

Community service as punishment under the ipc criminology essay



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Community service constitute an apologetic reparation that the person is now required to make to the community what he has wronged. The Indian Penal Code was the enacted in 1860 by virtue of the classic legal draftsmanship of Lord Macaulay. If there would have been a concept of community service prevalent at that time then the authors are sure that there would have been no need to urge the inclusion of the same in the Indian Penal Code. But since this exclusion by Macaulay is because of no fault of his it is our duty to incorporate such to meet the demands of the time and to make the IPC a living social document. Section 53 of the IPC[2] provides for the various types of punishments. But these are old and do not meet the exigencies of the present day globalised world. The authors yearn for inclusion of community service as a mode of punishment. Indian draftsmen have not overlooked the necessity of such a restorative mode in recent enactments. We find the inclusion of community service in The Juvenile Justice (Care and Protection of Children) Act, 2000[3](Section 15[4]).

Community service is defined as an order that requires an offender (who must consent and be aged at least 16) to perform unpaid work for between 40 and 240 hours under the supervision of a probation officer. Formerly known as a Community Service Order. It can also be defined as

‘ A community order which requires the offender to do unpaid work in the community under the supervision of a probation officer.’[5] Moreover the work that the offender is required to undertake has some obvious relation to the nature of offence.[6]

History of community service

The first organized community service program meant systematically to be used in place of short prison sentences were established in ad-hoc basis in California in the 1960's. . Thus community service was indirect alternative to imprisonment.[7]In the United Kingdom, Parliament enacted legislation in the early 1970's giving the courts specific powers to order community service as a sentencing sanction.[8]In the early 1980's after a series of private pilot projects the Dutch implemented community service nationwide and evaluators made comparable findings.[9]It was Lenin[10]who also stressed on the importance of community service.[11]

Benefits of Community Service

Community service serves the goals of punishment, reparation, restitution and even rehabilitation. It is beneficial to the offenders[12], the community[13], the victim[14]and even to the courts.[15]So community service has both the social and the cognitive benefits. It also serves as an alternative to imprisonment (India has 32 prisoners per 1000 of population. We have 11094. 25 lakhs prisoners in India as on 31 December 2005) [16]which is morally reprehensible and indefensible[17]. Moreover Prisons have proved ineffective in their object of reforming the criminals. Research indicates that about half of all prison inmates are likely to be rearrested and returned to prison, many soon after their release from an institution. [18]Contamination is the gist of prison life. Prisons are dens of criminality. The unsophisticated offender is compelled to associate with the hardened professional criminals and thereby he learns not only the techniques of committing the crime but also the specific drives, rationalisation and

attitudes of crime.[19]The Community Service Program is intended to add some refinement by requiring the offender to put back into society through performing a job for the community.[20]

Not only do offenders need to be addressed as active participants rather than as passive recipient of punishment or treatment, but they also need to be positively motivated to engage in the process of change to law-abiding lives. Performing work for the community, as well as requiring offenders to pay back to the society helped them realize that they had contribution to make to the society.[21]

Developments in India

Macaulay may have not envisaged the need of community service as it was not prevalent at that time. But it first dawned upon India in the 42nd report[22]of the Law Commission.[23]Then an Amendment bill[24]was introduced in the Parliament[25]which was passed in the Rajya Sabha but due to the proclamation of emergency it could not be passed in the Lok Sabha and it lapsed. Again the Law Commission in its 156th report[26]urged the need to implement community service in Indian Penal system.[27]Even the Malimath Committee and others[28]recommended community service as mode of punishment.[29]

Community Service Scheme has also been started in one state i. e. Gujarat and it is an alternate for offences under the Bombay Prohibition Act. Another state i. e. Andhra Pradesh (Prison is a state subject)[30]has also amended the Penal Code and introduced Community Service as a punishment. This

legislation is now pending with the Union Government for their concurrence.

[31]

Cases and pronouncements

We have instances where the court has ordered the offender to do community service in lieu of the offence that he has committed. The Delhi High Court asked two businessmen to perform community service with a voluntary organisation for a year as punishment for firing three shots at their friend for fun. Justice Sanjay Kishan Kaul, while quashing a first information report (FIR) against the two businessmen Monday, asked Delhi Police not to return their gun for a year.[32] For sexually harassing a woman on the bus the magistrate asked the offender to write a 25-page essay on eve-teasing and harassment. He was asked to make 500 copies of the essay and distribute them outside schools and colleges.[33] In probably a first, the Patna High Court has given provisional bail to two accused in a mobile phone loot case on the condition that they would have to do community service at a local temple thrice a week for six months.[34]

The Indian Supreme Court though not having argued (even in their obiters) to have community service as a mode of punishment has nevertheless hinted at the importance and need for such type of restorative sanction. In one of the cases the court said-

A few other weighty factors deserve reference. All deprivation of liberty is validated by social defence and individual correction along an anti-criminal direction, public justice is central to the whole scheme of bail law. Fleeing justice must be forbidden but punitive harshness should be minimized.

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Restorative devices to redeem the man, even through community service, meditative drill, study classes or other resources should be innovated.[35]

The unacceptable anomaly

Community service was not incorporated in the IPC. The reason fascinates and confuses me. The neo democratic style of non-inclusion is too hard to swallow. The Law Commission of India circulated a letter highlighting the main issues involved in the Penal Code for eliciting views from various quarters.[36]

The letter was sent to Registrars of High Courts, the Home Secretary of the State Governments & Union Territories, the President of Supreme Court Bar Association and High Courts Bar Association, National Commission for Human Rights, National Commission for Minorities, National Commission for SC & ST, National Women's Commission, State Law Commissions, Police Officers, Advocates, Academicians and some social organisations, Institutions etc.

Responses were received from three State Governments, Seven Judges and one Additional Registrar of High Courts, Two Advocates, Six Police Officers, One State Law Commission, One Academician and Two organisations (Nirantar and Federation Indian Chambers of Commerce and Industry).[37]

Now the recommendation that came out was that the proposed section 74 should not and cannot be implemented in India. The report laid-

This section contemplates a supervisory authority to see whether the convict is working and rendering service for the number of hours specified and if he fails to do so by way of default, he has to be sentenced thereafter. We think

an open air prison system is better suited from the point of view of the correctional measures rather than the proposed punishment of community service.

The community service no doubt is another innovation in the direction of correctional methods but as voiced in many workshops it may not be practicable to give an effect to and also may not amount to punishment.

The most horrifying aspect of the entire thing is that merely on the views of some of the judges, advocated, academicians, police officers and organizations an innovative and pulsating need of the criminal justice system was not implemented. The authors are unable to find a rational nexus with the reasons given for such non inclusion.

Reforms Suggested

What the authors want is that is not the inclusion of community service as a form of punishment but the authors want the successful and effective implementation of community service as a form of punishment under the code prepared by the legal acumen of Macaulay.

That is the reason we do not recommend to amend the IPC and include community service as a sixth form of punishment immediately as was once tried by the 1976 bill.[38]It would not be an inclusion as we nowadays find the Indian legislators just amend and insert new provisions[39]in the enactments without looking at its suitability and implementability.[40]

The authors suggest an area approach (AA) in the inclusion of community service as a mode of punishment. Firstly few selected areas must be

selected which have the resources and concentration of specific crimes occurring in specific areas.

Firstly, the Union must select few states and urge them to implement community service programs in few select areas. These areas must be selected by the state themselves with the concurrence of the Union. The areas should be selected on the basis of criteria's such as prevalence of petty offences, resources available[41]etc as decided by the state governments.

The authors only intend to suggest that first implementation issues must be dealt with as per the acumen and foresight of the legislature and the executive. Then only we can dream of such a form of sanction. This was one precise lacuna in the 1976 Amendment bill.

Beside this lacuna the authors find no other major loophole and feel that the proposed amendment was to a very large extent acceptable. But we suggest that in all the cases where the judge convicts the accused and imposes fine as the only punishment community service should be made compulsory.

The other recommendations are as follows-

It is recommended that in order to address such problem and increase efficiency, special community service officers be appointed and trained to handle offenders on community service.

A lot of publicity should be given to this schemes initiation so that even the grass roots and the have-nots of the society are aware of such a change. The spread of the scheme must not be confined to the legal fraternity and <https://assignbuster.com/community-service-as-punishment-under-the-ipc-criminology-essay/>

experts. It must not remain a burning topic for the scholars and the academicians to debate and write scholarly articles and researches. The modes of publicity as newspapers, media and the government. The entire implementation and the process and the procedure of the community service scheme must be available in almost all the recognized languages of India so that the local masses are aware of it. It must be simple and clearly worded.

The cooperation of various stakeholders such as the civil servants, the judiciary, the policy-makers and all other relevant stakeholders within the criminal justice system is vital for the process of implementation of the programme as well as for its ongoing sustainability.

The implementation of such programme should be seen as the responsibility of every Indian, and endeavor should be made to help it succeed as a new intervention to replace imprisonment.

ABSTRACT

The Indian Penal Code was the enacted in 1860 by virtue of the classic legal draftsmanship of Lord Macaulay. If there would have been a concept of community service prevalent at that time then the authors are sure that there would have been no need to urge the inclusion of the same in the Indian Penal Code. But since this exclusion by Macaulay is because of no fault of his it is our duty to incorporate such to meet the demands of the time and to make the IPC a living social document.

The research paper tries to incorporate the needs and the benefits of community service in India. It would then delve upon the legal development of inclusion of community service as mode of punishment. It would be done <https://assignbuster.com/community-service-as-punishment-under-the-ipc-criminology-essay/>

by scrutinizing the reports of the law commissions, judicial pronouncements and the lapsed bills which urged such a reform.

Then authors would suggest concluding the problems in the inclusion and implementation of community service in India and how to overcome these difficulties so that IPC meets the social needs and critics find one issue sorted in criticizing the IPC and its efficacy.