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REFORMING JUSTICE: THE TRANSITION FROM TRADITIONAL PUNISHMENT TO COMMUNITY SERVICE IN SHAPING A MORE PROGRESSIVE SOCIETY

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Abstract

The concept of justice has evolved significantly over time, reflecting societies' changing values and priorities. In recent years, there has been a notable shift towards alternative forms of punishment, particularly community service, to address crime and promote rehabilitation. This paper explores the transition from traditional punitive measures to community service, examining its implications for shaping a more progressive society. Traditional punishment, characterised by incarceration and punitive measures, has often been criticised for its ineffectiveness in reducing recidivism and addressing the root causes of criminal behaviour. In contrast, community service offers a more therapeutic approach, emphasising accountability, rehabilitation, and community engagement. By requiring offenders to contribute positively to their communities through service projects, community service aims to punish wrongdoing and foster personal growth and societal integration. This paper discusses the various benefits of community service, including its potential to reduce prison overcrowding, lower recidivism rates, and strengthen social cohesion. Additionally, it explores the ethical and philosophical foundations of community service as a form of justice, drawing on principles of restorative justice and human dignity. By prioritising rehabilitation, accountability, and community involvement, community service has the potential to not only reduce crime but also foster a more just and inclusive society.

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Introduction

The Constitution of India guarantees liberty, equality, and freedom, and every citizen must be treated equally regarding political, social, and economic justice. The recent events suggest a dire need for political and judicial reforms. According to the National Judicial Data Grid, India has approximately 4.4 crores of pending cases. The sanctioned strength of judges to the population is highly disproportionate, making it impossible to dispose of such a large number of cases within a reasonable time.

Prison falls under entry no. 4 of List II within the domain of the State. The state must maintain the prisons, and the centre supports them. The amount allotted to prison safety and maintenance is meagre as compared to other countries, due to which prisoners live in a depressing state and lack basic amenities.² According to the report submitted by the Standing Committee on Home Affairs, some of the critical areas that need to be looked after concerning prison include overcrowding of prison, lack of clarity as to who is to be considered as a 'young prisoner', shortage of prison staff, improper administration of prison budget, separate wards for transgender prisoners, etc.³

Community service can be the most suitable alternative for many problems, such as overcrowding of prisons, proper supply of resources to prisoners, maintenance and security of prisoners, etc. This rehabilitative form of punishment transforms an offender by inculcating a sense of accountability and allows him to undo the wrong done to him.

Community sentences can be imposed in several petty offences where there's no need for a prolonged trial to administer justice. This form of punishment shortens prison expenditure and overcrowding and provides an opportunity for the inmate to reconnect with society. The quantum of the sentence is at the discretion of the court, and it is up to the court to impose the

² Statista, <https://www.statista.com/statistics/1211682/india-prison-spending-per-inmate-by-state/> (last visited Dec 19, 2023).

³PRS LEGISLATIVE RESEARCH, <https://prsindia.org/policy/report-summaries/prison-conditions-infrastructure-and-reforms> (last visited Apr 3, 2024).

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most suitable form of punishment. Recently, with the enactment of the Bhartiya Nyaya Sanhita, 2023, community service has been added as an alternative form of punishment other than sentences of imprisonment and fines.

Community service is a successful alternative sentencing method in many countries worldwide. Effective implementation of these orders can transform criminals into beneficial assets for communities. The ensuing decongestion of jails and the use of awarding convicts for public service can reduce the load on the state's finances.

Origin & Development

The origin of community service cannot be traced owing to its long course and duration over several civilisations and cultures. As a reformatory punishment, the application of this sentence varied from place to place. Several countries have adopted community sentences, including the USA, UK, Spain and Australia.

Bridewell Prison was the first place in England to have a correction facility. It was used as a prison to hold those engaged in petty or less severe offences. The inmates were subjected to harsh labour or sometimes whipping for a period varying from two to three weeks.⁴

In 1970, a report titled “Non-custodial and Semi-custodial Penalties”, commonly referred to as the “Wootton Report,” suggested the community sentence as a form of punishment, which was eventually adopted in the Criminal Justice Act of 1972 (now the Powers of Criminal Courts Act of 1973). It suggested other alternatives to punishment by introducing non-custodial forms of sentence.⁵

Under the Alameda County California program, instead of the usual imprisonment and hefty fines, the municipal court judges in the United States sentenced several persons to unpaid labour

⁴ Bringing The Past To Virtual Life, <http://hist235.hist.sites.carleton.edu/timeline/bridewell-becomes-the-first-house-of-correction/> (Lat visited Jan 10, 2016).

⁵ Home Council Advisory Council on Penal Systems, “Non- Custodial and Semi-Custodial Penalties” (London HMSO, 1970).

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or community service. Under this program, a unique agency was set up to monitor the effective implementation of the program.⁶

Before the enactment of the Bhartiya Nyay Sanhita, 2023, there was no provision for community sentencing in India. Now, six forms of punishment have been specified under section 4 of the Act, including community service.⁷

Community Sentencing in India

In India, there are a plethora of cases that are pending in the courts. According to the National Judicial Data Grid, there are 3,33,84,586 pending cases in India's District and Taluk courts. Out of these cases, 72.22 per cent of the cases are pending for more than one year.⁸ Due to these never-ending proceedings, the inmates suffer extreme hardship and become disintegrated from society. This leads to anger, depression, hatefulness, etc, not only in inmates but also in their family members who depend on him for their survival.

Community sentencing not only reduces the burden of court but also provides an option for the offender to remedy the wrong committed by him by investing in society one way or the other instead of imprisonment or fine. It will act as a balancing rod between the restoration of justice by providing a sentence and, at the same time, protecting the inmate from the rigours he would have gone through had he been imprisoned.

Over time, the Law Commission of India recommended several alternatives to custodial punishments, including parole, probation, an open prison, etc. The Commission, in its 156th Report, suggested the implementation of Community sentences as an alternative to custodial sentences.⁹ The Indian Penal Code (Amendment) Bill of 1978 suggested several alternative forms of already existing punishments. These were-

⁶ James R. Davis, "Community Service as an Alternative Sentence" 7 Journal of Contemporary Criminal Justice 108 (1991).

⁷ Bhartiya Nyay Sanhita, § 4, 2023

⁸ National Judicial Data Grid, <https://njdg.ecourts.gov.in/njdgnew/?p=main/index> (last visited date Dec 31, 2020).

⁹ Law Commission of India, Report on the Indian Penal Code, Report No. 156: Volume 1 (August 1997), available at <http://lawcommissionofindia.nic.in/101-169/Report156Vol1.pdf> (Last visited on January 2, 2019).

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- community service
- disqualification from holding office
- order for payment of compensation and public censure

According to the Bill, a person older than 18 must work without remuneration for a limited number of hours. According to the Bill, any criminal not yet eighteen years old may be subject to terms and conditions and compelled to labour a set number of hours without receiving payment. Additionally, it stipulated that the convict's permission to do the task would be necessary, and the court would be assured that the individual in question is qualified to carry out the tasks assigned to him.

According to the Bill, offenders convicted by less than three years might get a community sentence, with labour hours varying from forty to a thousand hours.¹⁰ However, these attempts to introduce community sentencing went into a vein because the Parliament did not pass it.

Role of Judiciary

Despite several unsuccessful attempts to legislate community sentences, the Indian judiciary actively took the burden into its own hands and passed several judgements awarding community sentences. The courts have exercised discretionary powers to grant this alternative punishment by recognising the dire need for community sentencing. While doing so, several factors were considered, such as the inmates' sociological, economic and financial interests. The Constitution of India has empowered the High Court¹¹ and the Supreme Court¹² to exercise inherent power to do complete justice.

It was observed by the Hon'ble Rajasthan High Court that there has been an emergence in the reformatory theory of punishment since the 20th century.¹³ The court favoured specific reforms that helped inmates during the period of punishment, such as parole. It is in the state's interest to reform the prisoners to enable them to earn their livelihood and achieve a dignified life after

¹⁰ The Indian Penal Code (Amendment) Bill, 1978.

¹¹ The Code of Criminal Procedure, § 482, No. 2, 1973.

¹² India Const. art. 142

¹³ Pappu Khan v. State Of Rajasthan And Ors., 2005CRILJ4732, RLW2005(4)RAJ3052, 2006(1)WLC31

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imprisonment. Community sentences can be a punishment that helps to reintegrate them into the social fabric and resumption of their familial relationship. In the case of *Vishal S Awtani v. State of Gujarat*,¹⁴ the apex court discussed the meaning of the term ‘community service’. The court clarified that it is not a punishment in the true sense but rather a kind of reparation. An opportunity is given to the wrongdoer to repair the wrong caused by him constructively and become more responsible without disintegrating him from society. In this case, the Gujrat High Court passed specific directions for those who violate COVID-19 protocols for the safety and well-being of the public. According to these directions, any person not wearing masks in public places or not following social distancing was required to perform community services at any COVID care centre run by the local authorities. The State government was directed to implement these directions without any discrimination, against which a Special Leave Petition was filed in the Supreme Court because it was judicially unmanageable and had no authority of law.

The apex court highly criticised the community service sentence in *Aparna Bhatt v. State of MP*.¹⁵ In this case, bail was granted to the accused because he had to visit the victim’s home with his wife and bring a rakhi and a box of sweets. He requested the complainant to tie the Rakhi and promised to protect her. The apex court highly criticised this decision of the Madhya Pradesh High Court. It held that whenever the honour and dignity of a victim in the cases of rape and sexual assault is in question, no compromise should be entertained. The court shall authorise no contact between the victim and the accused.

Juvenile Restorative Justice and Community Integration

The Juvenile Justice Act stipulates that the Juvenile Justice Board may order the child to conduct community service under the supervision of an organisation, institution, or a specific person, individual, or group of persons recognised by the Board. Such an order can be passed only if the board is satisfied after a preliminary assessment that a child, irrespective of age, has committed any petty, serious or heinous offence. The order must be passed based on the nature of the crime,

¹⁴ Vishal S Awtani v. State of Gujarat, SPECIAL LEAVE PETITION (CIVIL) No. 14818 OF 2020

¹⁵ Aparna Bhatt v. State of MP, SPECIAL LEAVE PETITION (CRL.) NO. 2531 OF 2021

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the particular need for monitoring or intervention, the circumstances described in the social investigation report, and the child's prior conduct.¹⁶

Community Service under the Bharatiya Nyaya Sanhita, 2023

Currently, the Indian Penal Code 1860 prescribes only five kinds of punishments—

- Death
- Imprisonment for life
- Rigorous Imprisonment with hard labour or Simple Imprisonment
- Forfeiture of property
- Fine

But the newly enacted Bhartiya Nyaya Sanhita also includes community sentences as punishment.¹⁷ Several provisions under the BNS provide community service as an alternate punishment in addition to or instead of a sentence of imprisonment or fine. Section 8 of the BNS provides that in case of default of community service, the court may impose imprisonment of any description to which the offender might have been sentenced for the offence.¹⁸

The punishment of community service has been provided for a total of six petty offences. Section 354 of the BNS offers that a person liable for defamation may be punished with simple imprisonment extending up to two years, with a fine, with both, or with community service.¹⁹

Other provisions that have included community service as a form of punishment include those about public employees who are involved in unlawful trade, failing to appear in response to a proclamation notice, theft of property valued at less than ₹5,000 that the offender has paid for; and trespassing while intoxicated.

¹⁶ The Juvenile Justice (Care and Protection of Children) Act, § 18, No. 2, 2015.

¹⁷ Bhartiya Nyaya Sanhita, § 4, 2023

¹⁸ Bhartiya Nyaya Sanhita, § 8, 2023

¹⁹ Bhartiya Nyaya Sanhita, § 354, 2023

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Recently, it was announced by the Union Home Ministry that the newly enacted criminal laws (Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita and Bharatiya Sakshya Act) will be enforced from 1st July 2024.²⁰

Transnational Analysis of Community Service Programs

- **Community Service As A Form Of Punishment In The United States**

The dawn of community service as a form of punishment in the United States of America can be traced back to the year 1966 in Alameda County, California. Initially, community service served as an alternative to jail on account of non-payment of traffic fines, but later, its scope was extended to low-level convicts as well.²¹

- **Statutory provision**

18 U.S.C. § 3563(b)(12) provides statutory backing to sanction community service. As per this provision, the court may provide that the defendant “work in community service as directed by the court.”

- **Duration of community service**

The duration of community service is a question of fact. In other words, the number of hours the wrongdoer has to engage in community service is decided by the sentencing judge based on the facts and circumstances of the case that an offender has to render. Generally, offenders must meet between 50 to 100 hours of community service. Offenders must complete the community service mandate in the prescribed time unless there is reasonable ground for delay.²² The period of community service should not be excessive, and the offender should have sufficient time for his

²⁰ INDIA TODAY, <https://www.indiatoday.in/law/story/new-criminal-laws-to-come-into-effect-from-july-1-what-are-the-changes-2506610-2024-02-24> (last visited date, Feb 24, 2024)

²¹ DAVID C. ANDERSON, SENSIBLE JUSTICE: ALTERNATIVES TO PRISON (The New Press 1998)

²² UNITED STATES COURTS, Chapter 3: Community Service (Probation and Supervised Release Conditions), *United States Courts*, <https://www.uscourts.gov/services-forms/community-service-probation-supervised-release-conditions> (last accessed April 4, 2024)

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work and family obligations. Further, the offender can challenge the duration of community service if it appears to him to be unreasonable.²³

➤ **Modus operandi of community service**

When a court sentences the offender to community service, he or she must complete a certain number of hours. After that, the court assigns the offender to a community service organisation where they should complete the required community service hours. Once accomplished, the defendant shall furnish proof of completion to the concerned court. This proof can be in the form of a letter from the community service organisation.

➤ **Failure to perform community service**

Where an offender upon whom the court imposes a sanction of community service fails to complete the mandated hours of community service, he is liable for arrest for contempt of court. Upon arrest, the offender is sentenced to imprisonment, and costs and fines can be imposed upon them.²⁴

➤ **Recent trends in court-ordered community service**

According to a 2019 report titled “*Court-Ordered Community Service: A National Perspective*”, among the sentencing sanctions available to the American courts, community service was the 3rd most commonly used sentencing option (65%) after monetary sanctions (98%) and imprisonment (73%)²⁵

Further, community service mandates are most frequently used for offenders charged with misdemeanours (77%), followed by violation-level offences (64%). From the perspective of a specific class of offenders, this sentencing option is commonly used for first-time offenders (74%) and youth offenders (73%).

²³ HOW TO JUSTICE, <https://howtojustice.org/im-going-to-prison/explainer-the-case-for-community-service-sentences/> (last visited April 6, 2023)

²⁴ HOW TO JUSTICE, <https://howtojustice.org/im-going-to-prison/explainer-the-case-for-community-service-sentences/> (last visited April 6, 2023)

²⁵ Sarah Picard, Jennifer A. Tallon, Michela Lowry, and Dana Kralstein, *Court-Ordered Community Service: A National Perspective*, (Center for Court Innovation, 2019).

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As per the report's statistics, a significant chunk of community service work comprised Manual labour (78%) and rendering public and social services (57%). Administrative work for public agencies (27%) and service industry labour (10%) formed a small fragment of community service work.²⁶

- **Community Service As A Form Of Punishment In The United Kingdom**

The Mandate of Community Service was, for the very first time, introduced in England and Wales by the Criminal Justice Act of 1972. The sanction was one of the principal proposals of the Wootton Advisory Council on the penal system in 1970.²⁷ Later on, this sui generis model of community service was replicated in Scotland, Ireland, and other European nations.

- **About Community Service Orders**

The United Kingdom has five main types of criminal sanctions: discharge, fines and compensation, driving disqualification or points, community orders, and prison sentences. In the English penal system, community service, also known as a community payback order, is a typical sentence for offences that are too grave for a discharge or a fine to be imposed but not as grave that a custodial sentence must be imposed²⁸. PART IX of the Sentencing Act 2020 encapsulates provisions relating to community sentences. Chapter II of this part deals with community order.

- **Meaning of Community Order**

Section 200 of the Sentencing Act provides that “community order” means an order imposing one or more community order requirements.²⁹ The community order requirements are mentioned in Section 201, read with schedule 9 of the code, some of which are as follows:

- Perform between forty to three hundred hours of non-remunerated work.

²⁶ Ibid.

²⁷ Shane Kilcommins, The Introduction of Community Service Orders: Mapping its Conditions of Possibility, 53 HOWARD J. CRIM JUSTICE. 487, 487 (2014)

²⁸ Nick Titchener, *Types of criminal sentencing under UK Law*, Lawtons Solicitor (August 12, 2020), <https://www.lawtonslaw.co.uk/resources/sentencing/>

²⁹ Sentencing Act, 2020, §, 200, No. 03, Acts of Parliament, 2020, (U.K.)

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- Comply with “Curfew requirement”
- Comply with “Drug Rehabilitation requirement” and “Alcohol Treatment requirement”
- Comply with “residence requirement”
- Comply with an “exclusion requirement”
- Comply with “prohibited activity requirement”
- Comply with “mental health treatment requirement”
- Comply with “Attendance Centre Requirement”³⁰

➤ **Requisite conditions for imposing Community Order**

According to section 202 of the code, “A community order is available to a court by or before which an offender is convicted of an offence if—

- (a) the offender is aged 18 or over when convicted and
- (b) the offence is punishable by imprisonment by that court.

However, a community order cannot be passed for an offence about which a mandatory sentence requirement applies.”³¹

➤ **Restrictions on Imposing Community Order**

As per the code, if the court has imposed a suspended sentence order in respect of-

- 1) the offence,
- 2) any other offence of which the offender is convicted by or before it,
- 3) any other offence for which it deals with the offender

then no community order shall be imposed by such court.³²

Further, as per section 204(2), “the court shall not make a community order unless it thinks that-

³⁰ Nick Titchener, *Types of criminal sentencing under UK Law*, Lawtons Solicitor (August 12, 2020), <https://www.lawtonslaw.co.uk/resources/sentencing/>

³¹ Sentencing Act, 2020, §, 202, No. 03, Acts of Parliament, 2020, (U.K.)

³² Sentencing Act, 2020, §, 203, No. 03, Acts of Parliament, 2020, (U.K.)

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- 1) the offence,
- 2) the combination of the offence and one or more associated offences was serious enough to warrant the making of such an order.³³

➤ **Duration of Community Order**

As per section 204, a community order shall designate a date better known as the end date by which all the requirements must be fulfilled, and such end date must not be more than three years after the order date. Further, if a community order imposes two or more different community order requirements—

(a) The order shall specify a date for compliance with each of the requirements imposed.

(b) if the order specifies the dates, the last of such dates shall be the end date.³⁴

➤ **Review and amendment of Community order**

Section 217 empowers the secretary of state to make regulations that empower the courts to review the community orders.³⁵

Further, Section 217 enables the court to amend—

(a) the requirements of the community order, or

(b) any provision of such order relating to such requirements.

After considering the progress report.³⁶

➤ **Cessation of Community order**

According to section 220, “community order ceases-

(a) at the end of the end date, or

³³ Sentencing Act, 2020, §, 204, No. 03, Acts of Parliament, 2020, (U.K.)

³⁴ Ibid.

³⁵ Sentencing Act, 2020, §, 217, No. 03, Acts of Parliament, 2020, (U.K.)

³⁶ Sentencing Act, 2020, §, 217B, No. 03, Acts of Parliament, 2020, (U.K.)

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(b)if later, when the offender has completed any unpaid work requirement imposed by the order.”³⁷

➤ **Non-Compliance of Order**

If the offender fails to abide by the community service order, they can be handed over additional, prolonged, or even acceptable requirements. In some cases, the offender may also be sentenced to imprisonment.

• **Community Service As A Form Of Punishment In Australia**

Even before the inception of Community service in the U.S.A. and the United Kingdom, a non-statutory ad hoc practice of community service for juvenile offenders existed in Australia.³⁸ However, the formal inauguration of the community service mandate in Australia ranges from 1972 for Tasmania to September 1982 for Victoria. Much of the legislation relating to community service in Oz is founded on the English and Welsh model.³⁹

➤ **Community Service Orders in Australia**

The sanction of Community service is known by different names in different jurisdictions of Australia, but it is commonly referred to as Community Service Orders. Earlier, community service was available as a separate sentencing option in most of the states and territories of Australia. However, in 2018, New South Wales and Tasmania replaced the sanction of community service orders with community correction orders.⁴⁰

Due to these novel reforms, only Queensland, South Australia and the Northern Territory currently provide community service as a distinct form of sentence. In the remaining five states, community service has become an optional condition.

³⁷ Sentencing Act, 2020, §, 220, No. 03, Acts of Parliament, 2020, (U.K.)

³⁸ Shane Kilcommins, The Introduction of Community Service Orders: Mapping its Conditions of Possibility, 53 HOWARD J. CRIM JUSTICE. 487, 492 (2014)

³⁹ C.R. Bevan, *Community Service Orders in Australia and New Zealand*, (AIC, November 21-24, 1983)

⁴⁰ Dr. Karen Gelb, Dr. Nigel Stobbs and Professor Russell Hogg, *Community –based sentencing orders and parole: A Review of Literature and Evaluation across Jurisdictions*, Queensland, QSAC , 56-57 (2019), https://www.sentencingcouncil.qld.gov.au/_data/assets/pdf_file/0003/615018/edited-final-literature-review.pdf

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➤ **Duration of community service orders**

Similar to the U.S.A. and the United Kingdom, Australian courts provide for time-bound community service orders. For instance, the courts in South Australia can impose a community service order of “maximum 18 months, with between 15 and 300 hours of work required”. Similarly, the courts in Queensland Jurisdiction may impose a community service order “requiring between 40 and 240 hours of non-remunerated work to be completed within one year from the making of such order” unless the court provides for an extension. Likewise, the “Northern Territory community work order may require up to 480 hours of work”.⁴¹

➤ **Nature of offences**

According to a seminar report of the Australian Institute of Criminology titled “COMMUNITY SERVICE ORDERS IN AUSTRALIA AND NEW ZEALAND”, the type of offences for which the sanction of community service was available followed a somewhat stereotyped pattern throughout the country. A significant chunk of these offences comprised driving offences followed by stealing and fraud. Apart from these offences, instances of assaults, robberies, drugs and miscellaneous offences also attracted a sentence of community service.⁴²

Currently, community service orders can be imposed in South Australia and the Northern Territory regardless of the severity of the offences. However, in Queensland, if a court finds an offender guilty of a crime that carries a jail sentence or a regulation offence, the offender may be subject to a community service order.

➤ **Breach of community service orders**

What sort of actions and conduct will cause a breach of the order primarily depends upon the statutory conditions affixed with the order. However, these conditions are more or less the same in each jurisdiction with minor alterations. Further, in case of breach of such order, the courts have been given a wide array of discretionary power to deal with it. Thus, the courts may take

⁴¹ Dr. Karen Gelb, Dr. Nigel Stobbs and Professor Russell Hogg, *Community –based sentencing orders and parole: A Review of Literature and Evaluation across Jurisdictions*, Queensland, QSAC, 58 (2019), https://www.sentencingcouncil.qld.gov.au/_data/assets/pdf_file/0003/615018/edited-final-literature-review.pdf

⁴² C.R. Bevan, *Community Service Orders in Australia and New Zealand*, (AIC, November 21-24, 1983)

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various measures such as protracting the order, revoking the same, dealing with the offender through any other sanction, or sentencing the offender to incarceration. The courts in South Australia have additional power, i.e., they may annul all or some of the unperformed hours in case of failure to comply with the order.⁴³

➤ **Changing trends of community service**

In the past decade and a half, community service has emerged as a viable alternative to the orthodox sanctions in the Australian Penal System. A 2018 report by the Australian Bureau of Statistics revealed that around 10,627 people were engaged in community service across the Australian continent. Further, “New South Wales, with a share of 29.6%, accounted for the largest proportion of all people serving a community service order in 2018”.

Victoria, Queensland and Tasmania have witnessed a rapid surge in the impositions of community service orders since 2008. However, there has also been a decline in community service orders in the regions of South Australia, Western Australia, the Northern Territory and the Australian Capital Territory over that period.

Conclusion

The emergence of the community service mandate was shaped by a modern criminal justice paradigm devoted to certain principles and values. “These included the rejection of moral free will perceptions of criminal behaviour, a greater appreciation of the part played by the social environment in offending, demands for greater levels of knowledge about offenders, and the rise of more individualised and measured penal disposals that resulted in the prison being decentred⁴⁴”. The cropping up of community service in the criminal jurisprudence called for replicating the traditional custodial practices of prisons, borstals and detention centres in a non-custodial environment.

⁴³ Dr. Karen Gelb, Dr. Nigel Stobbs and Professor Russell Hogg, *Community –based sentencing orders and parole: A Review of Literature and Evaluation across Jurisdictions*, Queensland, QSAC, 58 (2019), https://www.sentencingcouncil.qld.gov.au/data/assets/pdf_file/0003/615018/edited-final-literature-review.pdf

⁴⁴ Shane Kilcommins, *The Introduction of Community Service Orders: Mapping its Conditions of Possibility*, 53 HOWARD J. CRIM’AL JUSTICE. 487, 493 (2014)

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Community service has suddenly been impacted since its inception due to various factors. It allowed the offenders to 'pay back' for their actions. It helped them cope with solitude and alienation by enabling their social integration into the community again and serving the community via constructive services. According to Vass, 'Prisons punish but alienate. Community punishes but reintegrates: it helps to create a moral conscience and assists offenders in rebuilding their social networks; boosting their morale; engaging in good deeds for others; and treating themselves and others with the respect they deserve⁴⁵.'

Moreover, recent trends suggest community service orders are more efficacious in reducing crimes than incarceration. According to a recent study published in the journal *Criminology & Public Policy*, reoffending rates were significantly lower among those who received a community sentence than those who were sent to prison. Thus, community service keeps a check on recidivism.⁴⁶

According to Sutherland, criminal behaviour is not inherited and is learned. Community service orders are targeted toward preventing first-time offenders or juvenile delinquents from coming in contact with hardened criminals in prisons. Apart from that, community service is an apt sanction for indigent deviants who do not possess the monetary means to compensate for the wrong caused.

However, as they say, "there is light and shadow in every situation"; community service also has its negatives. Though community service orders sound like an escape from the harsh punishment, the reality is often disappointing. Community sentences indirectly promote discrimination when used as an alternative to fines because delinquents from the higher strata of society can easily avoid it. In contrast, marginalised workers must work for weeks without any remuneration to pay off their debt.⁴⁷

⁴⁵ Shane Kilcommins, *The Introduction of Community Service Orders: Mapping its Conditions of Possibility*, 53 *HOWARD J. CRIM'AL JUSTICE*. 487, 496 (2014)

⁴⁶ James S., *Why community sentences are better than prisons*, LINKEDIN (Nov. 18, 2022), <https://www.linkedin.com/pulse/why-community-sentences-better-than-prisons-james-stoddart/>

⁴⁷ Ebby Stoutmiles and Chris Lin, *The Problem with Community Service*, JUVENILE LAW CENTER, <https://jlc.org/news/problem-community-service>

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Community sentences often lack the rigour of a penal sanction. Penal sanctions are marked by harshness, thereby generating a sense of fear. However, community service orders do not possess any of these traits. They sound more like an opportunity to escape from more barbaric penal mandates.

On the one hand, the statistics relating to custody and fines have held their ground, while the figures about community orders have nearly halved in the last decade. The sharpest decline has been witnessed in respect of theft and drug offences.⁴⁸

The real problem lies in the structure of the community service orders. The sanction depicts community work as a deplorable job that should be avoided. It degrades the status of community work. Community service has transformed itself into an incentive-rigging⁴⁹. In many nations, community service models have become a symbol of the leniency of the criminal justice system, or, in other words, the "soft on crime" approach. The community service order is often perceived as equivalent to the discharge of offenders or inadequately punishing them. Another major drawback of the community service scheme is the lack of political support, both in monetary and administrative terms, needed for its effective implementation.⁵⁰

⁴⁸ RUSSELL WEBESTER, <https://www.russellwebster.com/what-went-wrong-with-community-sentences/> (last visited May 4, 2017)

⁴⁹ Eric Liu, *Why Community Service should not be a punishment*, Time Magazine, June 12, 2012

⁵⁰ CONNECTICUT GENERAL ASSEMBLY,
<https://www.cga.ct.gov/2000/pridata/Studies/Prison%20Final%20Chapter%20V.htm>

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