BEYOND THE PRISON BARS: CONTEMPLATING COMMUNITY SENTENCING IN INDIA

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The deplorable state of the criminal justice administration system in India has been highlighted time and again with several possible measures being suggested to remedy the same. However, even within these discussions, the possibility of the introduction of community sentence as a restorative justice reform has not been given much consideration. At the same time, various jurisdictions have successfully tested community service as a form of alternative sentencing. Notably, community service not only reduces the burden on the system of incarceration, but also disburdens the state exchequer. While there is ample literature debating other alternatives to custodial sentencing, community sentencing in India remains a relatively unexplored domain. In recognition of this situation, this paper examines the attempts made in India to introduce community sentencing. This is juxtaposed against the experiences with the system of community sentencing in different legal jurisdictions. On this basis, a suggested model for the introduction of community service in India has been outlined in this paper.

I. INTRODUCTION

An efficient criminal justice administration system is the backbone of any civilised society. The state is obligated to uphold the faith reposed in it by its citizens for securing their rights. In recent years, India has witnessed a deteriorating Rule of Law Index, especially in the realm of criminal justice, wherein India's global rank is as low as 77 out of 126 countries, as of 2019.[1] In the past decade, various problems associated with the criminal justice administration system, especially the institution of prisons, have been highlighted on repeated instances. Particularly, the prisons in India have become infamous globally for their deplorable living conditions and the appalling cases of human rights violations which occur within them.[2] The National Human Rights Commission Annual Report 2015-16 for instance, documented various such instances.[3] Violence, specifically

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1 World Justice Project, *World Justice Report Rule of Law Index 2019*, available at https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2019 (Last visited on March 22, 2019).

2 Human Rights Watch, *Prison Conditions in India*, available at https://www.hrw.org/sites/default/files/reports/INDIA914.pdf (Last visited on March 22, 2019).

3 National Human Rights Commission India, *Annual Report 2015-16*, 39-49, 88.

physical and sexual violence, against inmates at the hands of both, authorities and other prisoners, is notably common in Indian prisons.[4] Yet, despite various attempts at prison reforms, correctional homes have continued to be overcrowded,[5] often with individuals belonging to underprivileged[6] and uneducated sections of society,[7] who languish behind bars for decades, often serving more time than that prescribed for the offence by law.[8]

The number of prisoners lodged in various jails in India increased from 4,18,536 in 2014 to 4,33,003 in 2016, witnessing a 3.5 per cent increase during that period.[9] The occupancy rate remained as high as 130.9 per cent in some jails during the same period, with the national average standing at 113.7 per cent, demonstrating the extent of overcrowding in Indian jails.[10] It was further found that during the period under study, most inmates were uneducated and only a small percentage, accounting for 8.7 per cent of the total inmates, had received education post higher secondary school level.[11]

It is worth noting that the number of under trial prisoners increased from 2,82,076 in 2015 to 2,93,058 in 2016,[12] and 87.1 per cent of total prisoners belonged to the age group of 18-50 years,[13] depicting how human resources can continue to lay unproductive behind bars in India, while taxpayers continue to bear their economic burden. It is noteworthy that the total expenditure for the financial year 2016-17 for all prisons in the country was Rs. 4944.7 crores.[14] Yet, it is indeed unfortunate that despite the extent of expenditure incurred, conditions in Indian prisons continue to be deplorable.[15] The existence of these issues within the prison framework forebodes the approaching collapse of a crumbling

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4 Ministry of Women and Child Development**,** *Women in Prisons India,* June 2018, available at https://wcd.nic.in/sites/default/files/Prison%20Report%20Compiled_0.pdf (Last visited on March 6, 2019).

5 Press Trust of India, *Supreme Court shocked at over 600 per cent overcrowding in jails*, The Times of India, March 30, 2018, available at https://timesofindia.indiatimes.com/india/supreme-court-shocked-at-over-600-per-cent-overcrowding-in-jails/articleshow/63546393.cms (Last visited on February 20, 2019).

6 Neeta Lal, Indian Jails Slammed as Purgatory for the Poor, The Citizen, August 11, 2016, available at https://www.thecitizen.in/index.php/en/NewsDetail/index/9/8433/Indian-Jails-Slammed-as-Purgatory-for-the-Poor (Last visited on January 20, 2019).

7 Ministry of Home Affairs, National Crime Records Bureau, *Prison Statistics India 2015*, 99, 102, 105, 108.

8 Vijay Raghavan, *Undertrial Prisoners in India: Long Wait for Justice*, 51(4) Economic and Political Weekly (January 23, 2016).

9 Ministry of Home Affairs, National Crime Records Bureau, *Prison Statistics 2016*, xii.

10 *Id.*, xi. (The occupancy rate at the end of 2016 was 113.7%).

11 *Id.*, 41. (A total of 28.4% prisoners were illiterate).

12 *Id.*, xiii.

13 *Id.*, xv.

14 *Id.*, xxiii.

15 Krishnadas Rajagopal*, Supreme Court slams primeval conditions in jails, observation homes,* The Hindu, November 22, 2018, available at https://www.thehindu.com/news/national/supreme-court-slams-primeval-conditions-in-jails-observation-homes/article25569788.ece (Last visited on March 6, 2019).

institution. Therefore, there exists an urgent need to shift towards consideration of the viability of alternatives to custodial sentencing, which is administered through the prison system.

Several alternatives to imprisonment have been implemented in India.[16] However, even within such efforts, the introduction of community sentencing has not been given much consideration, having been dismissed as not being practicable to be given effect to in the Indian setup.[17] Community sentencing, also known as community service, is part of an array of alternative sanctions to imprisonment. For the purpose of this paper, it is defined as a form of non-custodial punishment for offenders to undertake unpaid work for a certain number of pre-determined hours.[18] In case of community sentencing, various types of work of social importance like cleaning, gardening, painting, teaching, etc., are assigned to the offenders according to their skills and suitability. Such sentences are usually meant to be given to first-time offenders, convicted for less severe offences, instead of awarding a short-term sentence or fine.[19]

Based on the restorative and rehabilitative justice models, community sentencing holds offenders directly responsible for the damage they have caused to the society.[20] It also directly provides the community with human resources, which would otherwise have remained unproductive for a long period of time due to incarceration. Further, not only does community sentencing help the offenders acquire new skills through supervised work activities but it also aids in establishing within them a positive work attitude and sense of belongingness with the local community.[21]

Moreover, it reduces the overall burden on the incarceration system through decongestion of the overcrowded prisons and contribution towards the shielding of first-time offenders from interaction with hardened criminals. Additionally, it has also proved to be effective in terms of reduction in costs,

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[16] Bureau of Police Research and Development, *Alternatives to Imprisonment*, available at http://www.bprd.nic.in/WriteReadData/userfiles/file/6515844528-Part%20V.pdf (Last visited on January 4, 2019).

[17] 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).

[18] Anita Abdul Rahim et al, Community Service as an Alternative Punishment: The Extent of its Application on the Categories of Crime and Offender in Malaysia, 1 International Journal of Education and Research (July 2013).

[19] Brett Snider, What is Community Service? When Can You Get It?, June 25, 2014, available at https://blogs.findlaw.com/blotter/2014/06/what-is-community-service-when-can-you-get-it.html (Last visited on March 20, 2019).

[20] Robert D. Hanser, Community Corrections 473 (2013).

[21] R.J. Harris & T.W. Lo, *Community Service*: *Its Use in Criminal Justice*, 46(4) International Journal of Offender Therapy and Comparative Criminology (2002).

avoidance of re-entry crisis, decline in recidivism, and improvement in the offender's overall sense of self-worth.[22]

Community sentencing has been tested across various jurisdictions like the United States of America,[23] the United Kingdom,[24] Australia,[25] Spain,[26] South Africa[27] and Zimbabwe[28] to address various problems associated with the institution of prisons. On the other hand, introduction of community service in India has been resisted. Hence, this paper proposes a comprehensive model of community sentencing, feasible for implementation in the Indian context, through an analysis of the best practices prevailing in other jurisdictions. Part II of the paper analyses the attempts made in India to introduce community sentencing, with reference to 156th Law Commission Report, The Indian Penal Code (Amendment) Bill, 1978, and judicial precedents. Part III studies the systems of community sentencing as prevailing in various legal jurisdictions. Learning from the models adopted in other jurisdictions, Part IV of the paper draws a comprehensive model of community sentencing as practicable in India. Lastly, Part V evaluates the implications and problems which may be associated with the implementation of such a system.

II. COMMUNITY SENTENCING: AN UNEXPLORED POTENTIAL IN INDIA

With over a staggering 2,17,55,186 criminal cases pending,[29] the criminal justice administration system continues to be sluggish in India. Even a single day in several prisons across India can be a harrowing experience for any individual.[30] Evidently, the psychological effects of incarceration on inmates are

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22 Christopher Bright, *Community Service*, available at http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-3-programs/community-service/#sthash.8HIi9GTC.xcJOatKo.dpbs (Last visited on January 1, 2019).

23 United States Courts, *Chapter 3: Community Service (Probation and Supervised Release Conditions)*, available at https://www.uscourts.gov/services-forms/community-service-probation-supervised-release-conditions (Last visited on January 20, 2019).

24 Government of United Kingdom, Community Sentences, available at https://www.gov.uk/community-sentences (Last visited on March 20, 2019).

25 Government of South Australia, *Community Service*, available at https://www.corrections.sa.gov.au/community-corrections/community-service-repaysa (Last visited on January 21, 2019).

26 ESTER BLAY & ELENA LAURRAURI, COMMUNITY PUNISHMENT 191-208 (2016).

27 LUKAS MUNTINGH, BEYOND RETRIBUTION — PROSPECTS FOR RESTORATIVE JUSTICE IN SOUTH AFRICA 105-119 (2005).

28 Governance and Social Development Research Centre, *Community Service in Practice,* available at http://www.gsdrc.org/docs/open/ssaj27.pdf (Last visited on January 20, 2019).

29 NATIONAL JUDICIAL DATA GRID, *Summary Report of India as on May 10, 2019*, available at http://njdg.ecourts.gov.in/njdg_public/main.php (Last visited on March 10, 2019).

30 Shivendra Srivatsava, Exposed: UP's hell prison where inmates suffer vicious torture and corruption, INDIA TODAY, September 7, 2016, available at https://www.indiatoday.in/india/story/exposed-ups-hell-prison-where-inmates-suffer-vicious-torture-and-corruption-339802-2016-09-07 (Last visited on March 20, 2019); Dhrubo Jyoti & Roshni Nair, Tales from former inmates: What life is like in a women's jail in India, HINDUSTAN TIMES, July 26, 2017, available at https://www.

long-term on account of the pain, deprivation, isolation, and extremely unusual norms of living that they bear.[31] Given that the conditions in prisons are hostile and stressful, and the prisoners are subjected to an often harsh and rigid institutional routine, the process of institutionalisation or prisonisation of the inmates occurs in response to the extraordinary demands of prison life.[32] This process of integration into the prison culture due to its deep relation with societal deprivation can manifest itself in chronic manners in inmates.[33] As a consequence, during their sentence, inmates may suffer from emotional withdrawal, depression, hyper-vigilance, display suicidal tendencies, engage in substance abuse or showcase other symptoms of post-traumatic stress disorder.[34] Such psychological effects cumulatively impede their post-incarceration rehabilitation and interfere with their successful re-integration into a social network and employment setting, and resumption of their familial relationships.[35]

Thus, the inhumane conditions in prisons and the exposure to hardened criminals can lead to the release of damaged individuals after the completion of their sentences.[36] Even after the release of the offender, the stigma of serving a prison sentence persists, and the society shuns them as an outcast.[37] The socio-economic implications continue throughout the life of the offender even after serving a sentence, inhibiting progress in their chance of re-integration into the community.[38] These adverse implications of incarceration should be viewed as reminders of the emerging need to not only strengthen the prison system but also gradually diminish the use of prisons and move towards alternative measures.

Several forms of alternatives to custodial sentencing like open prisons, parole, probation, vocational training, and rehabilitation centres have been sought to be introduced in India to improve the criminal sanction system, but community sentencing has arguably not been subject to due contemplation. The only provision for it in India exists for juveniles under §18(1) (c) of the Juvenile Justice (Care and Protection of Children) Act, 2015,[39] which provides for community service for child offenders, if the Juvenile Justice Board deems fit. Developments at the policy level have also remained limited, with the Social Justice Department

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hindustantimes.com/india-news/tales-from-former-inmates-what-life-is-like-in-a-women-s-jail-in-india/story-UBBSj0N5yz2VskZpqgGiLK.html (Last visited on March 22, 2019).

31 Craig Haney, *The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment,* From Prison to Home Conference Working Paper (2002).

32 *Id.*

33 S. Sanyal, *Prison and Prisonization of Inmates*, 16(63) Social Defence (1981), available at

34 Shivani Tomar, *The psychological effects of incarceration on inmates: Can we promote positive emotions in inmates*, 16 Delhi Psychiatry Journal (2013).

35 Haney, *supra* note 31.

36 *Id.*

37 Jason Schnittker & Andrea John, *Enduring Stigma: The Long-Term Effects of Incarceration on Health*, 48(2) Journal of Health and Social Science (2007).

38 Danya E. Keene, Amy B. Smoyer & Kim M. Blankenship*, Stigma, Housing and Identity After Prison,* 66(4) The Sociological Review (2018).

39 Juvenile Justice (Care and Protection of Children) Act, 2015, §18(1)(c).

of Kerala only recently having planned to bring new projects aiming at reintegration of first-time offenders into mainstream society[40] and allowing for offenders involved in petty offences sentenced to three years imprisonment or fine or both to engage in community service in lieu of custodial punishment.[41]

Looking back several decades, the Indian Penal Code (Amendment) Bill, 1978[42] ('The Bill'), had provided for community service orders and the provisions therein were mostly satisfactory. As per the Bill, any offender not under eighteen years of age could be ordered to work for a certain number of hours without any remuneration, subject to terms and conditions. Further, it provided that the consent of the convict to perform the work would be required, and the court would have to be satisfied that such person is suited to perform the work required of him. As per the Bill, community sentencing could be awarded for offences punishable with less than three years, with work hours ranging between forty hours to a thousand hours.

This provision, however, posed a major discrepancy in the Bill, since §51 of the Factories Act, 1948 specifies that no adult worker shall be required or allowed to work in a factory for more than forty-eight hours in any week. Given that a maximum of forty-eight hours per week was the established norm, the maximum community sentence for an offender who has committed an offence punishable with a term of less than three years should ideally have been estimated at five months only.[43] Yet, this would imply that an offender who commits an offence punishable with less than three years could get away with a sentence of a maximum of five months of community service, which could be disproportionate to the gravity of the offence.

A counter to this stance could possibly have been that the duration prescribed in the Bill did not have to be in conformity with the Factories Act as the service sought to be expropriated was not in the ordinary course and instead on account of punishment for engagement in criminal activities. This issue, however, remained unresolved, with the Bill lapsing due to the dissolution of the Lok Sabha.[44] Nevertheless, the Bill served as the first attempt to insert community service as a form of punishment under the Indian Penal Code.

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40 R.K. Roshni, *State's convict probation system showing results*, The Hindu, March 4, 2019, available at https://www.thehindu.com/news/national/kerala/states-convict-probation-system-showing-results/article26432687.ece (Last visited on January 22, 2019).

41 Shan A.S., *Serve less time in prison - serve community instead*, The New Indian Express (October 26, 2018).

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

43 The maximum number of hours that could be awarded as per the Bill was 1000 hours. As per The Factories Act, 1948, the maximum duration of work per week is 48 hours. Hence, a maximum of 21 weeks (5 months approximately) could be awarded. (1000 hours/48 hours = 21 weeks approximately).

44 Press Release, Press Information Bureau, October 21, 2008, available at https://pib.gov.in/newsite/erelcontent.aspx?relid=43986 (Last visited on January 18, 2019).

Later, the 156th Law Commission Report in 1997 also discussed the proposed amendment of §53 of the Indian Penal Code[45] to include community service as one of the sanctioned forms of punishments, and deliberated upon Clause 27 of the Indian Penal Code (Amendment) Bill, 1978, seeking to define the contours of community service.[46] Ultimately, it opined that the open air prison system was preferable as a correctional measure in comparison to community service,[47] thereby effectively refusing to endorse the introduction of community service as a criminal sanction.

Despite these aforementioned unsuccessful legislative attempts, the judiciary has continued to be proactive in attempting to interpret community sentencing as a form of punishment for criminal actions, through the exercise of its discretionary powers. It is to be noted that there is no specific provision on community service in India and all orders for the same are passed in exercise of the discretionary power vested in the court to pass any other order as it may deem fit as High Courts, in the exercise of their power under §482 of the Code of Criminal Procedure, can make any orders to meet the ends of justice.

Recently, a lower court in New Delhi ordered community service, observing that imprisonment may not always serve the desired purposes, especially when the accused is a first-time offender, given that harsh views may ruin his entire future while also taking away from his chances of reformation.[48] The position taken by the lower court perhaps draws from the dictum of *Pappu Khan* v. *State of Rajasthan*,[49] in which the Supreme Court observed that a welfare state cannot afford a large non-productive prison population as it imposes a heavy burden on the state exchequer. Therefore, the Apex Court expressed that it is in the interest of the State to reform prisoners by teaching them techniques and skills which would ensure a source of livelihood to them after they are released from jail.[50] Further, in *Babu Singh* v. *State of U.P.*,[51] the Supreme Court held that restorative devices through means of community service, meditative drill or study classes should be innovated upon to help redeem the offender.

It can therefore, be argued that the judiciary has, to a degree, recognised the benefits of community sentencing. However, like other jurisdictions, legislation is still required for more extensive use of this alternative.

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45 The Indian Penal Code, 1860, §53 enumerates the punishments which can be meted out to convicted offenders such as death, imprisonment for life, rigorous or simple imprisonment, forfeiture of property and fine.

46 Law Commission of India, *supra* note 17, 28-34.

47 *Id*., 34-35.

48 Ayesha Arvind, *Delhi's petty criminals work off their debt to society as courts catch on to community service*, Daily Mail, October 7, 2013, available at http://www.dailymail.co.uk/indiahome/indianews/article-2447171/Delhis-petty-criminals-work-debt-society-courts-catch-community-service.html#ixzz54bQ4W7gB (Last visited on January 24, 2019).

49 Pappu Khan v. State of Rajasthan, 2005 SCC OnLine Raj 348 : 2005 Cri LJ 4732, ¶6.

50 Pappu Khan v. State of Rajasthan, 2005 SCC OnLine Raj 348 : 2005 Cri LJ 4732, ¶6.

51 Babu Singh v. State of Uttar Pradesh, (1978) 1 SCC 579 : (1978) 2 SCR 777.

A. OPEN PRISONS AND COMMUNITY SENTENCING

At this juncture, it is suggested that a discussion juxtaposing the system of open prisons already prevalent in India, with community sentencing, shall be fruitful. The basic difference between the two is that while community sentencing is an alternative to custodial sentencing,[52] open jails are part of the post-custodial reforms. The idea behind community sentencing pertains to not being confined behind any perimeters but rather performing unpaid work of social importance to undo the loss caused to the society by the acts committed by the offender.[53] This arguably also serves towards removing the stigma attached to individuals having served prison sentences, and subsequently avoiding other problems associated with incarceration, as discussed in Part I.

In open prisons, depending on the nature of the prison, the state has the added responsibility to either provide lodging, employment or both, which in itself is a cumbersome and expensive process.[54] Unlike open prisons, no physical infrastructure is required to be set up by the government to house the offender and his family in community sentencing. Rather, the offender continues living with his family and reports for the assigned work and performs the same under the supervision of an appointed officer.[55]

It is also to be noted that while there are a different set of rules adopted by each open jail, most of them, although permit prisoners to leave prison grounds, restrict their physical movement beyond a designated area,[56] and require inmates to report for evening roll calls.[57] Community sentencing generally does not entail any such elaborate regulation, and the few which are prescribed generally for reporting and performing the said service. In open prisons, the onus of finding employment lies on the prisoner himself, who may often find it difficult to get employed because of his status as an offender and the rules and conditions imposed as a part of their sentence.[58] On the other hand, in case of community

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[52] Parliamentary Office of Science and Technology, Parliament of United Kingdom, *Alternatives to Custodial Sentencing*, May 2008, available at https://www.parliament.uk/documents/post/postpn308.pdf (Last visited on February 3, 2019).

[53] Ministry of Justice, *Unpaid Work / Community Payback Service Specification and Operating Manual for Community Payback: Delivering the Sentence of Unpaid Work* (2010), available at https://www.justice.gov.uk/downloads/offenders/probation-instructions/pi_02_2010_unpaid_work_community_payback_service_specification.pdf (Last visited on March 7, 2019).

[54] *Bhopal: MP's 6*th *open jail inaugurated in Bhopal*, The Free Press Journal, March 7, 2019, available at https://www.freepressjournal.in/bhopal/bhopal-mps-6th-open-jail-inaugurated-in-bhopal (Last visited on March 14, 2019).

[55] Nicola Laver, *Community sentences*, available at https://www.inbrief.co.uk/court-judgements/community-sentences/ (Last visited on March 14, 2019).

[56] *This open prison allows inmates to live with family and go out to work!*, India Today, September 14, 2018, available atiatoday.in/education-today/gk-current-affairs/story/open-prison-indore-1340052-2018-09-14 (Last visited on March 14, 2019).

[57] A prison where the inmates have to go and find jobs, BBC News, February 2, 2019, available atthttps://www.bbc.com/news/stories-47093046 (Last visited on March 14, 2019).

[58] Department of Corrections, *Annual Report 2009-2010.*

service sentences, courts require offenders to work on projects which are identified as having social importance.[59]

Further, since many offenders come from underprivileged backgrounds, community service can also act as a means of providing training to them and acquiring new skills,[60] while residents of open prisons would largely have to depend on their existing skills to gain employment outside the prison premises. Therefore, given these relative benefits of community sentencing over the system of open prisons, which is being readily embraced as an alternative to the rigorous custodial imprisonment regime,[61] it is argued that the time has come to reconsider the feasibility of adopting community sentencing as a form of punishment in India.

III. A STUDY OF COMMUNITY SENTENCING MODELS IN OTHER JURISDICTIONS

Community sentencing has spread across the world, *albeit* unevenly, mostly throughout Western Europe, with limited use in Asia and South America.[62] Yet, the importance of the same appears to have been increasingly recognised in the international community in the last few decades. Notably, the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) suggests member nations to adopt alternatives to custodial measures like community sentencing.[63] Further, the ground-breaking Kampala Declaration on Prison Conditions in Africa also recommended that community sentences be preferred in comparison to traditional imprisonment.[64]

While variations have been witnessed in how these recommendations of integrating community service models within the criminal sentencing regime are implemented across various jurisdictions, commonly, as part of adopted models, offenders convicted for minor offences undertake a court-mandated number of hours of unpaid work under supervision in all the studied jurisdictions.[65] In

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[59] Scottish offenders complete six million unpaid hours, BBC News, February 6, 2018, available at https://www.bbc.co.uk/news/uk-scotland-42960495 (Last visited on March 14, 2019).

[60] Royal Borough of Greenwich, *Offenders are helping to make a difference with community payback*, March 18, 2019, available at mmunity_payback (Last visited on March 20, 2019).

[61] SC tells states to consider setting up an open prison in each district, Hindustan Times, December 12, 2017, available at https://www.hindustantimes.com/india-news/sc-tells-states-to-consider-setting-up-an-open-prison-in-each-district/story-tnLIiuOT6tAKlso8wKamUJ.html (Last visited on March 14, 2019).

[62] Shelley Turner & Chris Trotter, Best practice principles for the operation of community service schemes: a systematic review of the literature in Monash University Criminal Justice Research Consortium, Melbourne (2013).

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

[64] The Kampala Declaration on Prison Conditions in Africa, (September 19-21, 1996), 2-3.

[65] *Id*.

several countries therefore, community sentencing has achieved a position of an intermediate sanction between the alternatives of probation and imprisonment.[66]

In an effort to better understand how nations integrate community sentencing, I have selected eight jurisdictions for a study of their community sentencing models. In all of these jurisdictions, community sentencing is awarded in the form of unpaid work to first-time offenders and may include, but is not limited to, mental health and alcohol treatment, drug rehabilitation, counselling sessions, skill training, and accredited programmes aimed at changing criminal behaviour. Work like removing graffiti, painting, clearing wastelands, gardening, decorating public places and buildings may also be ordered to be performed at NGOs, government hospitals, palliative centres, local bodies etc., is undertaken by offenders under the supervision of a 'community payback supervisor'.

In this part, therefore, various factors such as the suitability of the offender, the number of hours awarded, the supervising mechanism, the breach regulation, and the effectiveness, alongside the public perception regarding the community service rendered, have been outlined for each jurisdiction.

A. AUSTRALIA

In Australia, each state has a different criminal justice administration system due to the federal-state composition. The states have their own community service schemes but these schemes are cumulatively characterised by the following elements. Firstly, the work hours which can be awarded can range from between forty[67] to seven hundred and fifty hours.[68] Secondly, the community correction orders do not exceed five years.[69] Thirdly, those engaged in probationary services assess the offenders' suitability for community service, prior to the sentencing, and advice the court on the same.[70] Fourthly, offenders are supervised by community service staff while serving their orders.[71] In some Australian jurisdictions, community service can also be applied in lieu of a fine.[72]

The trends regarding the number of people performing community service-based sentences are varied across jurisdictions in Australia. Yet figures have been promising, with an increase of fourteen percent being noted in the average daily number of persons serving community based sentences (including

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66 Norval Morris &Michael Tonry, Between Prison And Probation: Intermediate Punishments In A Rational Sentencing System 121 (1990).

67 Penalties and Sentences Act, 1992 (Australia), §103(2)(a)

68 Crimes (Sentencing Procedure) Act, 1999 (Australia) §§17G(1), 73A (2)(d).

69 Sentencing Advisory Council, Community Correction Order, available at https://www.sentencingcouncil.vic.gov.au/about-sentencing/sentencing-options-for-adults/community-correction-order (Last visited on March 21, 2019).

70 Turner, *supra* note 62.

71 *Id.*

72 *Id.*

non custodial sentences such as community service), since June 2018.[73] As of June 2019, 79,134 people were undertaking community based sentences across Australia, indicating a five percent increase since March 2019 and notable forty percent increase since June 2009.[74] Further research conducted among a sample in Victoria indicated that when provided with viable alternatives to imprisonment, people are likely to prefer alternatives to building more prisons.[75]

B. FINLAND

Community service is part of a general punishment recognised under the Criminal Code of Finland[76] since 1995.[77] In terms of duration, fourteen to two hundred and forty hours of community service can be awarded.[78] While sentencing to community service is generally awarded when the sentence for the offence is less than eight months of imprisonment, other preconditions may also be outlined as per legal policy.[79] In other cases, where community service is awarded to supplement a sentence of conditional imprisonment exceeding eight months, up to ninety hours of community service may be ordered.[80] Under Finland's legal system, one day of imprisonment is also capable of being converted to one hour of community service.[81]

It is the responsibility of the Criminal Sanctions Agency to assess the suitability of offenders for community service and to supervise their performance while serving such a sentence.[82] For the purpose of making an assessment on the request of the prosecutor, a pre-sentence report is prepared by the Agency, commenting on the suitability of the offender for performing community service as per a designated sentence plan.[83]

In Finland, recidivism has been found to be slightly lower after community service than after prison sentences and a more suitable sanction for those

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[73] Australian Bureau of Statistics, *Corrective Services, Australia, March quarter 2019*, available at https://www.abs.gov.au/ausstats/abs@.nsf/0/C57B3CAC8D0EDB87CA25825000141F8F?Opendocument(Last visited on January 21, 2019).

[74] *Id*.

[75] Dr Karen Gelb, *Sentencing Matters Alternatives to Imprisonment: Community Views in Victoria,* Sentencing Advisory Council (2011).

[76] Criminal Code of Finland, 1894 (Finland), Chapter 6, §1.

[77] Criminal Sanctions Agency*, Community service*, available at https://www.rikosseuraamus.fi/en/index/sentences/communitysanctions/communityservice.html (Last visited on January 21, 2019).

[78] *Id*.

[79] *Id*.

[80] *Id*.

[81] Tapio Lappi-Seppälä, *Imprisonment and Penal Policy in Finland* in Scandinavian Studies in Law (2012).

[82] R.I.S.E., *Criminal Sanctions Agency*, available at https://www.rikosseuraamus.fi/en/index/sentences/communitysanctions/communityservice.html (Last visited on March 12, 2019).

[83] *Id*.

who lack experience in prisons.[84] Over half of all the offenders sentenced to community service were convicted for the offence of aggravated drunken driving.[85] Around 3600-3700 community service sentences are enforced annually, of which more than eighty percent are completed.[86]

C. NEW ZEALAND

Community work in New Zealand was introduced by the Sentencing Act, 2002.[87] Community sentence in New Zealand involves unpaid work, treatment sentences, participation in some form of rehabilitation, and surveillance sentences, often utilising electronic monitoring and restrictions on movement within the community.[88] The sentences range from forty hours to four hundred hours and can be shortened by ten percent if an offender does good work.[89] Further, offenders with longer sentences must complete at least one hundred hours within six months.[90] Unlike other jurisdictions, offenders serving at least eighty hours can spend up to twenty percent of those hours in doing work and training in life skills.[91] This training can range from writing a resume and preparing for job interviews, to parenting, literacy and numeracy, road safety, and budgeting.[92] A distinct element is found in New Zealand, in terms of repeating the work hours if the offender does not perform the work satisfactorily.[93]

Community service has found to be working in a positive manner in New Zealand. In 2018, 17,829 community work sentence orders were given to offenders in New Zealand.[94] It has also been found that some offenders benefited from the projects to such an extent that they continued as volunteers even after their hours were served.[95] Though it is difficult to accurately determine an overall

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84 Marja-Liisa Muiluvuori, *Recidivism Among People Sentenced to Community Service in Finland*, 2 JOURNAL OF SCANDINAVIAN STUDIES IN CRIMINOLOGY AND CRIME PREVENTION (2001). (Recidivism was observed by comparing the subsequent recidivism in those who undertook community sentences with persons sentenced up to eight months of imprisonment.)

85 R.I.S.E, *supra* note 82.

86 *Id*.

87 Sentencing Act, 2002 (New Zealand), §15.

88 Department of Corrections, *Community sentence patterns in New Zealand: An international comparative analysis*, April, 2012, available at https://www.corrections.govt.nz/__data/assets/pdf_file/0009/672768/nz-community-sentence-patterns-april2012.pdf (Last visited on January 3, 2019).

89 Department of Corrections, *Community Work*, available at https://www.corrections.govt.nz/resources/newsletters_and_brochures/community_work_brochure.html (Last visited on March 22, 2019).

90 *Id.*

91 *Id.*

92 *Id.*

93 *Id.*

94 *Community Work Sentences Given to Offenders in New Zealand*, available at https://figure.nz/chart/eeNqWY9VMjS05H8T-P53zKcu0EMeBOWf5 (Last visited on March 22, 2019).

95 Department of Corrections, *Community Work*, available at https://www.corrections.govt.nz/resources/newsletters_and_brochures/community_work_brochure.html (Last visited on March 22, 2019).

public opinion on the community service, a high rate of orders reflects the public demand for it.[96]

D. OKLAHOMA, UNITED STATES OF AMERICA

The Oklahoma Community Sentencing Act was implemented in 2000. The Act requires each county to develop its own community sentencing system.[97] Community sentencing may involve community service with or without compensation to the offender; substance abuse treatment; education and literacy; employment opportunities and job skills training.[98] Before awarding the sentence, assessment is made on the Level of Services Inventory ('LSI') which gathers information on the offender on various parameters. A score is then arrived at and only the offenders with scores in the moderate range are eligible. If it is found that adequate assessment by means of an LSI assessment or another form of approved assessment is not possible for any reason, the offender will be deemed ineligible for any community services.[99] Further, this has to be accompanied by a written supervision plan and an appropriate community punishment which is reviewed by the court.

As per the latest data available of 2014, 22,607 orders were awarded by the end of the year.[100] Not only is the cost of community sentencing less compared to that of prisons, the annual average cost per offender has been found to be declining for community service as well.[101] Further, the rate of recidivism has also been found to be low.[102]

E. SINGAPORE

Community order in Singapore includes mandatory treatment order

A. day reporting order, community work order, community service order and short detention order.103

B. The terminology used in Singapore is distinct from that in other jurisdictions. Community work order as per §344 of Singapore's Criminal Procedure Code applies to an offender who is sixteen years of age or above,104 if the court is of the view that the performance of such orders

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96 Department of Corrections, *supra* note 88.
97 Oklahoma Community Sentencing Act, 2000 (U.S.A.), §22-988.4.
98 Oklahoma Community Sentencing Act, 2000 (U.S.A.), §22-988.8.
99 Oklahoma Community Sentencing Act, 2000 (U.S.A.), §22-988.18(C).
100 Oklahoma Department of Corrections, *Community Sentencing Annual Report FY 2014*, 7.
101 Oklahoma Department of Corrections, *Community Sentencing Annual Report FY 2009*, 29.
102 Linda G. Morrissey, & Vickie S. Brandt, *Community Sentencing in Oklahoma: Offenders Get a Second Chance to Make a First Impression*, 36 Tulsa L. J. 767 (2013).
103 Criminal Procedure Code (Singapore), 1955, §336.
104 Criminal Procedure Code (Singapore), 1955, §346(1).

> associated with the offence under the supervision of a community work officer will lead to reformation.105 The order of the court awarding community work specifies the maximum number of hours to be performed and any other conditions as the court may deem fit.106

§346(2)(a) of Singapore's Criminal Procedure Code further provides for community service orders to be awarded post satisfaction regarding suitability of the offender examined on the basis of physical and mental condition of the offenders. Further, a report is also called upon from the community service officer regarding the suitability of the offender. The remaining provisions are similar to §344. Though the Code is may not be too detailed in relation to community service orders, it can be inferred from available annual reports that community service orders have been implemented since 2011 for offenders aged 16 years old and above, who have committed offences punishable with a term of imprisonment not exceeding 3 years, and as of 2016, such orders were implemented with a tenure of forty to two hundred and forty hours.[107]

In Singapore, offenders have found themselves to have benefited from community service orders by acquiring new skills, life values and sensitisation as human beings.[108] In 2016, sixty seven offenders were placed on the CSO and ninety percent of them completed it successfully.[109] The lesser number of sentences can arguably be attributed to the overall low rate of crime in Singapore.

F. SPAIN

Article 49 of the Criminal Code, 1995 of Spain provides for community service wherein the offender performs specific activities of public utility which may have relation to the offence committed, for a maximum of eight hours. Community service may range from thirty one to one hundred and eighty days for less serious penalties.[110] In some cases, each day of imprisonment has to be transformed into one day of service.[111] The order is required to be completed within one year of beginning the work,[112] which is generally not possible, particularly for offenders with full-time employment.[113] Thus, the orders are usually not completed

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105 Criminal Procedure Code (Singapore), 1955, §344(4).

106 Criminal Procedure Code (Singapore), 1955, §344(6).

107 Ministry of Social and Family Development, Government of Singapore, *Probation and Community Rehabilitation Service Annual Report 2016*, 55.

108 *Id.*, 44-46.

109 *Id.*, 54.

110 The Criminal Code, 1995 (Spain), Art. 33(3)(k).

111 The Criminal Code, 1995 (Spain), Art. 88.

112 The Criminal Code, 1995 (Spain), Art. 40.

113 Ester Blay, *It could be us: Recent Transformations in the Use of Community Service as a Punishment in Spain*, 2 European Journal of Probation 65 (2010).

within one year and are capable of expiring.[114] This is an unnecessary procedural hurdle and should arguably be done away with.

The Spanish Criminal Code further provides that the work provided under community service should not be against the dignity of the convict or for the attainment of economic interests.[115] The law suggests that community service orders may also include participation in workshops or trainings or re-education programmes on labour, culture, traffic education, sexual and other similar matters.[116]

In recent years, community service has been used extensively in Spain and there have far-reaching developments in the implementation and supervision of orders, from majorly interventionist practices towards increasingly managerial styles.[117] In 2018, 51,070 such orders were given in Spain.[118] However, this has not led to a reduction in the use of prison sentences as the prison population is growing rapidly as well.[119]

G. UNITED KINGDOM

In the United Kingdom, community service is referred to as community payback[120] and is implemented by the Ministry of Justice. First-time offenders, people with mental health conditions and those who show promise of reformation are awarded unpaid work of forty to three hundred hours depending on the gravity of the crime.[121] Apart from this, other conditions such as curfews, restrictions on travel or the requirement of wearing an electronic tag may also be imposed on the offender.[122] The extensive use of community payback is evidenced by taking a look at the statistical figures. In 2018, 83,022 orders were passed in the United Kingdom.[123]

A mixed public perception regarding community sentencing has emerged in the United Kingdom. Despite offenders having largely found it to be

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[114] *Id*., 74; Gill McIvor, Ester Blay et al., *Community service in Belgium, the Netherlands, Scotland and Spain: a comparative perspective*, 2(1) European Journal of Probation University of Bucharest 84 (2010).

[115] The Criminal Code, 1995 (Spain), Art. 49(2).

[116] The Criminal Code, 1995 (Spain), Art. 49(5).

[117] Blay, *supra* note 113.

[118] Instituto Nacional De Estadística, *Conviction Statistics 2018*.

[119] Blay, *supra* note 113.

[120] Government of United Kingdom, *Community Payback*, available at https://www.gov.uk/community-sentences (Last visited on January 21, 2019).

[121] *Id*.

[122] Elena Kantorowicz, *The "Net-Widening" Problem and its Solutions: The Road to a Cheaper Sanctioning System*, 10 (2013), available at http://www.antoniocasella.eu/nume/Kantorowicz_2013.pdf (Last visited on January 24, 2019).

[123] Ministry of Justice, *Criminal Justice System and Offenders Criminal History*, available at https://moj-analytical-services.github.io/criminal_history_sankey/index.html (Last visited on March 23, 2019).

helpful, the public is still not convinced that it is as effective as a prison.[124] The offenders are ordered to undertake an education, training and employment course which makes them capable of taking up jobs in future.[125] However, the instances of breach by the offenders are frequent and they have to be sent back to the prisons or alternatively two hundred hours of unpaid work are added to their sentences.[126] However, it is being recognised that community payback has an increasing role to play and hence, reforms such as enlisting more community groups and involving the private and voluntary sectors are being taken up to help in the successful enforcement of the program.[127]

H. UGANDA

In Uganda, community sentencing was introduced by Community Service Act, 2000.[128] After checking the eligibility of the offender from a pre-sentence report, unpaid work of a maximum of six months can be awarded.[129] In certain cases it may also involve activities such as speaking to high school students about the dangers of drunk driving and underage drinking.[130] In cases of breach of the order, the orders may be cancelled, varied, or a fine may be imposed.[131] Uganda has a dedicated body to exclusively deal with such orders, viz. the Directorate of Community Service along with the National and District Community Service Committee.[132]

Studies indicate that the award of community service orders has decreased prison population.[133] In 2016, the number of orders was 10,975 in Uganda.[134] Since 2001, approximately $3.7million in savings by the government and $860,000 as efficiency savings to placement institutions in the form of labour provided by offenders have been recorded.[135] Further, a very positive perception has been found in the community regarding such orders. The offenders have found

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[124] *Can community sentences replace jail*, BBC NEWS, available at http://www.bbc.com/news/magazine-10725163 (Last visited on March 21, 2019).

[125] *Id.*

[126] *Id.*

[127] *Id.*

[128] Community Service Act, 2000 (Uganda).

[129] Community Service Act, 2000 (Uganda), §4.

[130] Uganda Radio Network, *Community Services Sentences Can Reduce Prison Congestion*, available at https://ugandaradionetwork.com/story/community-services-sentences-can-reduce-prison-congestion (Last visited on March 10, 2019).

[131] Community Service Act, 2000 (Uganda), §5.

[132] Community Service Act, 2000 (Uganda), §10.

[133] Uganda Radio Network, *supra* note 130.

[134] MINISTRY OF INTERNAL AFFAIRS, GOVERNMENT OF UGANDA, *National Community Service Programme Annual Report 2015-16*, 1.

[135] Penal Reform International, *Making Community Service Work A resource pack from East Africa*, (2012), available at https://cdn.penalreform.org/wp-content/uploads/2012/05/Making-Community-Service-Work-A-Resource-Pack-from-East-Africa-2MB.pdf (Last visited on March 3, 2019).

themselves to be benefited by working and building a personal and professional network.[136]

IV. UNDERSTANDING THE SYSTEMS OF COMMUNITY SENTENCING

From the above discussion, it can be broadly concluded that community system has been mostly faring well in all the aforementioned jurisdictions. In all the aforementioned countries, community service has been brought to solve the problem of overcrowding of prisons and increasing costs as well as to rehabilitate the offenders, especially first-time offenders convicted for petty offences. Many of the studied jurisdictions (barring New Zealand, Singapore, Spain and United Kingdom) conduct a pre-sentencing screening of the offenders to assess their suitability and thereby a report is prepared by the concerned department and submitted to the judge. Oklahoma has a comparatively complex pre-screening process where not only is a detailed report sought but also a supervision plan is called for in advance.

Further, community service in Spain and Singapore require that the work should have some relation with the offence committed. The number of hours varies in each jurisdiction wherein a range of minimum and maximum hours has been set up. Finland appears to be the most lenient as it converts one day of imprisonment into one hour of community service orders.

Some jurisdictions such as New Zealand offer distinctive features, which incentivises the successful performance of the offender by shortening the sentence by ten percent if the offender performs good work and/or offering him twenty percent of the hours on skill training. Unlike other jurisdictions, paid community work in New Zealand and United Kingdom may also involve electronic surveillance. Some jurisdictions such as New Zealand, Australia, Spain, Oklahoma and Finland also require the sentence to be completed within a given time frame. Further, in certain jurisdictions community sentencing is monitored by a specifically set up institution or by probation boards. A breach of the community sentence can be dealt with a fine, an increase in the hours of work or sending back the offender to prison. New Zealand offers another exclusive feature viz. requiring the work hours to be repeated if the offender does not perform the tasks satisfactorily.

While it is difficult to assess the public perception regarding the sentence accurately, it has been found in most jurisdictions that the public is optimistic considering the rate of use of community service orders. Yet certain sections of the population may show reservations to community sentencing in jurisdictions where it is implemented strictly, such as in the United Kingdom. From the

[136] Uganda Radio Network, *supra* note 130.

offender's perspective, community sentencing has been positively received due to its rehabilitative and restorative nature. Further, the rate of recidivism in community sentencing has also been found to be better than that in prisons. In all the aforementioned jurisdictions, community sentencing orders have been resorted to quite extensively and have been found to be successful.

V. A SUGGESTED MODEL OF COMMUNITY SERVICE FOR INDIA

It can be concluded from the foregoing discussion that conventionally, community service schemes usually require first-time petty offenders to undertake a predetermined and court-mandated number of hours of unpaid supervised work. While ostensibly beneficial, the models used abroad cannot be transplanted while seeking to implement community service as a sentencing measure in India. Resultantly, various issues such as those of determining the suitability of offenders, the conditions to be imposed, the nature and duration of the work, the measures for monitoring, and the issue of breach of the order have to be analysed while devising a model of community sentencing for India.

A. SUITABILITY OF THE OFFENDER

A single day in prison can be a harrowing experience and the psychological consequences of the same leave an indelible imprint, especially on young offenders. Thus, it is argued that it is appropriate to award community service to first-time offenders convicted for petty crimes or defaults after taking into consideration other relevant circumstances, as provided in this Part. In general, the first-time offenders who are convicted for petty offences which are not punishable for more than one year, or those involved in cases of default of monetary penalties, can be considered for the purpose of awarding community service orders,[137] in order to provide them with an opportunity for repentance and reformation. This is also apparent from the analysis of various jurisdictions in Part III wherein community service has been found to be a punishment of intermediate nature, neither being extremely light nor too stringent for the petty offenders who perform them.

Such orders however, are not suitable for offenders convicted of serious offences as punishment has to be commensurate to the nature of offence as is evident from the cases referred in Part II. However, deviating from this convention, the Hon'ble Supreme Court in State v. Sanjeev Nanda[138] awarded granted community service to the offender for the offence of culpable homicide not amounting to murder. The sentencing in this case indicates a possible departure from the general

[137] The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders*, Enhancement of Community-Based Alternatives to incarceration at the sentencing stage of the Criminal Justice Process*, available at http://www.unafei.or.jp/english/pdf/RS_No61/No61_25RC_Group2.pdf (Last visited on January 24, 2019).

[138] State Tr. P.S. Lodhi Colony New Delhi v. Sanjeev Nanda, (2012) 8 SCC 450 : AIR 2012 SC 3104.

inclination towards exclusion of community sentencing as a means of punishing graver offences. In fact, the Apex Court opined that community service by the offender in the case would be beneficial to the society.[139] Nevertheless, it is emphasised that courts need to exercise due caution while ordering community sentence by considering the facts and circumstances of each case so as to not interfere with the overarching purpose of the criminal justice system.

The nations of Australia, Finland, Uganda and the state of Oklahoma necessitate the submission of a pre-screening report by the designated agency to the judge in order to facilitate a decision regarding the suitability of the offender for the service. However, in the Indian context it appears appropriate to not make the process cumbersome from the initial phases of bringing community service into the criminal sentencing regime. The judge could instead make the assessment himself based on certain parameters while awarding the sentence.

Some suggestive parameters which could be considered in such determination are the nature of crime committed, the criminal antecedents, the mental and physical condition of the offender, his or her willingness to engage in the program, the relative threat posed to the society, the room for reformation and the chances of reoffending. Opinions of experts may nonetheless be sought in order to ensure that a correct assessment is made by the judge. A state agency may be designated in the meantime with officials being specifically trained to carry out assessments for the purpose of advising judges about the suitability of offenders for partaking in community service as punishment for their offences.

B. NATURE OF WORK

The objective of community sentencing is to render services that are beneficial to the community and restore, to the extent possible, the wrongs committed by the offender. The nature of work, therefore, should be such that it not only helps the society but also rehabilitates the offender by assisting in the acquisition of new skill sets. It is suggested that tasks including but not limited to cleaning of public spaces, collection of waste material, planting of trees, gardening, assisting the elderly, painting and beautification of public areas, civic volunteering in road traffic and working for the betterment of such youth as is under risk, can be ordered.

The nature of the work ordered should be assessed as per the specific needs and skills of each offender. For instance, if the offender is pregnant or feeble i.e. incapable of undertaking physical labour, the nature of work awarded should take into consideration her special needs.[140] The sentencing should incorporate

[139] State Tr. P.S. Lodhi Colony New Delhi v. Sanjeev Nanda, (2012) 8 SCC 450 : AIR 2012 SC 3104, ¶60.

[140] The Community Service Regulations, 2001, Second Schedule, Part A (Uganda), Reg. 7.(The Court must specify in the Order the nature of work to be performed by the offender and such work

activities capitalising on the relative strengths of the offenders for the benefit of society, i.e. if an offender is skilled in a particular vocation, the potential should be utilised in the work awarded as much possible. A similar system has been adopted in Uganda wherein the offender has to be matched with an appropriate institution. As an example, a doctor could be ordered to perform community service at a local clinic.[141] However, in such case, it would also be consequential to ensure that the doctor has not been sentenced for any offence related to his medical practice.

It is to be noted here that evaluating the nature of work to be awarded after taking due factors into consideration vests a substantial discretion with the concerned authority which may potentially pose certain issues. Concerns relating to the same have been raised in studies conducted in foreign jurisdictions.[142] The discretion is similar to that exercised by judges in determining the duration of a sentence or the amount of fine. In order to address such concerns, judges in the United Kingdom assess the facts, the guilt of the offender, the level of harm caused and thereupon use sentencing guidelines to reach a proportionate sentence.[143] It is submitted that a similar mechanism can be adopted in India, which incorporates proper sentencing guidelines, at least for community service sentences by taking into consideration international best practices. The existence of guidelines and the ability of the public to examine if a sentence of community service corresponds to the guidelines can arguably curtail the possibility of an arbitrary exercise of discretion to a large extent.

Before awarding certain type of community work to an offender, it is also desirable that there be a direct connection between the nature of the work assigned and the crime committed by the offender so as to enable the offender to witness the first-hand damage created by his offence.[144] This has been recognised in Spain and Singapore wherein the laws state that the convict shall perform specific activities of public utility that may consist of tasks similar to the nature of the offence committed.[145] This correlation also serves the purpose of reparation, wherein the work undertaken by the offender may potentially benefit the whole of the community and repair, albeit in a symbolic way, the harm caused through the offence.[146]

For instance, in one case, an offender booked for drunken driving was ordered to undergo four hours of training for at least 15 days and help the

should not be beyond the capability, physical strength or actual ability of the offender).

141 The Community Service Regulations, 2001 Second Schedule, Part A (Uganda), Reg. 17.

142 Turner, *supra* note 62.

143 Sentencing Council, *Sentencing Basics*, available at https://www.sentencingcouncil.org.uk/ (Last visited on January 21, 2019).

144 Turner, *supra* note 62.

145 *Id.*

146 JA Brandariz García, La Pena De TrabajoEnBeneficio De La Comunidad Como Sanción Penal 103-104 (2002).

traffic police sensitise other offenders against traffic violations.[147] Although many forms of work can benefit the public, if special care is taken to award community work which has an inherent relation with the nature of offence, it is argued that the chances of reformation in the offender are likely to be higher.

Similarly, a person convicted for mischief could be ordered to repair the property damaged by him or some other property. Further, an offender convicted of causing hurt or grievous hurt could be required to perform community service at hospitals and disability rehabilitation centres, provided that it is determined that he shall not cause any hurt to the vulnerable persons around him during the course of such community work placement. It is posited that placing offenders in such environments can help an offender to realise the nature of damage caused by his acts, thereby serving as the first step towards his reformation.

However, this requirement of having a correlation between the offence committed and the nature of work, despite being desirable, should not be viewed as a mandatory precondition to the performance of the sentence. Hence, in the cases where such coordination is impossible due to cogent reasons, the offender should be allocated some other work, irrespective of there being no correlation, subject to fulfilment of other requirements. This is necessary to ensure reduction in procedural hurdles and allow for successful execution of community service sentences.

Further, it has to be taken into consideration that the majority of the prison population in India belongs to the marginalised sections of society and is not suitably educated or trained to meet the market demands.[148] Evidently, some basic training of offenders is required to allow them to effectively engage in community service activities. Such skill training is also particularly necessary to avoid recidivism and to equip the offenders with the ability to be employable. Moreover, if possible, community service sentences should also mandate attendance of set hours of anger management sessions, counselling sessions, mental health treatments or vocational trainings, which can be crucial for their rehabilitation, as seen in the case of New Zealand where up to twenty percent of the sentence may be dedicated to such activities.

Finally, while selecting placement institutions for serving community sentences, a page can be taken out of Uganda's book. It is to be ensured that the selected institutions provide specific services to the community. For instance, public schools, hospitals, health clinics, foster homes and orphanages can serve as viable centres of community service. Further, the construction or maintenance of public roads, environmental conservation and enhancement works and projects

[147] Arvind, *supra* note 48.
[148] *See* Ministry of Home Affairs, *supra* note 9, i-xxiii.

for water conservation are beneficial alternatives as well.[149] It is also be seen that the institution should be within a reasonable travelling distance of the offender and should have work available that would be within the range of the offender's ability.[150]

C. DURATION OF WORK

In keeping with the principle of proportionality in sentencing, the duration of community work awarded should be proportionate to the gravity of the offence, so as to ensure that the orders are received seriously. As seen in Part III, several jurisdictions have specified the range of minimum and maximum number of hours that can be awarded, with discretion being vested in judges to decide the quantum of hours that should be awarded in the given facts of a case. However, adoption of the Spanish model of transforming each day of imprisonment into one day of a community work, with a maximum of eight hours each day, could also be considered in India as a static standard for specific offences instead of relying on a dynamic range of hours. It is argued that this can help resolve the issue of the community sentence not being 'strict enough' for relatively graver offences, if awarded in any case.

Over time, the development of a pre-defined method of determining the duration may be considered. Such a method could bind judges to calculations as per statutory provisions instead of allowing for determination of community service hours on the basis of subjective grounds. It is expected that this would bring uniformity whereby two offenders who may have committed the same offence would not be awarded different sentences. Further, to incentivise better performance, it is suggested that the reduction of sentences by about ten percent, in terms of tenure, if the offender performs well could also be considered.

D. RIGHTS OF THE OFFENDER

As mentioned in Part I, the prison system in India has been severely criticised on account of the instances of grave human rights violations of prisoners. Since community sentencing is an alternative to custodial imprisonment, it is imperative for it to seek to address at least some of the vices of custodial punishment. Community sentencing in India should therefore, not unduly interfere with an offender's rights. It must be ensured that while serving their community sentence, offenders are not made to face unreasonable restrictions or unfair treatment on account of their conviction status. The offenders should also be allowed to maintain a normal family life as far as possible, while maintaining necessary safeguards in conformity with the nature of the sentence.

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[149] Ministry of Internal Affairs, Government of Uganda *National Community Service Programme Annual Report 2015-16*, 2.

[150] *Id*.

Further, to ensure that the aims of the community service are fulfilled, it is imperative that the offenders provide their consent and undertake to complete the orders voluntarily.[151] In Spain, the consent is sought twice. It is sought when the offender accepts community service as a punishment and once again when he or she agrees to a particular placement.[152] However, in India, the second consent need not be contemplated as it may pose a procedural hurdle and cause unnecessary delay, which may further undermine the punitive credibility of the sanction as has been seen in Spain, in some instances.[153] At the same time, it is to be noted that the work imposed as part of a community service sentence should not be undignified in nature and a clause should be specifically inserted to this effect in any governing legislation, as has been done in Spain.[154]

E. MONITORING

It is acknowledged that various difficulties may be encountered in the implementation of community service orders if they are not supervised properly. The monitoring of offenders during the sentence would be crucial for ensuring that they do not take unfair advantage of the system. In order to alleviate this concern, an independent agency which is not involved in the prosecution of offenders should be engaged in the supervision of the entire process post the conferment of a community service sentence. The officials of such an agency should be adequately trained to undertake such supervision in a sensitive yet pragmatic manner.

Moreover, a community service supervisor who is preferably an officer engaged in law enforcement, should be designated for each offender serving a community service sentence. The supervisor should be tasked with checking the progress made by the offender and his compliance with the conditions of the sentencing order. A comprehensive report should also be required to be prepared by the officer, which should then be submitted to the sentencing court at the end of the sentence.

Further, a private-public partnership should be developed in relation to the implementation of community service orders. It is argued that non-governmental organisations can play a crucial role not only by allowing offenders to volunteer with them for various forms of social work and imparting essential value education to them but also monitoring them alongside the government appointed supervisor to ensure transparency in the process. In order to make effective use of this partnership, it may also be mandated that the final report prepared by a supervisor regarding an offender on community service is verified by the

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151 Blay, *supra* note 113.
152 *Id*.
153 *Id*.
154 The Criminal Code, 1995 (Spain), Art 49(2).

non-governmental institution involved as the placement centre and/or the civil monitor for the offender.

Furthermore, electronic tagging systems as are being utilised in New Zealand[155] and United Kingdom[156] for surveillance of varied types of offenders, could be used to ensure that the offender was on-site during the working hours. Through the help of location detectors, law enforcement authorities can accurately examine the compliance of the community service order and detect any breaches in the same. However, while electronic tagging systems promise as a means of monitoring, they must be adopted with caution. Data storage and sharing protocols should be developed in order to ensure that data collected thereof is not misused and due regard for the privacy of a sentenced individual is maintained.[157]

F. BREACH

To maintain the sanctity of community service orders, it is necessary to deal with any breaches strictly. New Zealand's practice of requiring the repetition of the same community service order in case of unsatisfactory performance of the allotted work can be adopted in India as a means of combating the casual attitude which offenders may display in regard to their community service sentences. Further, a supplementary approach can be adopted which stipulates that minor irregularities in performance would be dealt with through issuance of warnings and imposition of fines. Imposition of curfew timings or the extension of the required number of hours of community service on the defaulting offender, as is done in the United Kingdom, [158] can also be considered in case of noted casual attitude of an offender towards the conditions of a community service order.

It is asserted, however, that cases of gross disobedience of orders should lead to re-sentencing of the offender for the original offence along with custodial imprisonment and additional penal consequences in order to set a strict precedent and to promote positive engagement of offenders with their community service obligations. In such an event, the degree of compliance with the awarded community service sentence, if any, should be taken into account in the determination of the custodial sentence. Further, it is emphasised that it must be ensured that such processes for addressing breaches of community service orders are not cumbersome or long drawn but instead are as streamlined as possible in order

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[155] *See* Sentencing (Electronic Monitoring of Offenders) Amendment Act, 2016 (New Zealand).

[156] *See* Electronic Monitoring Services, *Electronic Monitoring: A guide for criminal justice professionals*, 8-11.

[157] Probation Institute, *The Use Of Technology And Electronic Monitoring (EM) To Support The Supervision And Management Of Offenders In The Community*, December, 2017, available at http://probation-institute.org/wp-content/uploads/2017/12/PI-Position-Paper-317-EM-1.pdf (Last visited on March 23, 2019).

[158] Sentencing Council, *Breach of a Community Order*, October 1, 2018, available at https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/breach-of-a-community-order-2018/ (Last visited on March 23, 2019).

to facilitate greater correctional impact on offenders and prevent offenders from utilising the interim period to add to their wrongs through further engagement in crimes.

VI. CONCLUSION

Community service as a form of alternative sentencing has proved to be effective in various jurisdictions around the world. If such orders are implemented effectively, the services of the offenders can serve as a valuable resource for governments. With the resultant decongestion of prisons and the utilisation of offenders for providing services to the public, a reduction of burden on the state exchequer can be reasonably expected. Additionally, community service orders would not only avoid the stigmatisation related to imprisonment, but also assist in the quick assimilation of offenders back into the society. Understandably, there may be various obstacles in the efficient integration of community service orders within the broader sentencing policy of a nation. In particular, a proper legislation would be required for the execution of community service based sentences in India. Evidently, for such a legislation to be enacted and implemented, it is essential that the organs of the government adopt a positive attitude towards non-custodial approaches to criminal justice.

The police would particularly play a major role in the implementation of community sentencing and would require proper sensitisation regarding its effectiveness in the process. Moreover, the judiciary would have to play the role of a vanguard to ensure strict compliance with the orders. The courts would then have to adopt a balance between the corrective and the deterrent machinery, depending on the specific facts of each case. It would also have to be ensured that while community sentencing is encouraged, the discretion vested with the court is not misused by the privileged sections to abuse the machinery of justice. Further, it is important to keep in mind that the State shall not be able to undertake the implementation of community service sentences in isolation. In such regard, a robust community support from the general public would be required to transform the justice system to be truly rehabilitative in nature. Thus, a constructive approach towards a reformative justice administration system would need to be promoted not only among all involved state institutions, but also the society at large, in order to actualise the goals of community service sentences once it is accepted within the conventional fold of criminal sentences in India.