts, statutory limitations. And finally whether Community service will prove to be viable under the Indian society.

Origin of Community service as a sentence:

Community Service as a form of sentence is a product of the last 5 decades and widely used in many parts of the world and more rapidly in USA and UK. It is difficult to exactly trace down the origin of community service, the concept of working in a community as a form of punishment has a long history in many countries. The idea can be traced to the House of Correction of Bridewell Palace in London during 1553 to deal with the vagabonds

² Howard S. Bergman, “Community Service in England: An Alternative to Custodial Sentence” 39 *Federal Probation* 43 (1975).

³ M.K. Harris, *Community Service by Offenders* 6 (Washington, D.C.: American Bar Association, Basics Program, 1980).

⁴ R.M. Carter, J. Cocks, & D. Glaser, “Community service: A review of the basic issues” 51 *Federal Probation* 4 (1987).

by way of discouraging idleness and vagrancy by means of labour.⁵ Community Service was order before and during the second world war⁶ and according to the Alaskan Statue of 1949 the judges ordered community service to convicts as a part of probation.⁷ The community service as a part of sentence in England and Wales formally originated as a recommendation of the 1970 report “Non-custodial and Semi-custodial Penalties” popularly known as “Wootton Report”⁸ which strongly argued for introducing non-custodial measures as alternatives to custody and proposed that in appropriate cases offenders should be engaged in some form of part time service to the community.⁹ It also emphasized on the reasons for introducing community service as an alternative – as it is a constructive and cheap alternative, introduces reparation to the community.¹⁰ After testing the scheme it was found to be viable and promising as it showed the highest success rate amongst all penal developments over the last three decades in England and Wales.¹¹ The recommendations made in this report were enacted in the Criminal Justice Act of 1972 which is now the Powers of Criminal Courts Act 1973. The key features of the act were -

1. Community service can be ordered to an offender above the age of 16 years.
2. Must be convicted of an offence punishable by imprisonment
3. A social enquiry report must be prepared by the probation officer
4. Duration of 40-240 hours within a year

Formal Community Service programs began in the United States in 1966 with the establishment of Alameda County California program, where the Judges of the municipal court sentenced a large number of convicts of traffic offences to unpaid labor or community service as a punishment a special agency was established to administer it.¹² The use of

⁵ Ken Pease, “Community Service Order” 6 *Crime and Justice* 56 (1985).

⁶ R.J. Maher, & H.E. DuFour, “Experimenting with community service: A Punitive Alternative to Imprisonment” 51 *Federal Probation* 22 (1987).

⁷ Douglas McDonald, *Punishment without walls: Community service sentences in New York City* 245 (Rutgers University Press, New Brunswick, 1989).

⁸ Home Council Advisory Council on Penal Systems, “Non- Custodial and Semi-Custodial Penalties” (London HMSO, 1970).

⁹ “Wootton report” para 30-31.

¹⁰ “Wootton report” Para 33.

¹¹ Bala Reddy, “Community Service Orders: An Alternative Sentence” 3 *The Singapore Law Journal* 232 (1991).

¹² James R. Davis, “Community Service as an Alternative Sentence” 7 *Journal of Contemporary Criminal Justice* 108 (1991).

community service as a complete sentence is now widespread and is now used in other jurisdictions like Australia, Sri-Lanka, Germany.

Purpose of Community Service as a Sentence:

Young points out that in United Kingdom Prisons were (even today) perceived as harmful to individuals and not useful for deterrent purposes, prison over-crowding is a cause of concern and building new prisons will adversely affect the economy, he argued that the existing non-custodial measures have failed as appeared from the increase in crime rate and hence new non-custodial measures and alternatives have become a point of attraction. And hence community service was introduced as a result of these factors.¹³ Similar arguments were posed by scholars in United States and New-Zealand.¹⁴ According to the literature review, with the rise in the prison populations and associated cost across the globe, community service as a sentence was resorted to, it was considered more interestingly by the policy makers under the criminal justice systems.¹⁵ Experts considered community service was a cost effective alternative to prison.¹⁶ Studies have also suggested that they are very effective in reducing recidivism and preventing further criminalization of offenders, the recidivism rates are lower in comparison to the prisoners released.¹⁷ In 2005 a report was issued by the Probation and Pre-trial Services Division of Administrative Office of the US Courts on community service sentences which encourage the judges to acknowledge the value of community service as a sentence as it is – flexible, personalized and humane sanction, it is a way for the offender to repay or restore the community, it also mentioned that ordering community service is practical, cost effective and fair i.e. it is a win-win proposition for all stakeholders.¹⁸ Allen and Treger stated that community service has similar objectives as of the other alternative punishments which are - rehabilitation,

¹³ W.A. Young, *Community Service Orders: The Development of a New Penal Measure* (1978) (Ph.D. thesis, Cambridge University).

¹⁴ Ken Pease, "Community Service Order" 6 *Crime and Justice* 59 (1985).

¹⁵ Denis Yukhnenko, Achim Wolf, Nigel Blackwood & Seema Fazel, "Recidivism rates in individuals receiving community sentences: A systematic Review" 14 *PLoS ONE* 2 (2019).

¹⁶ E.K. Drake, "The monetary benefits and costs of community supervision" 34 *Journal of Contemporary Criminal Justice* (2018).

¹⁷ Denis Yukhnenko, Achim Wolf, Nigel Blackwood & Seema Fazel, "Recidivism rates in individuals receiving community sentences: A systematic Review" 14 *PLoS ONE* 11 (2019).

¹⁸ Herbert J. Hoelter, "Sentencing Alternatives – Back to Future", 22 *Federal Sentencing Reporter* 55 (2009).

deterrence, punishing, retribution and justice.¹⁹ Community service helps to establish a dialogue with the community and the convict. Community Programs that are well-conceived, well-managed, well-targeted and financed adequately have repeatedly shown the reduction in reoffending.²⁰

Hudson and Galaway have listed several advantages of community service²¹ –

- a. Reduces intrusion of the justice system, and reduce recidivism,
- b. Agencies are benefitted by the labor provided by the offender,
- c. Increases the community support within the criminal justice system,
- d. Reduces cost,
- e. Works as an alternative sentence for the courts
- f. Offenders can also experience the need of other.

However, there are allegations that Community Service is awarded discriminately and unfairly and community safety is put to risk and so the offender's life, the problem of determination of the period and service is also present furthermore it is discretionary on the court, an ideal scheme is to be devised. There is also a need for having a separate department other than the courts and prison administration to manage the sentence of community service. Not adequate research has been done on to whom the sentence of community should be administered. But a very important question which arises is what is the eligibility for the grant a sentence of community service, which offenders should be given this punishment and how is it to be decided by the court, as a general rule it is ordered only in the cases of petty offences, first-time offenders, property related offences, breach of traffic laws.

Community service models in different jurisdictions:

¹⁹ F. Allen, & H. Treger, "Community service orders in Federal Probation: Perceptions of probationers and host agencies" 54 *Federal Probation* 9 (1990).

²⁰ Community Sentences, UK, available at: <https://www.gov.uk/community-sentences> (last visited on March 16, 2021).

²¹ J. Hudson, & B. Galaway, "Community service: Toward program definition" 54 *Federal Probation* 8 (1990).

Community sentence has across the world although unevenly, its importance has been highlighted internationally, the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules)²², it urges all member states to develop non-custodial measures in their legal systems to reduce the use of imprisonment and to rationalize criminal justice policies. The Kampala Declaration on Prison Conditions in Africa²³ states that taking into account the limited effectiveness of imprisonment particularly those serving short sentences and that community services and other non-custodial measures are innovative alternatives to imprisonment and should be preferred to imprisonment further legislations can be introduced to ensure that community service and other non-custodial measures will be imposed as an alternative. This part of the study explores the concept of Community service as prevailing and perceived in UK, USA and Australia.

In UK, community service is referred to as payback to the community and it is implemented by the Ministry of Justice. The use of Community service as a sentence can be seen by the statistical data i.e. in 2019 alone there were 80,039 orders passed in UK.²⁴

Community sentence in UK is awarded by the court if someone is convicted of a crime but not sent to the prison, as described by the Ministry of Justice the convict needs to do unpaid work in the local community, like removal of graffiti and is known as Community Payback. This sentence can be given for crimes such as – damaging property, benefit fraud, assault and the possibility of getting a sentence of community service is firstly, if the court thinks that it is likely that the offender stops committing a crime in place of going to prison, secondly, first time offender, and lastly, the offender has a mental condition which affects his/her behavior.²⁵ It is being recognized that community payback has an increasing role in the criminal justice regime and therefore, there can be seen a tremendous involvement of the private and voluntary community groups to help in the successful implementation of the program.

²² United Nations Standard Minimum Rules for Non-Custodial Measures, G.A.Res.45/110, U.N. Doc. A/RES/45/110(December 14, 1990).

²³ The Kampala Declaration on Prison Conditions in Africa, (September 19-21, 1996).

²⁴ Criminal Justice System and Offenders Criminal History, UK, available at: https://moj-analytical-services.github.io/criminal_history_sankey/index.html (last visited on March 16, 2021).

²⁵ Doris Layton Mackenzie, “What works in Corrections: Reducing the Criminal activities of offenders and delinquents” (2006).

In USA, the modern era of community service began in 1966 California when judges started imposing work assignments as an alternative to jail term, this practice spread across the country in 1970s when the Federal Law Enforcement Assistance Administration (LEAA) started funding it. The offenders had to do low-level maintenance work for public agencies involving – cleaning litter from parks and playgrounds, sweeping in public places, cutting grass, washing cars, clerical works, serving at hospitals, nursing homes, social service centers and NGOs. Around 1980's the LEAA fund dried up but the concept was being appreciated by the Judges, as it provided free labor for public works and also held the offenders accountable for the damage they had caused and also helped them to involve with the community and suit their job demands for the life after release. The probation department took over the implementation of Community Service as a sentence. As courts started to feel the pressures of jail crowding they resorted more often to community service and it became a sentence of choice.²⁶ Although Community Sentence has been used as a sanction for nearly 4 decades for less serious offenders it is still a new field and under-researched. Each state has its own program for community service and works independently.

In Australia, being a federal structure, each state has its own criminal justice administration system and similarly they have their own community service schemes and programs popularly known as Community Based Corrections but they are collectively summarized as –

1. Duration of community service ranges from 40-750 hours and cannot exceed 5 years,
2. Those who are engaged in probationary services assess the offender's suitability to award community service and they advise the court on the same

Trends regarding the number of persons performing community services vary across different jurisdictions, as of December 2020 77,919 persons were serving community based corrections which is lesser than the September Quarter 2020 where 78,401 people

²⁶ Australian Bureau of Statistics, Corrective Services, Australia, available at: <https://www.abs.gov.au/statistics/people/crime-and-justice/corrective-services-australia/latest-release> (last visited on March 16, 2021).

were serving Community service, Victoria, Australian Capital Territory and South Australia shows decrease for persons serving the community based sentences for the quarter despite an increase as seen in other states.²⁷

It can be fairly concluded that Community Service as an alternative is faring well in the above studied jurisdictions and it has also served its purpose of implementation i.e. reduction in prison overcrowding and recidivism. Now we come to the Indian model of sentencing as per the penal laws and the scope of community service in India although it has not been introduced formally, by way of judicial activism it has started to make its way into the Indian Criminal Justice administration.

Community sentencing in India:

Over the period of time and in the name of reforms many alternatives to custodial sentences have been introduced in the Indian Criminal justice system over a period of time like – use of open prisons, parole, probation, rehabilitation centers and etc., but Community sentence has not been given much importance. Not much literature is available and not many studies have been conducted to study the impact of community service as an alternate in the Indian scenario, although the problems of over-crowding, inhumane conditions inside prison, costly custody are plaguing in India also. Minimal efforts can be seen by the policy makers to introduce Community service in the system, the only statutory provision which is available in India is under the Juvenile Justice Act, 2015²⁸ under section 18 (1)(c) which provides that the juvenile offenders can be awarded community service if the Juvenile Justice Board deems it fit.

However, many recommendations and suggestions have been made time and again to include community service as a sentence under the IPC, the Indian Penal Code Amendment Bill of 1978, under clause 18 new forms of punishment were proposed under section 53 of the code such as community service, disqualification from holding office, order for payment of compensation and public censure.²⁹ As per the bill, the offender should be above 18 years of age to be eligible for community service to work for a certain number of

²⁷ Law Commission of India, “Report on the Indian Penal Code” (1997).

²⁸ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2015).

²⁹ Law Commission of India, “Report on the Indian Penal Code” 259 (1997).

hours without any remuneration but with consent, work hours ranging from 40-1000 hours, and it can be awarded only for offences punishable with less than 3 years.³⁰ This bill served as the first attempt to introduce community service as a form of punishment under the IPC. Later the 156th Law Commission Report again took up the amendment suggested by the 1978 bill which proposed community service under section 53, it was submitted that in the workshops held it was argued that punishment of community service is not practicable³¹, furthermore, it was stated that community service was a relatively new concept and closely connected with the reformatory theory but the Commission was more convinced with the idea of open air prison systems and had emphasized on the non-practicality as voiced in the workshops.³²

Punishment and sentencing occupy an important place in the administration of criminal justice system, while punishment is a matter of substantive law sentencing forms the part of procedural laws it is an award of the actual punishment to the offender or convict by the judge exercising his judicial discretion. In India the scheme of punishment is provided under section 53-75 of the IPC, section 53 particularly prescribes 5 types punishments which are –

1. Death – harshest of all punishments, a form of capital punishment
2. Imprisonment for life – always a rigorous form of punishment, imprisonment till the last breath of the convict.
3. Imprisonment – rigorous or simple; also known as incarceration or confinement, to temporarily remove the offender from the society. The offender is kept in a prison and deprive him of his liberty (conditionally). Imprisonment can be of two types – rigorous, where the prisoners have to undergo hard labour or simple, where the prisoner does not have to undergo labor but can involve himself into lighter works.
4. Forfeiture of property and,
5. Fine – however while imposing this punishment the financial circumstances of the person should be taken into account, nature and the gravity of the offence should

³⁰ Mitali Agarwal, “Beyond the Prison Bars: Contemplating Community Sentencing in India”, 12 *NUJS Law Review* 124 (2019).

³¹ Law Commission of India, “Report on the Indian Penal Code” 22 (1997).

³² Law Commission of India, “Report on the Indian Penal Code” 34 (1997).

be considered, the fine imposed should not be excessive and the usefulness should be examined properly.

Hence, it can be clearly understood that there are no formal provisions for awarding Community service as a non-custodial measure under the primary law.

The Code of Criminal Procedure (CrPC) provides for wide discretionary powers upon the judge during the stage on sentencing after it is found that the accused is guilty of the offence he was charged with, section 235 and 248 vests the power of sentencing with the sessions court and Magistrates court respectively. Section 360 gives the power to the convicting judge to release the offender on probation if he is found not to be a threat to the society. The discretion available with the judges is not unqualified, section 354(3) CrPC requires the sentencing court to provide special reasons while awarding death punishment stating and explaining why the alternative punishment of life imprisonment would not be sufficient.

Community Sentence and Indian Judiciary:

There can be seen a shift in the approach of the judiciary as regards to the sentencing of the offenders and incongruity can be seen as there is a lot of confusion which is a cause of concern, the court has no consistent theory to be followed in sentencing and in such a case introducing community sentence will create more ambiguity and confusion without a proper scheme and legislative framework of the same. However, it has been observed that the courts are resorting to community service as an alternative in many instances after already noting that the same has no mention under the penal laws. Judicial discretion in awarding sentences can be seen in a number of cases,

The Madhya Pradesh High-court in *Sunita Gandharva vs. State of M.P. and Anr.*³³ highlighted the importance of community service in the form that – “it gives a chance in some cases to melt the ego of an accused who is facing trial of those offences 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

³³ 2020 SCC OnLine MP 2193.

rekindled through the concept of community service.” The court considered it fit to impose community service as “*any other condition in the interest of justice*” as per section 437(3) of CrPC over the accused or offender. In *Babu Singh vs. the State of UP*³⁴, the Apex court held that restorative devices through means of community service, meditative drill or study classes should be innovated upon to redeem the offender. In *Azad Khan vs. State of MP*³⁵, the MP high court granted community service order to visit the District Hospital Guna to the applicant who was convicted under section 304 IPC and has also applied for revision. The Apex court in 2012 in the case of *State Tr .P.S. Lodhi, New Delhi vs. Sanjeev Nanda*³⁶ it was observed by the court that convicts in various countries are voluntarily wanting to serve the community, however serving the society is not a punishment in real sense wherein the convict pays back to the community, according to the facts of the case the convict had killed six human lives the court felt appropriate to award community service for two years as a sentence rather than incarcerating the convict further in jail. The high court of Gujarat in *Vishal S Awtani vs. State of Gujarat*³⁷ has categorically discussed the question ‘*what community service is*’ whether it is a sentence or punishment or reparation or reformation, the court observed that community service is not a punishment in true sense but it is a kind of reparation. The court also pointed out in its order the various benefits of community service as a sentence, in its case the court had directed the state to come out with a policy order that all those who people who are caught not wearing face masks as per the COVID-19 guidelines shall be listed for community service, and all those violating the COVID-19 protocol shall be mandated to do community service at any COVID care center. This judgment appears to be to advance for its time and was also stayed by the Supreme Court. Hence, though not formally introduced in the statue books and after discarding the recommendations of incorporating it in the sentencing policies, there are many attempts made by the courts, as the power of the courts to award sentences although subject to certain limitations is discretionary.

³⁴ (1978) 1 SCC 579.

³⁵ (2012) 8 SCC 450.

³⁶ AIR 2012 S.C. 3104.

³⁷ C/WPPIL/108/2020.

Conclusion:

One of the main objectives of punishment is to reform the offenders and rehabilitate them in the society as a good human. Community service as an alternative to punishment can be seen as one of the best ways to achieve the same although subject to its implementation and continuous monitoring. The Indian criminal justice system is suffering from many vices and reforms are alternatives can lead to see a new light, like Thomas Edison has said if – “*There’s a way to do it better – find it*”. Introducing community service as a sentence under the Indian system is a step ahead in innovation, reform and seeking justice as has already seen in many parts of the world, however it requires a lot of research and model schemes to be prepared to find out its suitability in the Indian social context many hurdles need to be overcome namely – public acceptance, effective implementation, difference of opinions within the judges, continuous monitoring a whole new system needs to be devised. On an extensive study of the use of community service it can be concluded that Community service is potentially a good retributive sanction and has been proved to be a robust mechanism as an alternative of custodial sentencing³⁸.

The Indian courts have passed a number of judgments awarding Community Service but it is only discretionary, a proper legislation is lacking, however a progress has been made by introducing it under the Juvenile Justice Act as seen above and it can be anticipated that Community Service can be effective for adult offenders and achieve adequate justice. Prospects of Community service sentencing is a long way to go and can prove to be a better alternative, although it requires a proper planning and model schemes are required to be prepared and pilot projects can be performed for taking a proper policy decision.

³⁸ Ken Pease, “Community Service Order” 6 *Crime and Justice* 89 (1985).