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ANALYSING THE SIGNIFICANCE OF COMMUNITY SERVICE AS AN ALTERNATIVE FORM OF PUNISHMENT

Khushi Bagaria¹

“The first prison I ever saw had inscribed on it ‘Cease to do evil: Learn to do well’; but as the inscription was on the outside, the prisoners could not read it”

- George Bernard Shaw²

INTRODUCTION

The constant struggle surrounding the betterment of India’s overwhelmed criminal justice system coupled with the rising concerns surrounding the rights of prisoners expose the discourse on the system of criminal punishment in India to the considerations of efficient alternatives. One such prominently considered yet largely unimplemented alternative is community sentencing. Community sentencing is a variedly used alternative to imprisonment in cases of petty offences in many countries.

This article attempts to analyse the concept of community sentencing and its scope and significance of applicability in India. It first provides a brief description of the present status of community sentencing in India followed by an analysis of the need to introduce an alternative to imprisonment. Furthermore, it examines the value of community service as an alternative punishment and the need to build a legislative framework for community service. This essay argues in favour of building an effective framework for the implementation of community sentencing in cases of certain petty or minor offences in the Indian criminal justice system.

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² George Bernard Shaw, *The Complete Prefaces: 1914-1929*, Viking Adult (1993).

STATUS QUO

Section 18(1)(c) of the Juvenile Justice (Care and Protection of Children) Act, 2015³ provides the Juvenile Justice Board with the power to order the child to perform community service under the supervision of an organization or institution, or a specified person, persons or group of persons for petty or serious offences keeping in view the circumstances mentioned in the social investigation report as well as the previous conduct of the child.

Community sentencing has also been adopted by High Courts in exercise of the discretionary power conferred under Section 482 of the Code of Criminal Procedure, 1973⁴. Community service was attempted to be introduced as an alternative form of punishment under the Indian Penal Code (Amendment) Bill, 1978⁵ in the form of an amendment to Section 53⁶. The Bill later lapsed as a result of the dissolution of the Lok Sabha. Clause 27 of the Bill sought to introduce community service without remuneration, subject to terms and conditions, for offences punishable with less than three years of imprisonment to offenders above 18 years of age with the consent of the offender and the satisfaction of the Court as to the ability of the offender to perform the work and appropriate supervision by the State⁷. The proposed working hours ranged between 40 to 1000 hours. After the lapsing of this Bill, the Law Commission of India, in its 156th report, recommended against the implementation of community sentencing deeming it ‘impracticable’ as it would require the setting up of a supervisory authority in order to ensure that the convict is working and complying with the community

³ The Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, INDIA CODE, § 18. Cl. (1)(c).

⁴ *Sunita Gandharv vs State Of Madhya Pradesh*, 2020 SCC OnLine MP 2193; *Mahender Singh Alias Sunny vs The State*, Delhi High Court, CrI.M.C. 852/2021; *Sanjay Chaudhry vs the State*, Delhi High Court, CRL.M.C. 362/2022.

⁵ Indian Penal Code (Amendment) Bill, 1978.

⁶ Indian Penal Code, No. 45 of 1860, INDIA CODE, § 53.

⁷ Indian Penal Code (Amendment) Bill, 1978, cl. 27.

service order⁸. The Law Commission further stated open air prisons to be a better alternative to community service.

THE NEED FOR AN ALTERNATIVE TO IMPRISONMENT FOR PETTY/MINOR OFFENCES

Reformation is a fundamental objective of criminal punishment. In *Babu Singh v. State of Uttar Pradesh*⁹, the Court observed the significance of reformatory devices. The court noted the innovative value of meditative drill or study classes in the redemption of offenders. In *Satto vs State of U.P.*¹⁰, the court referred to an opinion on the value of reformation in the context of probation which observed that the criminal's past and history is a significant factor in the determination of whether he is capable of real reform leading to probation. The value of reformation as a determinant factor in the rarest of the rare doctrine in awarding death penalty has also been recognised by the Supreme Court¹¹. In *State of Gujarat vs Hon'ble High Court of Gujarat*¹², the court noted the reformatory effect on a criminal to be the most germane aspect as observed by modern criminologists. The court further observed reformation to be a dominant objective of punishment. The restorative model of justice has also been recommended by the Malimath Committee¹³.

Overcrowding of prisons has been a long-standing issue in Indian prison administration. The occupancy of Indian prisons was calculated to be over 120% in 2019. After the recall of prisoners towards the end of 2020, the prison occupancy rates again saw an elevation. As per the

⁸ Law Commission of India, The Indian Penal Code, 156th Report (August 1997),

⁹ *Babu Singh v. State of Uttar Pradesh*, 1978 AIR 527.

¹⁰ *Satto vs State of U.P.*, 1979 AIR 1519.

¹¹ *Bachan Singh v. State of Punjab* AIR 1980 SC 898; *Md. Mannan @ Abdul Mannan vs State of Bihar* AIR 2019 SC 2934; *Mohinder Singh vs State of Punjab* AIR 1965 SC 79; *Mofil Khan and Another v. The State of Jharkhand* 021 SCC OnLine SC 1136; *Bhagwani vs The State Of Madhya Pradesh* 2022 SCC OnLine SC 52.

¹² *State of Gujarat vs Hon'ble High Court of Gujarat* 1998 (7) SCC 392.

¹³ *Report of Committee on Reforms of Criminal Justice System*, Ministry of Home Affairs, Vol.1, ¶ 23.3 (2003).

report of the Commonwealth Human Rights Initiative for December 2019- November 2021, the prison occupancy rates have further increased to 133%¹⁴. Considerations to alternatives for imprisonment like community service for petty and minor offences would substantially contribute to decreasing India's prison population.

As per the Human Rights Watch report on the Prison Conditions in India¹⁵, the Indian prison system follows a class system. Inmates are classified on the basis of social status, education and if they are "*accustomed to a superior mode of living*"¹⁶. The report, citing the All-India Committee on Jail Reforms, also describes the prisons to have poor sanitary facilities. The report also states prisons to have limited access to prison doctors¹⁷. The report describes inmates suffering punishments in prisons for physical restraint¹⁸. Imprisonment, especially in cases of petty or minor offences, have far-reaching consequences on the mental well-being of criminals at times failing the objectives of reformation. This problem is especially significant in India's prison administration system which lacks the required infrastructure and facilities to maintain its prison population.

As per Prison Statistics 2019¹⁹ reported by the National Crimes Records Bureau²⁰, the total expenditure on prisons during the financial year 2019-2020 was Rs. 5958.3 Crores. Of the total expenditure, 34.59% was expenditure on the prison inmates' clothes food, vocational training, medicinal as well as welfare activities and other expenses. An alternative to custodial punishments for minor offences would substantially reduce non-inmate related expenditure as well as the

¹⁴ Commonwealth Human Rights Initiative, *Analysis of Changes in Prison Population between December 2019 & November 2021*.

¹⁵ Human Rights Watch, *Prison Conditions in India*.

¹⁶ *Id.* At 29.

¹⁷ *Id.* At 38.

¹⁸ *Id.* At 39.

¹⁹ The author purposefully refers to pre-Covid expenditure statistics.

²⁰ National Crime Records Bureau, Ministry of Home Affairs, *Prison Statistics* (2019).

expenditure on inmates as the number of inmates in prisons would also decrease. Furthermore, in *Pappu Khan v. State of Rajasthan*²¹, the High Court noted that a large unproductive prison population cannot be afforded by a welfare state observing it to be a heavy burden on the exchequer.

IS COMMUNITY SERVICE A BETTER ALTERNATIVE?

In *Sunita Gandharv vs State Of Madhya Pradesh*²², the High Court dealt with community service after the grant of bail to accused. The court observed that on release by way of bail, if the accused is ordered to carry out community services such as plantation of sapling or serving in a hospital or doing such related work, then the accused is within the bounds of the criminal justice system and is “*not at large to extend threat to the victim or tampering with the evidence*”. In *Mahender Singh Alias Sunny vs The State*²³, the Delhi High Court ordered community service to youngsters above the age of eighteen after quashing the FIR against them even after noting injury to the complaint as a result of the conduct of the accused by exercising its power under Section 482 of CrPC. Similarly, in *Sanjay Chaudhry vs the State*²⁴, the Delhi High Court again ordered community service under similar circumstances. Thus, community service has been effectively used as an alternative to imprisonment and fines by High Courts.

A major concern with imprisonment of persons accused/convicted of petty or minor offences as well as first-time offenders is their treatment in prisons in the context of overcrowding and poor infrastructure and facilities of Indian prisons. Such conditions have far-reaching implications on the health of such class of prisoners. Community service is an effective manner of shielding such prisoners from the

²¹ *Pappu Khan v. State of Rajasthan*, 2005 CriLJ 4732.

²² *Sunita Gandharv vs State Of Madhya Pradesh*, 2020 SCC OnLine MP 2193.

²³ *Mahender Singh Alias Sunny vs The State*, Delhi High Court, CrI.M.C. 852/2021.

²⁴ *Sanjay Chaudhry vs the State*, Delhi High Court, CRL.M.C. 362/2022.

conditions of prisons and at the same time providing them with productive and restorative devices for the benefit of the society. Community service would also protect such prisoners from poor treatment at the hands of other prisoners who may be hardened criminals²⁵. Community service has also proved to substantially contribute towards the betterment of self-worth of such convicts.

Community sentencing is a better alternative to open prisons as under the open prison system, the prison administration has to provide living arrangements to prisoners, restraint their movements and regulate them²⁶. Furthermore, prisoners have to look for employment for themselves without State assistance. On the other hand, community sentencing spares the infrastructure required to maintain inmates and the convicts receive training and State assistance further increasing their employment prospects.

CONCLUSION

The structure and condition of the prison administration system in India compels considerations to better alternatives of punishment in order to lighten the load of the prison population and unburden the prison infrastructure and facilities in India. Community service; by virtue of its reformatory, pragmatic and economical value, proves to be a better alternative to imprisonment especially in the case of minor and petty offences as it helps such categories of persons in training, rehabilitation and reintegration into the society.

²⁵ Mitali Agarwal, *Beyond the Prison Bars: Contemplating Community Sentencing in India*, 12 NUJS L. REV. 119 (2019).

²⁶ *Id.*