



Conventional punishments vs. community service in BNSS: An evaluative legal study

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Abstract

Punishments are meant to be just in law. But as time changes, the definition of just also keeps on changing. The Bhartiya Nyaya Sanhita, 2023 which has replaced Indian Penal Code has retained a lot of punishments like death, life imprisonment, rigorous and simple imprisonment, forfeiture of property, and fine but for the first time it has given Community Service as a punishment. This paper looks closely at that addition and asks what it actually changes. This paper has discussed the old theories of punishment and in furtherance of that the new punishment of community service has been compared with older ones. This paper proposes a rough "4-D" formula (Deterrence, Desert, Disablement, and Discipline) for conventional punishments against a "4-R" formula (Repair, Reform, Relief, and Responsibility) for community service. Relevant case laws like Bachhan Singh, Gopal Vinayak case have been explained thoroughly in this paper. The paper concludes that the conventional punishments still have a relevant role to play in today's time but by using community service for less serious offence, we can solve the problem of overcrowding of jails. It can give chance to first time offenders to reform rather than to punish them.

Keywords: Conventional punishments, community service, BNS, theories of punishment, restorative justice

Introduction

India's criminal law was almost entirely based on the Indian Penal Code, 1860 for more than one and a half centuries. The code was built, quite understandably, on the premise that crime is best answered with confinement, fines or in the gravest cases, death. This framework has now been replaced by the Bharatiya Nyaya Sanhita, 2023 [3]. Much of the old structure survives in a new guise, but one change stands out as genuinely new, rather than merely renamed: community service has, for the first time, been given the status of a punishment under Indian criminal law. It is a shift in the way the State itself is choosing to look upon criminality, not simply as something to be punished but, where appropriate, as something to be cured by the agency of socially useful work. This transition was not from nothing. The prisons of India have become increasingly overcrowded over the past few decades, a large share of undertrial and convicted persons are first-time or minor offenders, and courts and policymakers alike have repeatedly acknowledged that a one-size-fits-all approach to sentencing — where a person convicted of petty theft and a person convicted of a violent crime both disappear into the same system — serves neither justice nor rehabilitation particularly well. Community service, a familiar feature of the criminal justice systems of the United Kingdom, the United States and Australia, offered an obvious point of reference. Its incorporation in the BNS is a deliberate legislative choice to draw upon that experience, but to adapt it to India's own criminal justice needs. But it would be a mistake to read this as the replacement of the conventional system. Section 4 of the BNS still provides the death penalty, life imprisonment, rigorous and simple imprisonment, forfeiture of property and fine — and rightly so — serious and violent crime cannot be tackled by unpaid community work, and it should not be. Under the BNS, Section 5 provides for a reformatory

alternative to such conventional sentences, which is largely applicable to minor, non-violent and first-time offences.

This paper aims to explore that co-existence. Because the theories of punishment — retribution, deterrence, prevention and reform, which have historically provided the theoretical underpinning for punishment — explain not only why traditional punishment has the form that it does, but also why community service had to be located on a different theoretical basis altogether, one that owes more to reformatory and restorative justice than to retribution or deterrence, we start by revisiting the theories of punishment. From there, the paper maps out the conventional punishments recognised under the BNS and the specific offences to which each applies, before turning to community service itself — its statutory basis, the offences for which it has been made available, and the reasoning behind its inclusion. The paper then places the two approaches side by side, comparing them on their underlying philosophy, objectives, nature, social impact, and effect on repeat offending, with relevant judicial pronouncements used to ground the discussion in how courts have actually engaged with these punishments in practice. The broader aim is to assess whether this dual approach — retaining conventional punishments for serious crime while opening the door to reform for minor offences — represents a genuine step forward in Indian criminal jurisprudence, or whether its practical implementation still leaves gaps that need to be addressed.

Theories of Punishment

The most Fundamental aspect of criminal Justice system is Punishment. It refers to the imposition of suffering, pain or deprivation on a person who has violated the law of the land. The Theories of Punishment explains the reason behind society punishing the offenders and it also covers

what shall be the primary goals of such punishment. The theories have a long background and it has evolved with time. These are basically influenced by philosophical, sociological and societal factors. The major types of theories are listed below-

- **Retributive Theory:** This theory is one of the ancient theories of Punishment. It is based on Doctrine of Lex Talionis which basically means an Eye for an Eye. It is based on belief that if someone has inflicted some pain or caused some harm, they deserve to suffer. The punishment is considered as an end in itself not as a means to achieve something else. This theory also lays emphasis on proportionality that is the severity of punishment shall be proportionate to the crime which has taken place and the offender shall be punished that much severally as much as harm he has caused ^[1].
- **Deterrent Theory:** This theory has word “Deter” in it which means to refrain. It is based on notion that main purpose is to refrain the person from committing any crime. Its core idea is that fear of punishment will discourage potential offender. The main motive is to convey that A man should not be punished just because he has committed an illegal act but also to ensure that crime is not committed. So the objective is to prevent criminals from attempting new crime or to repeat previous offences again. This theory supports exemplary punishments for purpose of creating deterrent effect.
- **Preventive Theory:** This theory is also known as Theory of Incapacitation. The focus is on safeguarding the society by disabling the offender from committing further crimes. The offenders are restrained physically or legally by using punishment as a means. Stringent punishments like Imprisonments, Exile and Death penalty are used. The focus is on neutralising the immediate threat posed by offender rather than taking revenge or reforming them. For instance, if there is a habitual offender who is in habit of hurting people nearby, preventive theory supports that he must be locked down so as to provide safety to public. This approach is basically used in case of repeat offenders, terrorists or those involved in organised crimes.
- **Reformative Theory:** This theory is based on the principle laid down by the Father of the Nation- Mahatma Gandhi. He was of the view that “Hate the

sin, not the sinner.” This theory believes that aim of penal system shall be to reform the criminal rather than punishing him/her. This theory treats criminal as Patient and believes that crime is a result of underlying social, economic or psychological problems rather than inherent moral failing. This theory aligns with modern human rights perspective emphasising dignity and reintegration.

- **Restorative Justice:** This theory is a modern concept of dealing with crime and its focus is on repairing the harm which has been caused rather than punishing the offender. It brings together stakeholders like victim, offender and the community to talk openly. The offender accepts his responsibility and tries to fix damage through restitution, community service or direct help to victim. The motive is to restore peace and make things right for everyone affected. This approach is especially used in minor offences and juvenile cases ^[2].

Conventional punishments

- **Death Penalty:** Death penalty or death punishment under BNS means the highest form of punishment in India. In which the competent court orders the execution of the offender, resulting in deprivation of life in according to due process of law. It is also called the capital punishment in India. Whereas the offender is sentenced to be put to death by the state following the competent court orders. Section 4 of the Bharatiya Nyaya Sanhita, 2023 ^[3] recognizes death penalty as a form of punishment, which is awarded in the most serious offences, strictly in rarest of rare cases, including brutal murders, terrorism-related crimes, and heinous instances of gang rape etc. It is also consider as most severe punishment in criminal jurisprudence. The sentence of death is imposed by a Court of Session as the trial court of competent jurisdiction; however, it does not attain finality unless it is mandatorily confirmed by the High Court after an independent and comprehensive judicial review of the conviction and sentence. In *Bachan Singh v. State of Punjab* ^[5], the Supreme Court laid down the principle that capital punishment should be awarded only in the “rarest of rare” cases. This principle was subsequently affirmed and elaborated in *Machhi Singh v. State of Punjab* ^[3, 6].

S.N.	Punishment	Offence	BNS Section Applied
1	Punishment may extend to Death Penalty.	Rape of a girl below 12 years of age	Section 65(2)
2	Punishment may extend to Death Penalty	Rape causing death or persistent vegetative state	Section 66
3	Punishment may extend to Death Penalty	Gang rape of a girl below 18 years of age	Section 70(2)
4	Punishment may extend to Death Penalty	Repeat offenders in rape cases	Section 71
5	Punishment may extend to Death Penalty	Murder	Section 103(1)
6	Punishment may extend to Death Penalty	Mob lynching resulting in death	Section 103(2)
7	Punishment may extend to Death Penalty	Murder committed by a person already undergoing life imprisonment	Section 104
8	Punishment may extend to Death Penalty	Abetment of suicide of a child or person of unsound mind	Section 107
9	Punishment may extend to Death Penalty	Attempt to murder by a life convict causing hurt	Section 109(2)
10	Punishment may extend to Death Penalty	Organized crime resulting in death	Section 112(2) (a)
11	Punishment may extend to Death Penalty	Terrorist act resulting in death	Section 113(2) (a)
12	Punishment may extend to Death Penalty	Kidnapping for ransom leading to death	Section 140(2)
13	Punishment may extend to Death Penalty	Waging war against the Government of India (treason-related offence)	Section 147

14	Punishment may extend to Death Penalty	Abetment of mutiny when mutiny is committed	Section 160
15	Punishment may extend to Death Penalty	Giving or fabricating false evidence leading to execution of an innocent person	Section 230(2)
16	Punishment may extend to Death Penalty	Threatening a person to give false evidence causing execution of an innocent person	Section 232(2)
17	Punishment may extend to Death Penalty	Dacoity/robbery by a gang resulting in death	Section 310(3)

- **Imprisonment for Life:** Imprisonment for life, as provided under Section 4 of BNS, signifies the confinement of an offender for the entirety of their natural life. However, in practice, the actual duration may be subject to remission, commutation, or suspension by the appropriate government under statutory provisions and constitutional powers or we can say that Imprisonment for life means incarceration

of a person for the remainder of their natural life, subject to remission or commutation as per law. In *Gopal Vinayak Godse v. State of Maharashtra* ^[7], the Supreme Court held that life Imprisonment means imprisonment for the remainder of natural life unless remitted and in *Union of India v. V. Sriharan* ^[8] the SC clarified that courts can impose life imprisonment without remission for a fixed term beyond 14 years.

S.N.	Punishment	Offence	BNS Section Applied
1	May be punishable with Imprisonment for Life	Murder	Section 103
2	May be punishable with Imprisonment for Life	Murder by a Life Convict	Section 104
3	May be punishable with Imprisonment for Life	Culpable Homicide Not Amounting to Murder	Section 105
4	May be punishable with Imprisonment for Life	Attempt to Murder causing hurt (in specified circumstances)	Section 109
5	May be punishable with Imprisonment for Life	Organised Crime	Section 111
6	May be punishable with Imprisonment for Life	Terrorist Act	Section 113

- **Rigorous Imprisonment:** In Bharatiya Nyaya Sanhita, 2023 ^[3], accused is given punishment for two types of imprisonment- one is rigorous and other is simple. Rigorous imprisonment is a punitive sentence where an accused is subject to compulsory hard labour. It is basically given for severe, grave crimes. It includes activities like manual labour, maintaining prison facilities etc. It is mentioned as a type of punishment which can be imposed

By competent authorities under section 4. By virtue of section 7 of BNS, courts have discretion to decide whether sentence shall be wholly rigorous, wholly simple or mix of them. The key offences where rigorous imprisonment is given are Organized crime given under section 111 of BNS, Trafficking of person under Section 143, Robbery under section 309 and Dacoity under section 310 and Theft in dwelling House under section 305.^[4]

S.N.	Punishment	Offence	BNS Section Applied
1	Rigorous Imprisonment up to 3 years	Theft (first conviction)	Section 303(1)
2	Rigorous Imprisonment up to 7 years	Extortion	Section 308
3	Rigorous Imprisonment up to 10 years	Robbery	Section 309
4	Rigorous Imprisonment for 10 years to Life	Dacoity	Section 310
5	Rigorous Imprisonment up to 10 years	House-trespass for committing an offence	Section 331
6	Rigorous Imprisonment up to 10 years	Dishonestly receiving stolen property	Section 317

- **Simple Imprisonment:** In contradistinction to rigorous imprisonment, simple imprisonment under the BNS denotes a form of custodial sentence where the convicted person is confined within the prison premises but is not compelled to perform any hard labour. The convict may engage in light work or activities of a voluntary nature within the prison, but such participation cannot be enforced as a matter of legal obligation. The essence of simple imprisonment lies in the deprivation of personal liberty alone,

Without the superimposition of compulsory physical toil. It is generally prescribed for offences that are comparatively less grave in nature such as minor infractions, offences involving negligence, public order misdemeanors, or cases where the legislature or the court deems that the punitive objective can be adequately served through mere confinement. It reflects a more reformatory approach to penology, acknowledging that not every offender warrants the rigour of hard labour ^[5].

S.N.	Punishment	Offence	BNS Section Applied
1	Simple Imprisonment up to 1 month	Public servant unlawfully engaging in trade	Section 202
2	Simple Imprisonment up to 6 months	Non-appearance in response to proclamation	Section 209
3	Simple Imprisonment up to 1 year	Attempt to commit suicide to compel public servant	Section 226
4	Simple Imprisonment up to 1 year	Misconduct in public by a drunken person	Section 355
5	Simple Imprisonment up to 2 years	Defamation	Section 356
6	Simple Imprisonment up to 6 months	Disobedience to order duly promulgated by public servant	Section 223

- **Forfeiture of Property:** It is one of the six punishments listed under section 4(d) of the BNS. It is a type of punishment which allows the state to seize the property of the offender as a penalty for certain serious

offences. It is not a routine punishment but it can only be done when it is specifically allowed by the BNS. It serves as a deterrence and deprive wrong doer from ill-gotten gains. It is basically done in cases involving

Financial crimes, Money laundering, Terror Financing or offences against the state and Organized crimes. The

procedure for Forfeiture is dealt under Section 107 and section 116-122 of BNSS ^[6].

S.N.	Punishment	Offence	BNS Section Applied
1	Forfeiture of Property	Waging war against the Government of India	Section 147
2	Forfeiture of Property	Attempt to wage war or abetment of war	Section 148
3	Forfeiture of Property	Conspiracy to commit offences against the State	Section 149
4	Forfeiture of Property	Collecting arms with intent of waging war	Section 150
5	Forfeiture of Property	Acts endangering sovereignty, unity and integrity of India	Section 152

- **Fine:** A fine is a monetary penalty imposed by a court upon a person convicted of an offence. It may be awarded: As the sole punishment, Along with imprisonment, or as an additional punishment for certain offences. The objective of this punishment is to punish the offender economically for deter the further

commission of offences. It is also beneficial in providing the compensation to victims in appropriate cases. This punishment significantly contributes to reducing prison overcrowding in India. As per the Bharatiya Nyaya Sanhita, it is predominantly awarded in several offences such as:

S.N.	Punishment	Offence	BNS Section Applied
1	Fine	Public nuisance	Section 270
2	Fine	Negligent conduct with respect to fire or combustible matter	Section 285
3	Fine	Rash or negligent act endangering human life	Section 281
4	Fine	Defamation	Section 356
5	Fine	Misconduct in public by a drunken person	Section 355
6	Fine	Disobedience to order duly promulgated by public servant	Section 223

Community Service: Community service is a form of punishment that requires offenders to perform unpaid work for the benefit of the community as part of their sentence such as cleaning public spaces, working in hospitals, assisting local authorities etc. As per Section 5 of BNS, 2023: The appropriate Government may, without the consent of the offender, commute any punishment under this Sanhita to any other punishment in accordance with section 474 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ^[3]. Community service is a new form of punishment that marks a significant

shift from the traditional punitive approach to a more reformative approach in criminal justice. Unlike conventional punishments such as imprisonment and fines, community service emphasizes the rehabilitation of the offender rather than mere retribution. It is based on the principles of reformative and restorative justice, where the focus is on correcting the behaviour of the offender while simultaneously benefiting society. By engaging offenders in socially useful activities, this form of punishment promotes accountability, reintegration, and a sense of responsibility towards the community ^[7].

S.N.	Punishment	Offence	BNS Section Applied
1	May be punishable with Community service	Public servant unlawfully engaging in trade.	Section 202
2	May be punishable with Community service	Non-appearance in response to a proclamation under Section 84 of the BNSS	Section 209
3	May be punishable with Community service	Attempt to commit suicide to compel or restrain a public servant	Section 226
4	May be punishable with Community service	First-time conviction for theft of property worth less than ₹5,000, if the property is returned or restored	Section 303(2)
5	May be punishable with Community service	Misconduct in public by a drunken person	Section 355
6	May be punishable with Community service	Defamation	Section 356(2)

Comparative Study On Conventional Punishments & Community Service: As A Punishment

The evolution of criminal justice systems reflects a gradual shift from rigid punitive approaches to more humane and reform-oriented methods. Conventional punishments such as imprisonment and fines have long dominated the legal framework. However, the introduction of community

service as a form of punishment represents a progressive change, emphasizing reformation and social welfare. Community service as a punishment represents a modern and progressive approach in criminal justice. It shifts the focus from retribution to reformation, ensuring that justice not only punishes but also rehabilitate's the offender while benefiting society as a whole ^[8].

S.n.	Grounds	Conventional punishments	Community service
1	Conceptual Basis	It is based on retributive, deterrent and preventive theories of punishment.	It is based on reformative and restorative justice system
2	Objective	To penalize the offender and deter future crimes	Gives the offender a chance for reforms/ self-improvement
3	Nature of Punishment	Imprisonment or Fine or Both	Involves in unpaid social work such as Cleaning public spaces, Working in hospitals, Assisting local authorities etc.
4	Social Impact	Social security or limited direct benefits	Direct benefits by doing social work without cost
5	Recidivism	Possibility of repeated criminal behaviour	A reformative approach helps in minimizing repeat offences."
6	Punishments Formula	4-D Formula is applicable in Conventional Punishments:	4-R Formula is applicable in Community Service: ▪ Repair (Fixing the Harm):

		▪ Deterrence ▪ Desert (Retribution) ▪ Disablement (Incapacitation) ▪ Discipline	▪ Reform (Changing the Person): ▪ Relief (Emptying the Prisons): ▪ Responsibility (Teaching a Lesson):
7	Applications & Limitations	▪ Serious offences (e.g., grievous hurt, robbery, murder) ▪ Repeat offenders / habitual criminals ▪ Violent crimes (involving harm to person or property) ▪ Cases where deterrence and punishment are necessary	▪ Minor offences ▪ First time offenders ▪ Non - violent crimes
8	Leading Cases/Decisions	▪ Bachan Singh v. State of Punjab (1980) ▪ Dhananjoy Chatterjee v. State of West Bengal(1994) ▪ Shatrughan Chauhan v. Union of India (2014) ▪ Gopal Vinayak Godse v. State of Maharashtra(1961) ▪ Laxman Naskar v. Union of India (2000)	▪ Parvez Jilani Sheikh v. State of Maharashtra (2015) ▪ Sunita Gandharva v. State of Madhya Pradesh (2020) ▪ Manoj Kumar v. State (Govt. of NCT of Delhi) (2022)

Conclusion

The Bharatiya Nyaya Sanhita, 2023 ^[3] has introduced community service as a punishment. This does not change the usual way that India gives out punishments. Community service is another option that can be used and that is the main idea. The death penalty, life in prison rigorous imprisonment, simple imprisonment taking away property and fines are still used for the reasons they always have been. These punishments are for crimes and they help to stop people from doing bad things in the future. They also keep people out of society.

The Bharatiya Nyaya Sanhita, 2023 ^[3] is not saying that these punishments are no longer needed. Certain crimes like murder organised crime, terrorism and violent crimes that happen again and again require the death penalty, life imprisonment, rigorous imprisonment, simple imprisonment taking away property and fines. These punishments are necessary to show that these crimes are taken seriously. Court cases like Bachan Singh v. State of Punjab and Union of India, v. V. Sriharan show that the courts still consider the death penalty, life imprisonment, rigorous imprisonment, simple imprisonment taking away property and fines to be serious punishments. The Bharatiya Nyaya Sanhita, 2023 ^[3] and community service are another way to punish people and the death penalty, life imprisonment, rigorous imprisonment, simple imprisonment taking away property and fines are still important. What this paper has tried to show is that community service fills a gap that conventional punishments were never really designed to fill. A first-time offender convicted of petty theft, a person who commits defamation, or someone guilty of a minor public-order offence does not necessarily need to be run through the same punitive machinery built for hardened or violent criminals. The 4-D framework of conventional punishment — deterrence, desert, disablement, discipline — and the 4-R framework underlying community service — repair, reform, relief, responsibility — are not competing ideas so much as two different tools meant for two different kinds of problems. Used correctly, community service offers minor offenders a genuine chance to reform without the lasting stigma of imprisonment, while also easing the very real burden of overcrowding in Indian prisons. The current framework has a problems that need to be fixed. The BNS does not have rules on how community service should be

given to people, who should watch over it and how to make sure people are doing what they are supposed to do. The BNS needs to have rules about what community service is, how long it lasts and who is in charge of watching over it. This would help make sure that community service is given out in the way in all courts and states. There is also no answer to what happens when someone refuses to do their community service. We need to have a plan, for when this happens. We should also have a way to track what happens to people who do community service. We should compare how many people who do community service commit crimes again to how many people who go to prison for crimes commit crimes again. This will help the people making the rules see if community service is really helping people not commit crimes again. The BNS and community service need to be looked at to make sure they are working like they should. Community service is a part of this reform and we need to make sure it is working. The community service rules are pretty limited now.. As courts look at old cases like Parvez Jilani Sheikh v. State of Maharashtra and Sunita Gandharva v. State of Madhya Pradesh it seems like a good idea to slowly add more minor and non-violent offences to the list. Community service really depends on how it is done at the local level. This means that municipal bodies and local authorities have to be able to take in people who have committed offences and give them work to do under supervision. So it is very important to make sure that these local authorities have the ability to do this. The new rules are a start towards making the criminal justice system better. Now we have to wait and see if these new rules will actually make a difference. This will depend on how the community service rules are put into practice. The community service rules need to be implemented in a way for them to work. The new rules, like the community service rules are a step, in the direction but the community service rules need to be done correctly.

References

1. Sharma V, Sood P. Theories of Punishment: Retribution, Deterrence, Reformatory and Preventive. Journal of Emerging Technologies and Innovation Research, 2023, 10(1). Available at <https://www.jetir.org/papers/JETIR2301686.pdf>.

2. Available at <https://restorativejustice.org.uk/what-restorative-justice>. Last Visited on 21 June, 2026.
3. Vijayalaxmi B. Capital punishment under the Bharatiya Nyaya Sanhita, 2023 - constitutional morality, human rights protection, and the future of the death penalty in India, 2026:8(3):14-20.
4. Available at <https://golegalconsultancy.com/bns/section-7-bns-rigorous-or-simple-imprisonment/>. Last visited on 15 July, 2026.
5. Ibid.
6. Shukla M, Agarwal T. Types of punishment under the Bharatiya Nyaya Sanhita, 2023: a comprehensive legal analysis, 2025, 5(11). Available at <https://ijlr.iledu.in/wp-content/uploads/2025/07/V5I1117.pdf>.
7. Arya S, Singha A. Comparative study of corporate criminal liability in india, united kingdom, and united states. Available at <https://ijlr.iledu.in/v6i494/>.
8. Ibid.