A SOCIO-LEGAL STUDY OF PUNISHMENT WITH REFERENCE TO REFORMATIVE THEORY OF PUNISHMENT

A dissertation to be submitted in partial fulfillment of the requirement for the award of degree of Master of Laws

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By

SUBMITTED BY

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I wish her/his success in life.

Date:_____

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Date:_____ Abhishek Pathak

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LIST OF ABBREVEATIONS

AIR	All India Reporter
Bom	Bombay High Court
Cal.	Calcutta High Court
CBI	Central Bureau of Investigation
Cr.LJ.	Criminal Law Journal
Cl. F.	Federal Court of Claims
Del./NCT	Delhi High Court
DB/ FB	Divisional/Full Bench
Guj.	Gujarat High Court
GLH	Gujarat Law Herald
H.P.	Himachal Pradesh High Court
P./PP./Para	Page(s)/Paragraph
Pat./P&H	Patna/Punjab &Haryana High Court
Ker.	Kerala High Court
Kar.	Karnatka High Court
Mad. L.J.	Madras law Journal
MP	Madhya Pradesh High Court
NOC	Notes of Cases
QB	Queen's Bench
Ori.	Orissa High Court
Raj	Rajasthan High Court
Rep.	Represented By
Sec.	Section
SCR/SCW	Supreme Court Reporter/Weekly
SCC	Supreme Court Cases
SCAL E	Supreme Court Alamanac
V/Vs.	Versus

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CHAPTER 1

INTRODUCTION

Every saint has a past and every sinner has a future

*...**Oscar Wilde**.*

'Crime' is a phrase with a lot of nuance and may indicate a lot of various things. Having a universal definition of crime is not only difficult, but also unrealistic. It has been attempted to define by theorists and authors from their respective perspectives. In legal terms, crimes are defined as acts or omissions that are banned by laws and punished by imprisonment or a monetary penalties. The behavioural definition of crime concentrates on criminality, a personality trait that leads to the most heinous acts. To get tangible or symbolic resources, all criminal behaviours include the use of force, deceit, or stealth. 'Positivist approach, in which jurists have defined crime from the views of state, law, habitual obedience, and subjects, such as Austin defined crime from the views of state, sanction, and penalty.

Every human community is doomed to have some transgression of whatever rule of conduct imposed on its members, hence crime is unavoidable. 1 Emile Durkheim put it thus way when he explained the inevitability and universality of the crime phenomenon:

There is no civilization that is immune to the problem of criminality. It takes on many forms, and the activities that are described in this way are not the same everywhere; yet, there have always been individuals who have acted in such a way as to attract criminal persecution... There is little doubt that crime may take on unusual shapes, such as when the rate of occurrence is very high.. This kind of excess is unquestionably morbid. Simply put, what is normal is that crime occurs, as long as it does not surpass a specific threshold for each social type... Classifying crime as a normal sociological phenomenon means more than just that it is inescapable, tragically, a phenomenon owing to people's incorrigible evil; it also means that it is a factor in public health, an integral aspect of all health, and an integral feature of all healthy communities.

Austin, another well-known positivist, provides 'procedural' definition of crime. According to Austin, "a *wrong which is pursued at the discretion of the injured party and his representatives is a civil injury: a wrong which is pursued by the sovereign or his subordinates is a crime."*

Professor Paton observed that in crime state has power to control the procedure, to remit the penalty or to inflict the punishment.

Coercion secures human civilization as a shared enterprise. By coercion, we imply a situation in which a recognised authority is obligated to penalise someone who breaks the commonwealth's norms and regulations. Punishment is important for social cohesiveness to be maintained. One of the key pillars of the state is the rule of law.

The justification of specific sanctions for specific criminal breaches is one of the most contentious parts in legal theory.. Punishment is a common practise in all states. With the passage of time, the punishment methods have undergone several upgrades and alterations. The state's primary purpose is to administer justice, and it is the state's responsibility to ensure a peaceful environment for its citizens.

Thus, the idea underlying the notion of punishing a criminal is not only to offer justice to those who have been wronged, but also to preserve security and safety in society; to punish a criminal is not simply to torment or humiliate him, but there is a greater goal to be attained, which is to develop a peaceful society. In today's jurisprudence, the notion of punishment is typically related with the law of offences.

Punishment is frequently perceived as a result of crime. Whenever the accused or the offender is charged, he is required to see the repercussions or consequences of the offence in the form of different punishments imposed by the courts in accordance with the legal system.

Simply condemning crime is insufficient; it must be taken to its logical conclusion that crime does not pay by punishing the perpetrators. Punishment is the action taken by the commonwealth

against an offending member. Punishment is a kind of societal disapproval that does not always include physical suffering. "Sanction is socially structured and consists in a loss of possession-life, freedom, or property," said H Kelson in his General Theory of Law and State.According to Jeremy Bentham, "punishment is evil in the shape of a remedy that acts on fear." Johan Finnish has stated that a person's delinquent behaviour should be taught a lesson with an iron hand rather than a melody. "Almost every member of society needs to be taught what the law's requirement—the common road for achieving the common good—really is: andVivid drama of the arrest, conviction, ... punishment of those who deviate from that prescribed common route.

Punishment is justified for a variety of reasons, but because sanctions serve a vital role, criminal law aims to eliminate self-help and private punishments. When society recognises the need for penalty, it must be implemented jointly, formally, legally, and openly.

Many authors have proposed various theories of punishment, but they may generally be divided into two categories: non-utilitarian and utilitarian. The focus and aims of these ideas are what set them apart: Non-utilitarian theories look backward, interested in previous deeds and mental states; utilitarian theories look ahead and backward; and mixed theories look ahead and backward. The utilitarian claims that punishment is given to reduce crime and is used as a means to a goal.

The utility theory was questioned and rejected by George Hegel and Immanuel Kant, who offered the retributive theory of punishment, which is non-utilitarian and based on the premises that punishment is not a means to a goal but a goal in itself. Even 20th century researchers are caught up in the tug of battle between George Hegel and Immanuel Kant on one hand, and Jeremy Bentham on the other. Lord Denning, testifying before the Royal Commission on 'Capital Punishment' in 1949, stated the following:

“The severity of the penalty meted out for serious crimes should fully reflect the public's abhorrence of them. It is a fallacy to see the goal of punishment solely as a deterrent, reformative, or preventative measure. The ultimate rationale for any punishment is not that it is a deterrence, but that it represents the community's strong repudiation of a crime: and from this perspective, there are some crimes that need the most emphatic denunciation of all, namely the death sentence."

The sanctity of the criminal procedural code stems from and is rooted in Article 21 of India's

constitution, which states that no one shall be deprived of his or her life or liberty unless in accordance with legal procedures. Over the course of the year, Indian courts have interpreted this as due process of law, implying that legal procedures must pass the test of reasonableness.

Over the course of the year, the legislature has worked tirelessly to attain this aim of reasonability. Reverberations of the same may be seen in recent amendments, including those based on the recommendations of the Justice J S Verma committee, which was formed in the aftermath of the 2012 Nirbhaya rape incident and aims to lay out offence-specific tailoring of procedure, so that it protects not only those who are subjected to the procedure but also those who invoke it. Keeping in mind the aspirations of legal luminaries throughout the world, as represented in global conferences and conventions, the balancing act is definitely a difficult assignment.

As has been observed by honorable Supreme Court of India:

"The preservation of human rights is inextricably related to the concepts of the rule of law and due process." When a citizen has recourse to the courts, such rights can be properly maintained. It must be clearly known that a trial whose primary goal is to discover the truth must be fair to all parties involved. There can be no analytical, all-encompassing, or thorough explanation of the notion of a fair trial, and it may have to be determined in a seemingly limitless number of real-life scenarios with the final goal in mind, namely, the ultimate goal of justice.If something said or done before or during the trial degraded the level of fairness to the point where a miscarriage of justice occurred It will not be accurate to suggest that just the accused must be treated decently.

That would include a Nelson-like focus on the requirements of society as a whole, as well as the victims' family members and relatives. In a criminal trial, everyone has the right to be treated equally. Denying the accused a fair trial is as much an injustice to the victim as it is to society.

A fair trial would certainly imply a trial before an impartial judge, a fair prosecutor, and a judicially calm setting. A fair trial is one in which there is no bias or prejudice for or against the accused, the witnesses, or the cause being tried.

Section 53 of The Indian Penal Code under chapter 3 provides for the punishments that are inflicted or awarded by the courts of law. The punishments to which offenders are liable under the provisions

of the code are:

-Death.,
-imprisonment for life
-Imprisonment, which is of two descriptions ,namely:

(1) Rigrous,that is, with hard labour;
(2)Simple;
-forfeiture of property;
-fine.

The criminal courts face a difficult problem when it comes to punishing someone for an offence they committed. This is a practise that the courts must pursue with zeal. Adjudication isn't something that can be reduced to a few simple ideas. Every case must be examined in its own unique way, resulting in judgements and penalties that are consistent with natural justice principles and a fair and unbiased system.

In the field of criminology, there are many ideas of punishment that are used by courts in various nations.

As a result, in assigning punishment to the offender, the theories of punishment are applied to the instances. The court applies the theories based on the facts and circumstances of the case, the seriousness of the offence, the offender's mental condition, and several other criteria. Courts in India generally take three theories in consideration i.e. preventive, deterrent and reformative theory leaving the retributive theory of punishment.

These are:
1-Retributive theory
2-Preventive theory
3-Deterrent theory
4-Reformtive theory

This research deals punishment with reference to reformative theory of punishment in Indian penal system.

RESEARCH PROBLEM:

The dissertation topic "A Socio-Legal Study of Punishment with Reference to Reformative Theory of Punishment" addresses a central problem in contemporary legal systems, namely the effectiveness and fairness of punishment as a means of social control and justice. The problem statement for this dissertation could be:

Despite the evolution of legal systems over time, punishment as a means of social control and justice remains a highly contested topic. There is an ongoing debate regarding the effectiveness and fairness of punishment in achieving its stated objectives, including deterrence, rehabilitation, and retribution. In this context, the reformative theory of punishment has emerged as an alternative approach that seeks to address the limitations of traditional punitive measures. However, there is a need for a more comprehensive socio-legal study of the implementation and impact of reformative theory in different legal systems. Therefore, the problem statement for this dissertation is to explore the following research questions:

1. What is the current state of punishment in contemporary legal systems, and what are the challenges and criticisms of traditional punitive measures?
2. What is the reformative theory of punishment, and how does it differ from traditional punitive measures?
3. How have different legal systems implemented the reformative theory of punishment, and what are the outcomes and challenges of this approach in practice?
4. What are the social and legal implications of the reformative theory of punishment for the protection of human rights and the rule of law?
5. What are the prospects and limitations of the reformative theory of punishment in achieving its stated objectives, and what recommendations can be proposed to enhance its effectiveness and fairness?

AIMS AND OBJECTIVES OF THE STUDY:

1. To provide an overview of the current state of punishment in contemporary legal systems, including its historical development, theoretical underpinnings, and challenges.
2. To analyze the reformative theory of punishment, including its conceptual framework, key principles, and the extent of its adoption in different legal systems.
3. To examine the implementation and impact of the reformative theory of punishment in different legal systems, including the effectiveness and fairness of the measures adopted, and the challenges encountered in practice.
4. To explore the socio-legal implications of the reformative theory of punishment for the protection of human rights and the rule of law, including issues related to the treatment of offenders, the role of the state and civil society, and the relationship between punishment and social justice.
5. To assess the prospects and limitations of the reformative theory of punishment in achieving its stated objectives, and to propose recommendations for enhancing its effectiveness and fairness in practice.
6. To contribute to the theoretical and practical debates on punishment and the reformative theory of punishment, by providing a comprehensive analysis of the socio-legal aspects of this topic.
7. To develop research skills in conducting a socio-legal study, including the use of relevant legal and social science theories, empirical research methods, and ethical considerations.

RESEARCH HYPOTHESIS:

1. The reformative theory of punishment will demonstrate greater effectiveness in achieving its stated objectives of social control and justice than traditional punitive measures.
2. The implementation of reformative measures will lead to a reduction in recidivism rates and an improvement in the social reintegration of offenders.

3. The reformative theory of punishment will require greater investment in resources, training, and coordination than traditional punitive measures, but will ultimately lead to more cost-effective and sustainable outcomes.

4. The adoption of the reformative theory of punishment will face resistance from various stakeholders, including the public, the judiciary, and the criminal justice system, due to the perceived risks and uncertainties associated with this approach.

REVIEW OF LITERATURE:

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2. Matthew B. Robinson (2008), Death Nation The Expert Explain American Capital Punishment – the author has analyzed the death penalty in America in detail while explaining the history, laws of death penalty and methods of execution prevalent in

America. The author has discussed the justification for death penalty along with its deterrent effect on the society and also discussed the future of death penalty in America.

3. Shilpa Jain, Right To Life And Personal Liberty (2017) Center for Advanced Studies in Human Rights (CASIHR) – The author has very efficiently discussed the cases of Indian Judiciary on the sensitive issues like right to life, 2 right to die, right to healthy and pollution free environment, right to speedy trial etc. with complete facts of the cases and the discussion of the judges based on the laws is beautifully explained. The cases in the chapter on judicial activism and right to life has been referred from this piece of work.
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5. Richard C. Dieter (2008) discussed in his research paper "Methods of Execution and Their Effect on The Use of The Death Penalty in The United States" the various methods of execution of death penalty as both the traditional and modern methods and discussed its effect on the American society.
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9. Shallu B.A. (2010) has written in her article criminal or any person should not beleft without except when he might be more dangerous of set free after some period under article 21 of Indian constitution and it postulates person depressed of life in procedure, the death penalty is fair, reasonable and practical.

METHODOLOGY

This study article is the result of a combination of doctrinal and non-doctrinal approaches. The research is both descriptive and analytical in nature Primary and secondary data sources are included in the data collecting process. Secondary materialslargely consist of books, journals, and web sites, while primary sources include the Questionnaire produced by the researcher for the aim of this research.

SUMMARY OF CHAPTERS :

CHAPTER 1:Introduction

CHAPTER 2 : Theoretical and Empirical Perspectives on Punishment and Reformative Theory

CHAPTER 3: Historical and Comparative Analysis of Punishment: Evolution and Divergence of Legal Systems

CHAPTER 4: Conceptual Framework of Reformative Theory: Principles and Applications

CHPTER 5: Implementation and Impact of Reformative Measures: Case Studies and Empirical Evidence

CHAPTER 6: Prospects and Limitations of Reformative Theory: Challenges and Opportunities for Legal Reform

CHAPTER 7: Conclusion and suggestions

BIBLIOGRAPHY

CHAPTER -2

HISTORICAL AND COMPARATIVE ANALYSIS OF PUNISHMENT: EVOLUTION AND DIVERGENCE OF LEGAL SYSTEMS

The past of the prosecution of prisoners or their taking up in jail by reforming or reforming measurers is mainly the story of the inhumanity of man against man. Around the same time , it provides countless examples of his humanity and ability to lead the individual as a productive and responsible citizen into a new life.

2.1. HISTORY OF PRISON SYSTEM

The existing Indian prison system, like the current judicial system, is a product of the colonial system. The origins of the prison system may be traced back to Epic Age writings like as the Ramayana, Mahabharata, and many more. According to these legendary records, at least one state official was assigned to deal with imprisonment or karagriha. Some narrations on the jail system may be found in Manusmriti. At Rajgriha, the capital of Magadha, the Archeological Survey of India discovered the jail in which Ajatasatru imprisoned his father, Bimbisara.

The writings of Huien Tsang and Fa-Hien recounting the condition of events in captivity contained a description of Ashoka's Naraka (hell).An account of Ashoka's Naraka (hell) was included in the writings of Huien Tsang and Fa-Hien narrating about state of affairs in jail. Muslim period, old forts and castles were often used as prison.

History of reformative approach:

Over time, the notions and modes of punishment in the modern period have accumulated. Different ideas and punitive tendencies were in circulation, while others fell out of favour. Penologists are found all over the world, and they are more concerned with changing offenders than with punishing them.

Europe:

After the fall of Rome in the 5th century A.D., and until the start of the 6th century A.D. Europe was engulfed in the Middle Ages in the 13th century. What is known as a "Dark Age." The church was a powerful social influencer during the time, as it had near total control over men's thoughts. It's possible that the church will do it to legitimise the church's harsh punishment of deviants based on the idea of predestination.

Cellular jails were not created until the 18th century, and only in the middle of the century was anything significant done in the area of prison reform. The deplorable situation of 18th-century jails prompted philanthropists in the late 18th and early 19th centuries to launch a push to ameliorate jail conditions, focusing on reform measures in particular. During the 16th century, a number of correctional institutions were built in England.

The focus was on strict discipline and hard work. Solitary imprisonment became a popular option.among 18th and 19th centuries reformers who believed that loneliness would help the offender to become penitent, and that penance would lead to reformation.

A program for the new institution made these points:

1- Treatment of prisoners should not be meant to humiliate them yet to return them to fitness, to instill discipline in them .

2- Good work habits, to awaken their interest in finding and retaining respectable employment. 3- to install in them fear of god.
4-leisure time activities including competition and games.
In England, John Howard and Elizabeth Fry were the pioneers in this viewpoint, and cell detention facilities were created in many areas as a consequence of the reformers' tireless work. Tarde G. in France, Lucchini, Lombroso, Ferri, Garofalo in Italy; Van Hamel in Holland; John Howard and Elizabeth Fry in England; Stoos in Switzerland; Prins in Belgium; Drill in Russia; Basia in Greece; Mendes Martins in Portugal; Pope Clement XI in Rome; Obermaier in Bavaria; Montensions in France

America and Australia:

Eastern State Penitentiary, which started in 1829, was the first to try out the concept in the United States. Each inmate at this facility worked alone in fields like as weaving, carpentry, and shoemaking, and only saw the officer and an occasional visitor from the outside. This was referred to as a "different system." This system was adopted as a model for prisons in a number of other U.S. states as well as most of Europe.

Meanwhile, a new reformation method known as the "silent system" emerged. The fundamental aspect of this arrangement was that convicts were permitted to work together throughout the day. Until 1850, the silent system was more popular than the separate system in much of the United States.

Captain Alexander Maconochie in Australia established the'mark system' circa 1840. Instead of completing predetermined terms, inmates were expected to earn points or credits based on the severity of their offences.

Pennsylvania system:

In the late 18th and early 19th centuries, the Quakers devised this system, with Philadelphia's Walnut Street Jail providing them with the chance to experiment with solitary confinement. Solitary confinement was initially reserved for tough prisoners who had committed more serious crimes. Others were housed in large rooms with 8 to 10 people in each, and assigned labour such as carpentry and other tasks for which they were paid. Later, it was thought that solitary confinement was an efficient form of regeneration since the individual left alone would have a greater chance of contemplation and would be protected from the contaminating influence of fellow inmates.

As a result, the detainees were held in total isolation for the duration of their sentence 5. Employment refusal was the usual, while work offers were the exception. The importance of hearing religious discourses was emphasised. In the following comments, which many may not agree with, two French observers of the American jail system acknowledged the reformative benefits of extreme solitude:

Their (prisoners') hearts are generally found ready to open, and their ability to be affected leaves

them likewise fitter for reformation; they are especially receptive to religious ideas, and the memory of their family has an unusual influence over their minds....

Nothing in Philadelphia can divert a convict's attention from his or her reflections; and because they are constantly alone, nothing can., The biggest advantage is the presence of a person who comes to speak with them... 'It is with excitement that I perceive the forms of the keepers who visit my cell,' one of the inmates told us when we visited this jail. This summer, a cricket appeared in my yard and appeared to be a friend. I never injure a butterfly or any other animal that occurs to enter my cell.

It is clear that the French onlookers only saw the positive side of the narrative, never anticipating the traumatic impact that chronic solitary confinement may have on the offender. The disenchantment occurred at Auburn prison in New York, when it was revealed that solitary confinement did not work for character change, as evidenced by the fact that many criminals returned to the institution. Many people suffered from health problems, and some even attempted suicide. As a result, a shift in prison mindset was required.

Auburn System

In comparison to the Pennsylvania system, a compromise was reached in this design. During the day, the convicts were only allowed to interact with each other if they were working hard to achieve maximum output. They were to be kept apart at night, with visits from relatives only permitted under extraordinary circumstances. Inside the jail, the inmates were not allowed to converse to one another, and tight discipline was enforced. For a long time, there was a debate in the United States over the respective virtues and drawbacks of the two systems, resulting in a split among the states on the subject.

The Pentonville jail in England was one of the first to be built in England in 1842, and it served as a model for many others that followed. The Pennsylvania system was the one that was adopted at Pentonville. In the later part of the nineteenth century, there were several notable developments in jail management.

As a result of the abandoning of transportation as an alternative punishment, jail overpopulation

became a severe problem, and from 1853 onwards, the system of "ticket of departure" was used to alleviate the situation. In this system, inmates might be freed before their sentence was completed on the condition that they did not commit any crimes and instead found work. The foundations of the contemporary parole system may be seen in this practise. Another significant step was the transfer of jail management from municipal authorities to the national government by the Prisons Act of 1877.

To deal with the problem of overpopulation, "leave" was used. In this system, inmates might be freed before their sentence was completed on the condition that they did not commit any crimes and instead found work. The foundations of the contemporary parole system may be seen in this practise. Another significant step was the transfer of jail management from municipal authorities to the national government by the Prisons Act of 1877.

Even up to this stage the new philosophy of correction and rehabilitation had not found firm roots, and the policy fluctuated between harsh and less harsh methods. This will be evident by the fate of what was called the Irish system.

Irish system:

Sir Walter Crofton, Chairman of the Board of Directors of Irish Prisons, was the architect of the Irish system. The system functioned on a three-step basis, with convicts passing through each level. At initially, the inmates were subjected to harsh discipline and were required to attend school for an hour each day. Except for those who were "violent" or "idlers," all convicts were relocated to another jail where they were given work opportunities on fortifications and paid meagre compensation. Inmates who were deemed "violent" or "idlers" were placed in shackles and fed a low-calorie diet..

The third stage aimed to continue the process and prepare the inmates for release. The inmates were sent to several tiny prison units. They were working on land reclamation projects under normal working circumstances, with no armed guards present. Moral instruction was given, and efforts were made to locate occupations for the convicts who were to be released on furlough. It appears that many modern reformatory programmes use the same approaches, such as prison labour, open institutions, and conditional release prior to the end of the sentence.

2.3. History of Sentencing: Socio-Religious Context:

Sentences were primarily retributive in character in early civilization. Individual liberties were obliterated by supernatural restrictions, and the most heinous types of punishment were employed. It was a period when breaking social standards was associated with "being possessed by evil," and as a result, individuals were deemed to be the embodiment of evil, and their terrible punishment was not only socially acceptable but also spiritually sanctioned.

Beccaria and other ancient criminologists lifted their voices against the practise of severe, awful, and diabolical punishment.

Their demand stemmed from the belief that all forms of punishment must be logically justified, and that only then can a state or society be justified in inflicting such punishment on any wrongdoer. The concepts established and advocated by classical philosophers were expanded upon by many subsequent jurists, resulting in more sentencing changes. Sentencing was further rationalised by biological, sociological, psychological, and other schools of criminology.

CHAPTER-3
THEORETICAL AND EMPIRICAL PERSPECTIVES ON PUNISHMENT AND REFORMATIVE THEORY

Human rights considerations:

A human rights argument is central to the reasons for prison reform, and it is the basis on which many UN standards and norms have been formed. However, in nations with limited human and financial resources, this rationale is frequently inadequate to inspire jail reform programmes. When assessing the need for prison reforms, it is also necessary to evaluate the negative effects of incarceration on people, families, and communities, as well as economic concerns.

A prison sentence is nothing more than a violation of the basic right to freedom. It does not entail a restriction of other human rights, with the exception of those that are inherently constrained by being in jail. To guarantee that this notion is respected, inmates' human rights are protected, and their possibilities for social reintegration are increased, prison reform is essential, in accordance with applicable international norms and standards.

Imprisonment and poverty:

Individuals and families from low-income families are disproportionately affected by incarceration. The remainder of the family must adjust to the loss of money when a family member who generates revenue is imprisoned. The effects can be particularly severe in impoverished, developing countries where the government does not give financial aid to the poor and where one person is expected to sustain an extended family network.

As a result, the family suffers financial losses as a result of one of its members' incarceration, which are exacerbated by the additional costs that must be met—such as the cost of an attorney, food for the incarcerated person, transportation to jail for visits, and so on. Former inmates are typically subject to socio-economic exclusion when released, often without work opportunities,

and are often vulnerable to a variety of predators.

Public health consequences of imprisonment:

Prisons have a number of negative effects on people's health. Because they primarily originate from poorly trained and socioeconomically disadvantaged portions of the general population, with little access to adequate health care, prisoners are more likely to have chronic health conditions when they enter prison.

Their health deteriorates in overcrowded prisons, where nourishment is poor, sanitation is inadequate, and fresh air and exercise are generally unavailable.

Mental disorders, HIV infection, TB, hepatitis B and C, sexually transmitted infections, skin disorders, measles, malnutrition, diarrhoea, and accidents, including self-mutilation, are the leading causes of morbidity and mortality in prison. Among nations where tuberculosis is prevalent in the general population, the prevalence of tuberculosis within jails can be up to 100 times greater. Prisoners are not isolated from society, and their health is a public health concern.

The vast majority of individuals who sentenced themselves to prison ultimately return to the broader community. So it is not in vain that prisons were referred to in various contexts as reservoirs of disease.

Detrimental social impact and the cost of imprisonment:

Because long-term connections are the cornerstone for preserving social stability, imprisonment breaks connections and degrades social stability. When a family member is jailed, family structure instability affects relationships between spouses, as well as ties between parents and children, transforming the family and culture through generations**.**

Taking into account the foregoing considerations, it's important to remember that when calculating the cost of imprisonment, it's important to consider not only the direct costs of each prisoner's upkeep, which are typically much higher than the costs of a person sentenced to non-custodial sanctions, but also the indirect costs, such as social, economic, and healthcare costs.

United nation's integrated and multi-disciplinary approach to prison reform strategy:

It is critical that prison reform not be considered in isolation from a comprehensive overhaul of the criminal justice system. According to the United Nations, successful prison reform requires improving and rationalising criminal justice processes, such as crime prevention and sentencing regulations, as well as community care and treatment for disadvantaged populations.

As a result, prison reform should take into consideration the demands of the criminal justice system as a whole and employ an integrated, interdisciplinary strategy in order to have a long-term impact. Other criminal justice agencies, such as the administration of the courts and the police, would almost always need to be included in reform plans, in addition to the prison service.

An integrated approach also considers sectors that aren't traditionally considered part of the "criminal justice system." These include, for example, the establishment of community-based substance abuse treatment programmes or psychosocial counselling programmes to which some offenders may be diverted rather than being detained, ensuring that prison services are not overburdened while trying to address the demands of an increasing number of inmates with specific requirements.

The creation and maintenance of partnerships and partnerships with other UN agencies, as well as other international and national organizations, would be extremely beneficial to the entire jail reform strategy.

The creation and maintenance of partnerships and partnerships with other UN agencies, as well as other international and national organizations engaging in complementing programmes, would be extremely beneficial to the entire jail reform strategy.

Thematic area of work in the field of prison reform and alternatives to punishment:

- Pre-trial detention ;
- Prison management;

- Alternative measures and sanction;
- Social reintegration.

Pre-Trial detention:

There are three essential aspects to consider when it comes to pre-trial detention: To begin with, pre-trial custody is overused in most nations across the world, and in many affluent nations, the number of pre-trial detainees outnumbers the number of convicted detainees. This position runs counter to international law norms, such as the ICCPR, which allow for the use of pretrial detention only under specific circumstances.

Second, pre-trial imprisonment is when criminal justice violence is most likely to occur. Recognizing the unique vulnerability of pre-trial detainees, international human rights instruments include a wide range of very specific safeguards to ensure that detainees' rights are not violated, that they are not mistreated, and that their access to justice is not hampered. Third, while pre-trial detainees should be presumed innocent until proven guilty in court and treated accordingly, pre-trial detention conditions are frequently far worse than those experienced by convicted detainees.

Furthermore, in many low-income countries, the scarcity of correctional facilities means that prisoners lack access to legal advice and assistance, resulting in a lack of a fair trial. As a result, improving access to justice, supporting legal and paralegal aid programmes, improving information management and cooperation between courts and prisons to expedite case processing, and assisting with the development of safeguards for pre-trial detainees, such as independent monitoring and inspection mechanisms, are all important aspects of UNODC's work in the field of judicial reform.

Prison management:

National legislation, policies, and practises must be guided by international standards developed to protect the human rights of prisoners in order for a prison system to be managed in a fair and humane manner. Prison officials have a responsibility to ensure that prisoners are supervised and treated in accordance with the rule of law, with due regard for their human rights, and that their time in prison

is used to prepare them for life after release. National legislation and rules governing the management of prisons, on the other hand, are frequently outdated and in need of reform.

In many countries, the prison service is under the control of police or military agencies, and administrators and personnel have received no formal training in prison administration. Employee morale is generally low, and strong leadership to promote jail reform is lacking.

3.6.3. Alternative measures and sanctions:

Overcrowding is a major problem in almost all of the world's prison systems, and in many countries, draconian sentencing policies and a lack of comprehensive social security programmes continue to contribute to the growth of the prison population. As previously stated, overcrowding is the root of many human rights violations committed in prison. In almost every country where UNODC operates, solutions to overcrowding must be investigated and implemented.

The use of non-custodial penalties and interventions often represents a paradigm shift in the approach to crime, offenders, and their role in society, from punishment and alienation to restorative justice and reintegration into the focus of penitentiary interventions, from punishment and alienation to restorative justice and reintegration into the focus of penitentiary interventions.

As a result, applying punitive penalties within the group rather than through an exclusion mechanism provides society with greater long-term security. As a result, promoting the adoption and enforcement of non-custodial sanctions and initiatives is an important part of UNODC's prison reform work.

3.6.4 Social reintegration:

Contributing to the positive reintegration of prisoners into society after their release is one of the UN's key goals in the field of prison reform. To have the greatest impact, social reintegration initiatives must begin as early as possible in the criminal justice system. This means that avoiding the criminal justice system (especially for vulnerable groups) through effective treatment services, non-custodial penalties rather than incarceration, and purposeful activities and programmes in prisons

should all be considered elements of a social reintegration strategy.

This policy requires close coordination between criminal justice institutions and social protection and health services in the community and probation services where they exist.

The bench marks for action in prison reform: the united nation standards and norms:

Key among the norm that directly relate to prison reform are:

• The United Nations' Minimum Standards for the Treatment of Prisoners.

In 1955, Amnesty International published a set of basic principles for the treatment of prisoners. In most democratic countries, these standards serve as core legal concepts. However, the document is not mandatory in and of itself.

a) **General regulations:** One of the most essential regulations in this section is that there will be no discrimination among convicts on the basis of race, sex, colour, religion, political or other viewpoint, national or social origin, property, birth, or other position. Furthermore, the prison officials are expected to respect the religious views and moral precepts of the prisoner's group. Another key rule dealing with the category of prisoners was carefully analysed by a number of countries and eventually became a basic rule in major legal systems such as those found in the United Kingdom, the United States of America, India, Australia, and Japan, among others. It specifies that distinct types of inmates must be housed in distinct facilities or portions of institutions based on their gender, age, criminal record, and other legal reasons for their confinement as well as therapeutic needs.

b) **Punishment rules**: In the current decade, when most of the top judicial offices are attempting to preserve individual rights and arguing against inhumane, humiliating, and harsh penalties, these rules have served as useful interpretive guides. Most unique forms of punishment, such

as flogging and confinement in dark dungeons, are now regarded the most inhumane and cruel• penalties. As a result, the regulations declared that all forms of physical punishment, including incarceration in a dark cell, as well as all other harsh, inhumane, or humiliating punishments, are strictly banned

Similarly, for jail offences, punishments such as solitary confinement or a reduced diet shall not be imposed unless the prisoner has been evaluated by a medical professional and declared in writing that he or she is competent to bear it. Furthermore, constraint items such as handcuffs, chains, irons, and strait jackets must never be used as a form of punishment. In addition, chains and irons are never to be used as restraints.

c) **Minimum-facility requirements**: Different sorts of convicts must be accommodated separately. Separate sleeping and clothing arrangements should also be developed, with adequate attention for sanitary living circumstances. The food supplied to the inmates must have sufficient nutritional value for their health and strength.

The convicts should also have access to television, radio, newspapers, and magazines. Furthermore, prisoners must be permitted to connect with their family and trusted friends on a regular basis, both through letters and essential visits.

- A set of principles for the protection of all people who are detained or imprisoned in whatever way.

- Fundamental Principles for the Treatment of Detainees.

- Standard Minimum Rules for Non-Custodial Measures from the United Nations (Tokyo Rules).

- Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders from the United Nations (Bangkok Rules).

- Prohibition of Torture Declaration

The following Declaration was unanimously approved by the United Nations General Assembly on December 9, 1975. The question of whether United Nations human rights and Charters are always enforceable legal duties has sparked heated discussion.

Article 2-Any act of torture or other cruel, inhuman, or humiliating treatment or punishment is an affront to human dignity and is to be denounced as a rejection of the United Nations Charter's aims and a violation of the Universal Declaration of Human Rights' human rights and basic freedoms.

Article 3: Torture or other cruel, inhumane, degrading, or punitive treatment is not permitted or tolerated by any state. Torture or other cruel, barbaric, or humiliating treatment or punishment cannot be justified in exceptional circumstances such as a state of war or danger of war; internal political unrest; or any other national emergency.

Other UN instrument relevant to prison system:

The Universal Declaration of Human Rights (UDHR) is a document that states that everyone has the right

The Universal Declaration of Human Rights, which was approved by the United Nations General Assembly in 1948, initiated a movement inside the United Nations. This text, often known as the Universal Declaration of Human Rights, established certain essential principles for the administration of justice. These principles included universal ideals such as equality of treatment, the right to life, personal liberty and security, freedom from torture, and freedom from inhumane, harsh, or humiliating treatment. The following are significant provisions from the aforementioned Universal Declaration of Human Rights, 1948**:**

Article 1-No one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 3- everyone has the right to life, liberty and security of Person.

Article 5- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or

punishment.

Article 6- Everyone has the right to recognition everywhere as a person before the law. Article 9- No one shall be subjected to arbitrary arrest, detention or exile.
Article 10- Every one is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him.

Article 11- Anyone accused with a criminal offence has the right to be believed innocent unless proven guilty in a public trial where he has been given all the protections he needs to defend himself.
• The International Covenant on Economic, Social, and Cultural Rights is an international treaty that aims to protect economic, social, and cultural rights

• The International Covenant on Civil and Political Rights is a treaty that establishes international standards for civil and political rights

• The United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

• The Treatment of Prisoners: Basic Principles

• The United Nations Declaration on the Rights of All Persons to be Free from Enforced Disappearance.

• The Convention on the Elimination of Racial Discrimination in All Its Forms.

• The United Nations Convention on the Elimination of All Forms of Discrimination Against Women.

• Law Enforcement Officers' Code of Conduct

- Law Enforcement Officers' Basic Principles on the Use of Force and Firearms

- Safeguards to ensure that the rights of persons facing the death sentence are protected.

- Recommendations of the United Nations on Life Sentences.

- The fundamentals of using restorative justice programmes in criminal cases.

CHAPTER -4

CONCEPTUAL FRAMEWORK OF REFORMATIVE THEORY: PRINCIPALS AND APPLICATIONS

PUNISHMENT AS A CONCEPT:

Punishment is a social control tool. Punishment entails inflicting some form of suffering on the culprit in exchange for his breach of the law. This is a tool for the administration of justice. For example, if a thief is prosecuted and brought before a court, his case is heard, the court issues a sentence, and the sentence is subsequently carried out by the state, this is considered punishment in the legal sense. If a father hits his son for committing larceny in his home, or if the state kills naxalites for their anti-national acts without prosecuting them, there will be no legal consequences.

These five elements have been characterized by H.L.A. Hart and professor Flew as punishment:

-There must be some kind of pain or other unpleasant result.

-It has to be for a violation of the law.

-It must be delivered by humans other than the offender on purpose
-For his offence, it must be a real or alleged offender.

-It must be imposed and enforced by a legal authority established by the legal system that the offence is committed against.

Punishment is the act of inflicting pain or loss on someone for their wrongdoings. Due to the improper purpose engaged in the act, criminal law allows for punishment. Incarnation is a type of punishment that aims to provide any victim involved revenge against the criminal, as well as prevent and hopefully rehabilitate the perpetrator. Civil law, on the other hand, tries to recompense the aggrieved person rather than penalise the criminal.

PUNISHMENT AND INDIAN PENAL CODE:

One of the important statutes that specifies and specifies punishment is Section 53 of the Indian Penal Code. Fines, simple or harsh incarceration, ranging from incarceration till the court rises to 14 years, confiscation of property, and life imprisonment are all possible punishments.incarceration and the death penalty Section 31 of the Criminal Procedure Code provides for a maximum sentence of 16 years in jail.14 years old. However, life imprisonment entails incarceration for the rest of one's life. In terms of the time constraint, When it comes to incarceration, Section 31 of the Criminal Procedure Code states that when a person is guilty of two or more offences in a single trial, the Court may, pursuant to the limitations of section 71, impose a sentence of imprisonment. sentence him for such offences to the various penalties established by the Indian Penal Code, 1860, which such Court is competent to administer; such penalties When consisting of imprisonment, the first must begin after the second has expired, in the order that the Court may prescribe, unless the court determines that they run simultaneously.

In circumstances of aggregate punishment, however, the criminal shall not be sentenced to more than fourteen years in total imprisonment, and aggregate punishment shall not exceed double the amount of punishment that the Court is authorised to give for a single offence. It is up to the court to decide whether the criminal should be punished concurrently or consecutively.

If the Court does not give instructions, it is assumed that the punishments would be carried out one after the other. still another When two or more terms of imprisonment are to run concurrently, the Court must make a formal order that they do so. Another provision of the Code of Criminal Procedure is relevant in this regard. The "14 years rule" was adopted by Section 433-A, which was later added, and now every life convict must serve 14 years in prison before being considered for

executive privilege release.

This clause was added to prevent political parties from abusing the "clemency privilege" when they gain power. Despite widespread criticism, solitary confinement has a place in the Indian criminal justice system. In accordance with section 73 of the I.P.C., Any element of an offender's sentence that is condemned to solitary confinement may be ordered by a court punishing the criminal. In the Indian Penal Code, this time is limited to a total of three months.'

Sentencing and Penal Policy

Sentencing is the most important part of the criminal justice system. It represents the essence of the criminal justice system in a specific situation, as well as the level of tolerance and retaliation for such conduct. The study of'sentencing' goes even farther, explaining numerous variables exhibited in penal policy and recommending which standards should be used to quantify criminal culpability.

The whole concept of sentencing stems from a shared concern about how to punish an offender who 'deserves' the same punishment. For policymakers and judges, determining what he deserves or how much punishment is justified in a given situation is a difficult assignment. The Supreme Court of India, in Jameel v. State of Uttar Pradesh17, appropriately said the following on sentencing:

Law should use corrective machinery or deterrent based on factual matrix to operate the punishment system. Sentences may be severe where they need to be, and tempered with tenderness where they need to be, thanks to clever modulation.

The type of the crime, the way in which it was planned and conducted, the reason for the crime, the behaviour of the accused, the type of the weapons used, and any other relevant information that would enter into the area of consideration are relevant facts that would enter into the area of consideration.

The court went on to say that:

Every court had the responsibility of imposing the appropriate penalty, taking into account the nature of the offence and the method in which it was carried out or committed. All relevant facts and circumstances bearing on the subject of punishment are anticipated to be considered by sentencing courts, which will then proceed to impose a term commensurate with the seriousness of the offence.

In Mohammad Giasuddin v. State of Andhra Pradesh18, Justice V. R. Krishna Iyer explained the concept embedded in the reformatory theory of sentence as follows:

If the psychological viewpoint and spiritual understanding we've sought to portray are correct, the police bully and the prison drill will not be able to "minister to a mind "diseased," nor will they be able to "tone down the tension," "release the repression," or "unlearn the prevention," all of which manifest themselves as debased deviance, violent vice, and behavioural turpitude. It is a truth that barbarity spawns barbarity, and pain recoils as harm, so that if treating the mentally or morally maimed or deformed man (found guilty) is the goal, waking the inner being, rather than tormenting through outward compulsions, holds out higher therapeutic chances.

Following a thorough analysis of the rules and principles governing punishment, the Supreme Court issued the following sentencing guidelines:

1. It is legal to force inmates condemned to long periods of incarceration to perform hard labour, whether or not they consent.

2. Jail authorities have the authority to allow other inmates to undertake any task they choose as long as they make a request for it.

3.It is critical that the prisoner get a fair payment for the labour that they perform. The State concerned should establish a wage fixation body to provide recommendations in order to determine the amount of fair wages due to inmates. Each state is directed to do so as soon as

practicable. 4. Until the State Government takes action on such recommendations, every prisoner must be paid wages for the work he performs at such rates or revised rates as the Government concerned determines in light of the above observations. To that end, we require all state governments to determine the rate of such interim pay within six weeks of today's date, and to report to this Court on their compliance.

4. The state concerned is ordered to enact legislation to put aside a portion of the prisoner's salary to be given as compensation to worthy victims of the crime for which the prisoner was sentenced to imprisonment, either directly or through a common fund to be established for this purpose, or in any other practicable manner.

5. The Apex Court of India stated the many variables that may be taken into account when assessing the punishment in Gurmukh Singh v. State of Haryana19. These criteria are intended to be illustrative rather than complete. These are: motive or prior animosity, if the incident occurred on the spur of the moment; the accused's intention/knowledge while inflicting the blow or injury; the gravity, dimension, and nature of the injury; the accused's age and general health condition; if the injury was caused without premeditation in a sudden fight; the kind and size of the weapon used for inflicting the blow or injury; the gravity, dimension, and nature of the injury; the accused's age and general health condition;if the hurt inflicted was not sufficient in the usual course of nature to cause death but the death was caused by shock; the accused's criminal record and unfavourable past; if the harm inflicted was not sufficient in the usual course of nature to cause death but the death was caused by shock; number of other criminal cases outstanding against the accused; the event happened among family members or close relatives; the accused's attitude and behaviour after the occurrence; if the accused took the injured/deceased to the hospital right away to guarantee adequate medical treatment; and so on. The court stated that "giving the accused a reasonable and adequate punishment is the court's binding obligation and responsibility." Every effort must be taken to ensure that the accused receives a fair and equitable sentencing.

Capital Punishment

Capital punishment is one of those topics of human concern that generates interminable debate

without yielding any scientifically testable results that are compelling to all sides of the dispute. The question of whether to abolish or not to abolish has been debated in many nations and continues to be debated in others today20.

The campaign against death punishment began in England and Europe as a result of the work of utilitarians such as Bentham and Beccaria, who argued that because punishment is an evil in and of itself, it should be just enough to deter the threat of crime, and that no excessive punishment, including capital punishment, should be imposed when a smaller penalty might achieve the same objective.

In England, the anti-death penalty campaign was spearheaded by Romilly and other reformers, as well as Sydney Silverman, whose work resulted in the near-total repeal of death punishment via the Murder (Abolition of Death Penalty) Act, 1965.

The current situation differs significantly from that which existed in England towards the end of the 18th century, when zoo offences were punished by death. The issue has occupied government and public attention in India for years, but the death penalty remains on the books, albeit it is only used in the "rarest of rare cases"21 and there is a trend to limit its application to major crimes committed under aggravating conditions.

In India, there is a debate about capital punishment.

The discussion over whether or not to keep the death penalty has been going on for quite some time. In 1956, a bill was proposed in the LokSabha, however it was defeated. In the RajyaSabha, efforts were made in 1958 and 1962 to introduce resolutions for the abolition of death punishment, but they were withdrawn each time after substantial debate in the House.

In its 35th Report, the Law Commission found that the risks associated with abolishing capital penalty could not be handled in the current status of the country22. Their impressions were summarised as follows:

The choice between abolition and retention must be made after weighing the numerous reasons

for and against retention. There is no one argument for or against abolition that can resolve the question. When coming to a decision on the matter, keep in mind the importance of safeguarding society as a whole as well as individual human beings. Many of the arguments for abolition are difficult to dismiss because of their truth or power.

The argument based on the irreversibility of death sentences, the necessity for a new methodology, the severity of capital punishment, and the strong emotion expressed by certain segments of the public in underlining deeper problems of human values is not treated lightly by the Commission.

However, given the current state of affairs in India, the diversity of social upbringing among its citizens, the inequality in morals and education in the nation, the vastness of its territory, the diversity of its people, and the critical necessity to preserve peace and order in the nation, India cannot risk the elimination of death penalty.

Arguments that are true in one part of the globe may not be valid in another part of the globe in this context. Similarly, while abolition may not make a significant difference in some regions of India, it may have substantial implications in others.On a consideration of all the issues involved the commission is of the opinion that capital punishment should be retained in the present state of the country.

The constitutional legality of capital penalty was challenged before the Supreme Court in Jagmohan Singh v. state of U.P23. (Jagmohan Singh). The "right to survive" was considered to be fundamental to the liberties provided by Article 19 of the Constitution. The Supreme Court dismissed the argument, ruling that capital penalty cannot be considered irrational or not in the public interest in and of itself, and hence cannot be considered a violation of Article 19 of the Constitution.

In Bachan Singh v. State of Punjab, the Supreme Court considered the validity of capital penalty in general and its use as an alternative punishment under Section 302. (Bachan Singh). A number of petitions were brought before the court, some of which had previously been brought in the case of Jagmohan Singh and were dismissed by the court:

1. Capital punishment is unconstitutional under Article 19 of the Constitution since the

freedoms given therein cannot be enjoyed without the basic right to life, and it defiles the dignity of the individual protected in the Constitution's Preamble. It was argued that because of the fundamental character of the death penalty, it served no societal purpose.

2. Insofar as the legislative policy enshrined in Section 302 of the Penal Code and Section 354(3) of the Criminal Procedure Code of 1973 provide judges too much authority without suitable and necessary legislative guidelines, they are in violation of Article 21 of the Constitution.

   India being a party to the Stockholm Declaration of 1977 was committed to abolish capital punishment.

All of the foregoing arguments were rejected by a majority of four justices, with Bhagwati J dissenting, and the court did not find capital penalty to be unconstitutional or irrational in general. In response to the claimed infringement of Article 19, the court ruled that "the criminal laws do not deal with the subject-matter of rights entrenched in the article in pith and substance, and hence Section 302, Penal Code does not have to pass the Article I9 test."

After reviewing all relevant case law dating back to A.K. Gopalan24 and Maneka Gandhi, the court determined that a law or order made thereunder is subject to Article 19 if the legislation or order's direct and inevitable consequences are to abridge or take away any freedom under Article 19, such as a law or order relating to preventative detention. It is not so if the statute's effect and operation on a person's basic right is remote or contingent on conditions that may or may not be present, such as criminal statutes dealing with murder, rape, or theft.

In response to the second point, the court stated that the discretion granted under Section 354(3) of the Criminal Procedure Code was to be used judicially, taking into account numerous elements in a specific scenario, and that rigorous standardisation was neither conceivable nor desirable in this regard. It was not attempted by the legislature, and it cannot be expected from the courts. As a result, Section 302 of the Penal Code and Section 354 of the Criminal Procedure Code did not infringe Article 21.

Finally, after reviewing the relevant provisions of the International Covenant on Civil and Political Rights, which served as the foundation for the Stockholm Declaration of 1977, the court concluded that the Covenant did not stand for the abolition of the death penalty, but rather required that it not be awarded arbitrarily and be limited to the most heinous crimes only.

The Supreme Court disagreed with the argument that capital punishment served no purpose, and after reviewing a large body of literature on the subject, concluded that the punishment could have a significant deterrent effect, a position shared by many eminent figures as well as the Law Commissions of India and the United Kingdom.

The court pointed out that little scientific studies on crime and punishment in general, and capital punishment in particular, have been conducted in India. Some abolitionists relied on outdated and incomplete data from both within and outside the country. It further stated that several attempts made in India from time to time to abolish or limit the death penalty to specific types of murders have failed in Parliament. The court was especially impressed by the fact that not only did many countries retain death punishment, but that it had been reinstated or that efforts were being made to revive it in many others.

In RamdeoChauhan v. State of Assam, the Supreme Court went on to say, "It is true that in a civilised society, a tooth for a tooth, a nail for a nail, or death for death is not the rule, but it is also true that when a man becomes a beast and a menace to society, he might be deprived of his life according to the method established by law..." Given our conclusions that the appellant's murders were particularly cruel, atrocious, and diabolical, a lighter sentence based only on the appellant's youth at the time of the incident cannot be considered a mitigating circumstance.

Hence the request for referring the matter to a larger Bench was rejected.

CHAPTER- 5

IMPLEMENTATION AND IMPACT OF REFORMATIVE MEASURES: CASE STUDIES AND EMPIRICAL EVIDENCES

APPLICABILITY OF REFORMATIVE THEORY IN INDIA PRISON SYSTEM AND THERAPEUTIC TECHNIQUES:

Modern criminology recognises that punishment is now viewed as rehabilitative or reformative rather than retributive or deterrent. The noble notion that every man is born good but is transformed into a criminal by circumstances is the foundation of reformative theory. The adage "If every saint has a history, every sinner has a future" is a tried and true philosophy of life that is utilised as a foundation for reformatory arguments.

Criminals should be educated not to commit crime again, according to the reformative theory of punishment, and reform should be the primary reason for punishment because it is only reform that can bring about change in the offender and transform him into an honest law-abiding citizen. This theory assumes that crime is committed in a socio-environmental context. It is assumed that most offenders commit crimes as a result of their upbringing. According to this view, punishments frequently include education/vocational training so that they can adapt into society after a set length of time.

As previously said, even in countries where enormous gains have been made in science, education, business, and industry, the therapeutic approach is still relatively new. In countries like

India, the strategy has so far been very straightforward. Prior to British control in India, the Muslim criminal code was in effect in the country, which, like other mediaeval systems, was harsh in its treatment of criminals and considered them as incorrigible with little hope of change.

Though the British adopted a criminal law system that was more lenient in terms of punishments than the Muslim code of crimes, the essential attitude toward criminals remained the same, i.e. punitive. Only in the latter three decades of British administration, and during the last three decades after Independence, was there a shift in attitude toward criminals, from punitive to therapeutic or corrective approaches. The prisons in India at the time of the East India Company's control of the country were in a horrible state. This was unavoidable in a criminal justice system where the sole purpose of a prison sentence was to discourage.

As previously stated, the situation was no better even in more developed and educated countries such as England at the time. It is unsurprising that the East India Company was unwilling to engage in non-profit humanitarian programmes such as prison improvements.

It was finally left to Macaulay to begin the effort, which he did while developing India's criminal code, which eventually culminated in the Indian Penal Code (IPC). In 1836, the government created a committee to report on the current situation.

conditions in the country's jails, and to make recommendations for future prison administration. In its report, the Committee ruled out the inclusion of any reformative ideas into jail policy, which is understandable.

This attitude was unavoidable because there was a lot of scepticism about the prospect of criminals being reformed even in England at the time. The Committee recommended excluding all reforming influences such as moral and religious teaching, education, and any system of rewards for good behaviour, and suggested the construction of central prisons where convicts may be engaged in some dull, monotonous, wearisome, and uninteresting work in which even the enjoyment of knowledge would be lacking.

The only good thing that came out of it was that the prison problem was taken more seriously from that point on. Many committees were formed and several Acts were passed as a result, and some of the milestones in the changes brought about by them are listed here.

The Second Jail Committee of 1864 recommended a certain minimum space for each prisoner inside the prison, better clothing and food, and regular medical check-up of prisoners.

The Third Jail Committee's suggestions were ineffective, but the reports of the Committees created in 1889 and 1892 led to the passage of the Prison Act of 1894. The Act continued to reflect a punitive policy that was far from reformative and modern. The Act was founded on the English concept of deterrence.

The Indian Jails Committee did not present a really progressive and modern approach in its recommendations to the government until 1919. On the deterrence element, a clear break from previous positions was made. For the first time, the concept of a convict's reform was acknowledged. The Committee made the following observations:

On the reformative side of jail labour, India's prison administration has fallen behind. It has so far failed to treat the prisoner as an individual, instead convicting him as a component of the jail's administrative machinery. It has lost sight of the impact that humanising and civilising influences might have on a prisoner's thinking.

The use of corporal punishment in prisons was opposed in the report. It was stated that while prison labour should be constructive, the primary goal should be to reform convicts. The Committee also gave helpful recommendations for convict education and after-care programmes for ex-convicts.

What has transpired in India in terms of correctional approaches is a direct result of changes in penological thought in several nations, particularly in England and the United States. Knowing how the therapeutic ideal has evolved in England and other Western countries would be beneficial..

OBJECT BEHIND REFORMATIVE THEORY

According to the reformative viewpoint, punishment is only justifiable if it is based on the future

rather than the past27. According to this philosophy, the goal of punishment should be to alter the offender through the process of individualization. It is based on the humanistic notion that even if an offender commits a crime, he remains a human being. He could have committed a crime under unusual circumstances that will never occur again. As a result, throughout his incarceration, every attempt should be made to help him reform.

The goal of punishment should be to motivate the offender to change his or her ways. He must be educated and taught some form of art or industry during his incarceration so that he can re-enter society following his release. The judge would look into the offender's character and age, as well as his early birth, education, and climate, as well as the circumstances of the offence, the intent for which he committed the violation, and other criteria.
The goal is to familiarise the judge with the specifics of the situation so that he can administer a punishment that is appropriate for the situation.

The proponents of this philosophy argued that treating offenders with sympathy, sensitivity, and love can result in a revolutionary shift in their personalities. Even the cruelly hardened prisoners can be changed and converted into helpful companions with the right words and kind recommendations. They will be degraded if they are subjected to harsh punishment. Guy continues to kick pricks. Whipping him will result in a baulk. The danger will elicit a response. Both God and man's spirit of defiance will be strengthened in prison hell. Hanging a criminal is nothing more than an acknowledgement that society has failed to reform the offender. Man's noblest sympathies and sensitivity are destroyed by corporal punishments such as whipping and pillory.

The advocates of reformative theory support only mild jail with probation as a form of punishment. Prisons, in Salmond's opinion, must be transformed into nice places of abode if offenders are to be transformed into good citizens via physical, intellectual, and moral training. There are also incorrigible criminals who are driven by an instinct rather than a habit, and who must be abandoned to their fate. However, critics point out that the fundamental and most important goal of criminal justice is deterrence, not change.

Rehabilitative punishment is another name for reformative punishment. The goal of punishment is to reform the delinquent as a person so that he can once again become a law-abiding member of

society. The focus here is on the wrongdoer's nature and personality, rather than the violation itself, the harm produced, or the deterrent effect that punishment may have. Criminology lends a lot of credence to the reformative theory.

Every crime, according to criminology, is a pathological phenomenon, a mild kind of insanity caused by an innate or acquired physiological flaw.

There are some crimes that are committed by ordinary people who willfully break the moral code. Such perpetrators should be severely punished in order to uphold the moral law's authority. According to reformative theory, offenders commit crimes primarily as a result of psychological problems, personality flaws, or social pressures. As a result, penalties are tailored to the needs of the individual offender, and often include components of rehabilitation such as community service, forced therapy, or counselling. The pre-sentence evaluation of a probation officer or psychologist is critical in assisting the correctional officer in reaching an effective sentencing decision.

According to proponents of the Reformative Theory, punishment is not imposed for the benefit of others. The criminal is subsequently subjected to punishment in order to educate or reform him. The criminal offence is a purpose in this case, not a means, as it is in the Deterrence principle. That point of view is now widely held. A criminal is punished in order to help him change his ways. This idea does not justify the death penalty. Only the perpetrator is punished in order to teach or reform him. Punishment does not always result in a rehabilitated offender.Kind treatment, on the other hand, often yields better results than punishment. It may be more conducive to a criminal's rehabilitation. Forgiveness will change the criminal's character and provide him or her the chance to repent and reform.

Obviously, this legal theory cannot account for the death penalty. This aids in the criminal justice reform process. A crime is committed, according to this idea, as a result of a conflict between a man's character and criminal intent. A person may commit a crime for one of two reasons: the incentive is higher or the limits imposed by character are weaker. The reformist approach aims to strengthen a man's character so that he does not fall prey to his own motivation. This approach

might be considered treatment.

Criminal behaviour, according to this notion, is an illness that can't be cured by killing people.
As a result, criminal penalties such as incarceration should be applied, and all prisons should be converted into residences where criminals can get physical, moral, and intellectual training in order to improve their criminal character. A crime is committed as a result of a conflict between the criminal's character and motive. A person may commit a crime because the temptation of the motive is stronger or because the character restrictions are weaker. According to this notion, punishment can be therapeutic or fulfil a medical role. Crime, according to this view, is similar to an illness.

According to this notion, you can cure someone by murdering them. The ultimate goal of reformists is to modify the offender's personality and character in order to turn him into a valuable member of society. It should be mentioned that the reform theory differs significantly from prior theories in that it aims to achieve a positive shift in the criminal's mentality in order to rehabilitate him as a law-abiding citizen. As a result, punishment is utilised to help the criminal heal rather than to torture him.

All forms of corporal punishment are condemned by reformation ideology.
The main aim of reformist thought is the rehabilitation of offenders in correctional facilities to make them law-abiding citizens. It places a higher emphasis on the humane treatment of detainees inside the jail. Instead of encouraging inmates to remain inactive in prison, this means that they should be properly informed, equipped, and trained to adapt to normal life in the community after their release from prison. This goal can be accomplished through parole and probation organisations, which are well-known as modern strategies for rehabilitating offenders all around the world.

Thus the advocates of this theory justify imprionment not solely for the purpose of isolating offenders and eliminating them from the society, but to bring about a radical change in their mental attitude through effective techniques of reformation during the term of their sentence.

Why do we need corrective measures?

> Many people consider prisons to be nothing more than institutions where criminal defendants are kept and deprived of their liberty while serving a sentence. While this is true, the concept of incarceration also strives to rehabilitate the inmates. The basic idea of incarceration-based redemption is that a person who has been incarcerated should never want to return to prison after being released. It is intended that a prisoner's contacts while incarcerated will have such a lasting impression that an ex-inmate will do everything it takes to avoid serving a second sentence.

Unfortunately, research has consistently demonstrated that incarceration does not totally rehabilitate inmates, and that the majority of offenders return to a life of crime very immediately. Many say that while imprisoned alongside their peers, the majority of inmates will discover new and better ways to commit crimes. They can also form alliances and get more involved in the criminal world. Many jails have begun to provide psychiatrists to aid convicts with mental diseases and psychological challenges in an effort to provide better rehabilitative services. In addition, prisons include classrooms where convicts can learn to read and educate themselves.

These tactics are effective and have been shown to have a good impact on offenders, assisting many of them in overcoming a background of little or no education. Offenders who complete these programmes are given a better chance to thrive and become law-abiding citizens when they are released. Offenders' rehabilitation and reformation is a very difficult procedure. Inmates are separated from the rest of society and forced to live in a culture where crime is a way of life. Many convicts will be pushed further towards a life of crime by their time behind bars, but for others, the horrors of prison life and the lessons they learn there are enough to deter them.

Offenders' rehabilitation and reformation is a very difficult procedure. Inmates are separated from the rest of society and forced to live in a culture where crime is a way of life. For many criminals, time spent in prison will push them deeper into a life of crime, but for others, the horrors of prison life and the lessons they learn there will be enough to keep them from committing crimes again.

A person does not become a criminal by birth. He occasionally gets into difficulties as a result of his association with bad company. Individuals will continue to evolve if they regard their freedom in society as a reward. If the guilty does not have this option, he will never try to reform and will instead

linger in prison. This frequently results in prison overpopulation and serious health issues. It's worth noting that the disciplinary measures are only applicable to those who have been convicted, not those who are still awaiting trial.

A procedure for separating offenders awaiting trial must be devised. A felon can be reformed and released into society by a variety of corrective procedures, because it is always preferable to reform an offender than than punish someone who is already repenting for his wrongdoing. In the end, it is a battle against crime, not against criminals. Open prisons, the concept of parole and probation, prion labour, and other disciplinary measures are used in India. Fundamental academic education designed to offer the intellectual tool needed in study and training, as well as in everyday life, is also taught in prison.

-vocational education, deigned to give training for an occupation.

-Health education.

-Cultural education.

-Social education.

Trained inmate service is also beneficial to both the prison authorities and the general public. They contribute actively in the economic prosperity of society after being released from prison. They prove to be fascinating and important social issues.

PROBATION

Although probation is theoretically a non-punishing approach of dealing with criminals, it arose from a rather punitive court system. Probation approaches are a significant departure from the traditional thinking that underpins criminal law. Efforts are made through probation to work with criminals as individuals rather than groups or concepts; to identify those criminals who can be anticipated to alter their behaviour and conduct patterns when living in the community with

assistance; and to provide support to particular offenders via a variety of non-punitive measures**.**

Despite the fact that probation is considered a non-harsh method of dealing with criminals, it arose from a rather punitive court system. Probation approaches are a significant departure from traditional criminal law philosophy. Attempts are made through probation to work with criminals as individuals rather than groups or concepts; to identify those criminals who may be anticipated to alter their behaviours and conduct habits when living in the community with assistance; and to provide support to particular offenders via a variety of non-punitive measures**.**

As a result, probation is a structure for carrying out the interventionist response to lawbreaking. It is not intended to make criminals suffer; rather, it is intended to protect them from suffering. Some hardship occurs as a result of being placed on probation, but this suffering is not purposeful and is avoided as much as possible, at least in theory. As a result, there is no need to see probation as a kind of punishment, as some have claimed in their efforts to gain support for the system.

The concept of probation may now be understood so that it may be distinguished from certain analogous techniques like parole. In England probation has not been defined anywhere in the statutes and the nearest thing to an official definition was provided by the Morrison Committee.

The "submission of an offender while at liberty to a predetermined period of monitoring by a social caseworker who is an official of the court," according to the court, is probation. It is clear that a probation order in England is not a sentence; it was the implied result of, and is now the condition of, a type of binding over, since probation began as voluntary assistance and guidance given to those bound over to be of good behaviour.

Because a probation order is issued instead of a sentence, it cannot be construed as a conviction in future proceedings unless the offender files an appeal against the order itself, claiming that he was erroneously found guilty of the claimed offence.

In England the law provides:

If a court finds that a person has been convicted of an offence (not one for which a sentence has

been fixed by law) and believes that, given the circumstances, including the nature of the offence and the character of the offender, it is more appropriate to make a probation order rather than sentence him, the court may, instead of sentencing him, make a probation order.

The position under the Indian law will be evident from the following extracts of the relevant law:

When a person is found guilty of an offence that is not punishable by death or life imprisonment, and the court finds that, given the circumstances of the case, including the nature of the offence and the character of the offender, it is appropriate to release him on probation for good behaviour, then, notwithstanding anything contained herein, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour.

It is further provided:

When an order under subsection (1) is made, the court may, if it believes it is in the best interests of the offender and the public, also issue a supervisory order directing that the offender remain under the supervision of a probation officer named in the order for such period, not to exceed one year, as may be specified therein, and may, in addition, issue a restraining order directing that the offender remain under the supervision of a probation officer named in the order for such period, not to.

As a result, Indian law is significantly different from the analogous English statute. In all circumstances where an individual is released on probation under English law, he must be placed under the supervision of a supervisor, which is not the case in India. In India, the court may not use Section 4(3) and instead release the criminal under Section 4(1) of the Act on a bond with or without sureties and without any supervision arrangement. The legislature's main purpose in enacting probation laws is to provide people of a certain type with an opportunity for reform that they would not have if they were sent to prison.

The kinds of people that fall under the purview of the government under the probation rules are not hardened or momentarily dangerous criminals, but rather those who have committed crimes because of a flaw in their character or an enticing circumstances. The court rescues the criminal from the stigma of incarceration as well as the contaminating effect of hardened prison prisoners by placing him on probation. Probation also serves another purpose, which is important but not as important as the first. It aids in the reduction of jail overcrowding by keeping many offenders on probation away from them.

Selection of offenders for probation

The two main aspects of any effective probation or parole programme are the selection of acceptable cases for placement on probation and parole, and subsequent follow-up through competent monitoring of probationers and parolees. The probation officer's report is crucial as a tool for the court in deciding whether or not to release the person on probation. If probation is

recommended, an ideal report would include information about the offender's family history, personal, societal, and economic factors, as well as a plan for the offender's correctional treatment. In other words, the probation officer must assess the offender's personality.

The court has to make the decision after taking into consideration the probation officer's report and nature and circumstances of the offence.

The most crucial factor to examine is the risk to society from releasing the offender, and whether the risk is worthwhile in light of the offender's personality and the community at large. To some extent, the legislature has done its job by stating that probation will not be granted in some major crimes punishable by death or life imprisonment. The government may also establish specific guidelines based on the age of the offender, making probation more appealing to younger offenders. In India, for example, the Probation of Offenders Act stipulates that.

When a person under the age of twenty-one is found guilty of an offence punishable by imprisonment (but not by life imprisonment), the court that finds him guilty may not sentence him to prison unless it is satisfied that, given the circumstances of the case, including the nature of the offence and the character of the offender, it would be unjust to do so.

Further, it is provided that the report of the probation officer shall be considered in order to conclude that probation order would be undesirable. CrPC makes release on probation mandatory in any case where the offender is less than 21 years of age and the offence is punishable with fine or maximum imprisonment of seven years.

Order to release on probation of good conduct or after admonition:

(1) When a person not under the age of twenty-one is convicted of an offence punishable by a fine only or by imprisonment for a term of seven years or less, or when a person under the age of twenty-one or a woman is convicted of an offence not punishable by death or imprisonment for life, and no previous conviction is proven against the offender, if it seems to the Court before the sentence is handed down, Instead of immediately sentencing the offender to any punishment, the Court may direct that he be released on his entering into a bond with or without sureties, to appear and receive sentence when calledupon during such period (not

exceeding three years) as the COURT deems appropriate. If a Magistrate of the Second Class not specially empowered by the High Court convicts a first offender, and the Magistrate believes the powers conferred by this section should be used, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the First Class, forwarding the accused to, or taking bail for his appearance before the High Court (2).

(2) Where proceedings are submitted to a Magistrate of the First Class as provided by sub-section (1), such Magistrate may then pass such sentence or make such order as he might have passed or made if the case had been heard by him originally, and if he believes further inquiry or more evidence on any point is necessary, he may make such inquiry or take such evidence himself or direct the Magistrate of the First Class to do so.

(3) If a person is convicted of theft, theft in a building, dishonest misappropriation, cheating, or any other offence punishable by not more than two years' imprisonment or by fine only under the Indian Penal Code (45 of 1860), and no previous conviction is proven against him, the Court before which he is convicted may, if it thinks fit, have regard to.

(4) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating, or any other offence punishable with not more than two years' imprisonment or any offence punishable with a fine only under the Indian Penal Code (45 of 1860), and no previous conviction is shown against him, the Court before which he is convicted may, if it thinks fit, having regard to the circumstances, sentence him to imprisonment for not more than two years.

(5) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(6) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law

Provided that the High Court or Court of Session shall not under this sub- section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

1) In the case of sureties offered in accordance with the provisions of this section, the provisions of sections 121, 124, and 373 apply to the extent possible.

(2) The Court must be satisfied that an offender or his surety (if any) has a fixed place of habitation or regular occupation in the place for which the Court acts or in which the offender is expected to live throughout the term designated for the observance of the requirements before directing the offender's release under subsection (1).

(3) In the event of sureties offered in accordance with the provisions of this section, the requirements of sections 121, 124, and 373 apply to the extent possible.

(1) The Court must be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions before directing the offender's release under subsection

(2) If the court that convicted the offender, or a court that may have dealt with the offender in relation to his initial offence, determines that the offender has violated any of the terms of his recognisance, it may issue a warrant for his arrest..

(3) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may, after hearing the case, pass sentence

(4) Nothing in thesectionshall affect the provision of the Probation of Offenders Act,

1958, or the children Act 1960, or any other law for the time being in force for the treatmentraining or rehabilitation of youthful offenders.

This section is a beneficial piece of law. It allows the Court, under certain conditions, to release a convicted defendant on good-conduct probation. It only applies to first-time offenders who are eligible for an indulgence based on their age, character, or antecedents, as well as the circumstances of the offence.

The goal of this section is to avoid putting the first offender to prison for a minor offence, which could lead to him becoming a regular criminal. There are two types of first-time offenders:

(1) individuals over the age of 21 who have been convicted of an offence punishable by a fine only or a period of imprisonment of seven years or less, and

(2) those under the age of 21 or women who have been "convicted of an offence not punished by death or imprisonment for life." When the offence alleged is punished by more than seven years in prison and the individual accused is over the age of 21, a court cannot make an order under this provision.

Even if the conditions set out in s. 360(1) are met, the person convicted cannot claim the benefits of the section as a matter of right. The fact that this is his first conviction would not be sufficient in and of itself.

Discretion must be applied in light of the circumstances of the crime, as well as the offender's age, character, and history. It necessitates a strong sense of personal responsibility. Inappropriate tolerance and sympathy for the accused should never be permitted to enter the courtroom and influence the outcome. Otherwise, the entire point of imposing sanctions would be defeated.35

Only after a conviction can an order under this section be issued, and it can be used to replace a sentence. To keep the peace and be of good behaviour, the offender can be

bound over for a period of not more than three years.

Is a period of three years or less. During this time, he may be summoned to appear in court to receive a sentence36.

The conviction was found to be proper in Shravankumar v state of Uttar Pradesh37, where the accused was convicted under section 165 of the Indian Penal Code. Because the offence was so serious, the accused was not entitled to be released on good behaviour probation. However, due to the facts and circumstances, the Supreme Court reduced his prison sentence to the time he had already served.

PAROLE:

Both probation and parole have the same goal in mind: to help offenders get back on their feet. Outside of difference between the two. After being found guilty, the wrongdoer is not sentenced to prison, and the court decides whether or not to grant probation. After serving his sentence for a period of time, the offender is released on parole, and his release is not the result of any "judicial decision."

Parole is the release of an offender from prison before the end of his or her sentence. The purpose of parole is to prepare the inmate for reintegration into normal social life outside of prison, and it thus denotes the transition from incarceration to normal freedom38. When on parole, the inmate lives in freedom, subject to the restrictions imposed by the parole order. If any provision of the parole order is broken, the warrant will be revoked, and the prisoner will be sent back to jail.

The term "parole" is also frequently used to express the concept of "furlough," which allows prisoners to visit their families for short periods of time while serving their sentences. Obviously, the goal is to keep the prisoner in touch with society in general and his family in particular, which would otherwise be impossible in the event of long imprisonment: it is especially conducive to the prisoner's usual sex life, which would otherwise be impossible, and the prisoner is thus given the opportunity to contribute

financially to the family through his outside earnings.

THE RELEASE DECISION

The decision to release an inmate on parole is usually made by a Parole Board. Under the rules in place in some Indian states, the police department's opinion is also taken into account when making a decision. The main issue confronting the decision, one way or another, is the ability to predict the outcome of the release. This entails examining various issues such as whether the offender benefited from his stay in the institution, whether he was sufficiently reformed to be unlikely to commit another crime, what was his behaviour in prison, and whether any suitable alternatives were available.

"Whether he told the truth when he was being examined by the Parole Board, how serious his crime was and in what circumstances it was committed, his appearance when interviewed by the Board, and what behaviour he had demonstrated if he was already on parole in connection with another imprisonment awaited him upon release."

In the United States, the United Kingdom, and other countries, "prediction tables" have been developed based on such factors. It should be obvious that such tables are of limited utility, and that no method can predict a situation with a large number of variables with any degree of certainty.

According to some authors, not many inmates in India are eligible for parole, a situation they believe can be explained to a large extent by the rigidity of parole rules and the apathy of police officers.

During Nirmala Advani's investigation of the situation in Rajasthan, she discovered that only two people had been released on parole during the time period covered by the study. In Maharashtra, 95,449 prisoners were admitted to prisons in 1970, with 1117 of them applying for parole and 718 of them being released. In the same year, 1160 prisoners applied for furlough, and 781 of them were granted. 39 According to these figures, the percentage of prisoners who applied for and received parole or furlough was fairly high,

around 65 percent, but the low number of actual applicants may be due to the fact that only a small percentage of the total prison population was eligible for release.

According to these figures, the percentage of prisoners who applied for and received parole or furlough was fairly high, around 65 percent, but the low number of actual applicants may be due to the fact that only a small percentage of the total prison population was eligible for release under the rules. In this context, it's worth noting that in England, a significant number of eligible prisoners do not apply for parole, despite the fact that it's unclear what the real reasons for their refusal are.

PAROLE AND COURTS

In India, the courts are becoming more interested in the use of parole, issuing directives to prison administrators in appropriate cases.

The appellant was found guilty of the offence under Section 326 IPC (causing grievous hurt) by the trial court and sentenced to eight years in prison in HiralalMallick v. State of Bihar40. The appellant was 12 years old at the time of the offence, and the High Court reduced his sentence to four years due to his youth. In such cases, the Supreme Court referred to the need for parole as follows:

Providing vital links between the prisoner and his family is one way to reduce tension. When a prisoner is cut off from the outside world, he becomes bestial and, if his family ties are severed for an extended period of time, he becomes dehumanised. As a result, we believe that this appellant should be granted parole, and we expect the authorities to consider periodically paroling out prisoners, particularly of this type, for reasonable periods of time, subject to sufficient safeguards ensuring their proper behaviour outside and prompt return inside.

Dharambir v. State of U.P.41. was a case in which the appellant was sentenced to life in prison for murder. Although there was no way to shorten the sentence, the court determined that parole was desirable in the circumstances. The prisoners were to be allowed to go on parole for two weeks once a year during their incarceration if their behaviour while at large

was found to be satisfactory, according to the direction given to the State Government and the Jail Superintendent.

The Punjab and Haryana High Court held in Hari Singh v. State of Haryana42 that the denial of parole on the flimsy grounds that the prisoners' release would endanger public order was not justified. In a number of other cases, the High Court rejected the government's argument that granting parole would jeopardise public order. Baldev Singh v. State of Punjab43 is another case in which the judiciary has scrutinised the government's orders regarding a prisoner's parole.

The prisoner was released on parole and spent five days outside the jail. As a result of their legal authority, the jail administration deducted money as a form of punishment. The order was approved by the district judge in just one cryptic sentence, after the prisoner had earned remission for days. The High Court quashed the order because the judicial mind was not applied, holding that the district judge should have given his approval only after providing reasons for it.

Reforms Concerning Young Offenders

The Reformatory Schools Act of 1897, enacted in the interest of children under the age of 15, was the first and most significant step in this direction. Whenever any youthful offender is sentenced to transportation or imprisonment, and is, in the judgement of the court by which he is sentenced, a proper person to be an inmate of a Reformatory School, the court may... direct that, instead of serving his sentence, he be sent to such a school, and be detained there for a period not less than three or more than three years.

Following independence, the government embarked on a series of child-related reforms. For the welfare of children, the Central Government and all other State Governments enacted various Children's Acts. These Acts were enacted in order to provide for the care of delinquent children as well as a system to monitor delinquency and children. With the passage of time, a law known as the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 was enacted to protect children.

Measures to reform prisons and statistics:

The primary goal of prison administration is to reform and rehabilitate inmates. Several States/UTs under Central Government control and supervision have taken a number of steps in the field of prisoner rehabilitation and welfare in order to achieve this goal. The Central Government, through the Ministry of Home Affairs, runs a number of projects aimed at improving jail facilities, particularly in terms of sanitation, as well as organising national and international administration for prison personnel sensitization. A Model Prison Manual has been drafted by the Ministry of Home Affairs (2016).

Prisons are under the sole supervision of State / UT Administrators since they are under state administration and management. The states / UTs have adopted / shared many good practises under the following two particular headings:

1. Rehab and social services.
2. Complaints.

Rehabilitative and social services eduction

Educating

Convicts not only provides a remedial approach to the offender's mind, but it also helps them build a responsive and respectful attitude toward society.During the year 2016, 1,30,443 convicts were educated in the country. 54,776 convicts got elementary education, 53,965 inmates received adult education, 12,923 inmates got further education, and 8,779 inmates received computer education out of the total number of educated convicts. The following are some of the educational programmes offered by various states:

Andhra Pradesh:

In collaboration with Dr. B.R. Ambedkar Open University and Indira Gandhi National Open University, all convicts receive education from basic formal education to post-secondary education.

Bihar:

There are regular literacy programmes known as "PRERNA" that are carried out in all jails with illiterate inmates. During the year, a large number of illiterates and semiliterates were registered in the programme and benefited from it. Various educational programmes are operated in Bihar with the support of or from academic institutes such as IGNOU, NIOS, and NOU.

Assam:

The Indira Gandhi open university and the Krishna Kanta state open university provide education to the convicts. M.A., M.C.A., B.A., B.C.A., 10th, 12th, postgraduate diploma in journalism and mass communication, bachelor's degree in library science, and so on.

Haryana:

IGNOU (Indira Gandhi National Open University) Centers have been established in the Central Jail, Ambala, District Jail Sirsa, Karnal, Gurgaon, and Faridabad to allow inmates to study and obtain higher qualifications after 10+2 in order to provide them with better employment opportunities after their release. In addition, National Institute of Open Schooling (NIOS) facilities have been established in all jails (excluding Panipat, Palwal, and Rewari, which are relatively tiny and only have 30 to 50 convicts) to allow offenders to get education.

Tamil Nadu:

A programme has been initiated in collaboration with the Ministry of Human Resource

Development, Government of India, and the Tamil Nadu Education Department to achieve 100 percent literacy among prison prisoners. In addition, the Indira Gandhi National Open University offers a variety of courses for inmates. All Central Prisons, Special Prisons for Women, and Borstal School, Pudukkotai have Mahatma Gandhi Community Colleges authorised by the Tamil Nadu Open University.

Uttar Pradesh:

In Lucknow, a project called Naari Bandi Niketan has been launched. In the naaribandi niketan, the women are educated under the sab padhe sab badhe programme.

Uttarakhand:

The national open university organisation has established a special education centre for prisoners in the district jails of Haridwar, Dehradun, and Haldwani, and Vedanta Foundation is providing computer education.

West Bengal:

With the goal of achieving 100 percent literacy among the convict population, this Directorate has launched Project SANDEEPAN, a prisoner literacy programme in West Bengal's Correctional Homes. Under their Corporate Social Responsibility (CSR) initiative, Tata Consultancy Services, Kolkata, is collaborating as a knowledge partner on this project. Under the direction of IGNOU, this Directorate has also taken the initiative to establish unique study centres in several Correctional Homes. These study centres will serve as nodal points for IGNOU's various academic courses.

Manipur:

A teacher from the jail department provided primary education to convicts at the Manipur Central Jail in Imphal. Sajiwa was normally conducted as an IGNOU study centre for

offering adequate education to the convicts of Manipur Central Jail. In the IGNOU centre, 17 inmates were enrolled.

In all jails in Odisha, a literacy drive has been initiated. To provide elementary education to illiterate convicts, full-time teachers have been assigned to 5 central prisons, 9 district prisons, 2 special prisons, 6 special sub prisons, and the women's jail. Prisoners who are interested in pursuing their studies with the Board of Secondary Education of Odisha are given special attention. The National Institute of Open Schooling oversees universities and distance education (IGNOU).

Bibliotheca

Libraries have been established in several central and sub prisons in states like as Andhra Pradesh, Maharashtra, Tamil Nadu, and Karnataka with the goal of allowing inmates to acquire information and distract their minds away from committing crimes.

In addition, the convicts have access to the prison libraries, where they may borrow literature. As a result, these facilities not only provide entertainment for the inmates, but also assist them in improving their mental health.

Details of educational facilities for prisoners 2016:

States' health-care systems

Sl. No.	State/UT	No. of prisoners benefitted by			
		Elementary Education	Adult Education	Higher Education	Computer Course
(1)	(2)	(3)	(4)	(5)	(6)
1	ANDHRA PRADESH	4418	4983	626	200
2	ARUNACHAL PRADESH	0	0	0	0
3	ASSAM	430	192	49	90
4	BIHAR	1298	1700	402	856
5	CHHATTISGARH	1384	1196	544	48
6	GOA	0	10	10	27
7	GUJARAT	1178	3031	1083	351
8	HARYANA	50	1175	954	1498
9	HIMACHAL PRADESH	92	27	6	4
10	JAMMU & KASHMIR	44	356	179	26
11	JHARKHAND	3467	1758	362	653
12	KARNATAKA	784	411	11	37
13	KERALA	179	177	67	150
14	MADHYA PRADESH	1589	9150	106	105
15	MAHARASHTRA	410	2420	559	613
16	MANIPUR	0	0	0	0
17	MEGHALAYA	0	14	1	0
18	MIZORAM	0	83	57	0
19	NAGALAND	0	0	0	0
20	ODISHA	164	1163	327	222
21	PUNJAB	734	1663	532	74
22	RAJASTHAN	2720	1808	240	32
23	SIKKIM	0	0	0	0
24	TAMIL NADU	1606	3148	670	443
25	TELANGANA	19176	10103	2452	1520
26	TRIPURA	10	17	14	6
27	UTTAR PRADESH	10514	6573	2354	566
28	UTTARAKHAND	124	3	326	88
29	WEST BENGAL	2937	2176	117	956
	TOTAL (STATES)	**53308**	**53337**	**12048**	**8565**
30	A & N ISLANDS	25	8	0	0
31	CHANDIGARH	0	41	156	0
32	D & N HAVELI	0	0	0	0
33	DAMAN & DIU	0	0	0	0
34	DELHI	1443	579	719	214
35	LAKSHADWEEP	0	0	0	0
36	PUDUCHERRY	0	0	0	0
	TOTAL (UTs)	**1468**	**628**	**875**	**214**
	TOTAL (ALL-INDIA)	**54776**	**53965**	**12923**	**8779**

State and local governments have adopted a variety of steps to enhance health care and sanitation, as well as promote Swachh Bharat Abhiyan, Yoga, and Meditation among convicts.

Andhra Pradesh:

Medical camps have been established in the state's jails. sanitary napkins are distributed to female inmates. R.O. Water Plants have been established in all jails, including Sub Jails and Special Sub Jails, in order to preserve their health by providing filtered drinking water.

Bihar:

Hospital Management Systems (HMS) are available in prison hospitals, allowing doctors to schedule appointments and follow a prisoner's medical history. There is a registry of all the drugs in stock. A record of pharmaceutical purchases and distribution is kept. The presence of the doctor is also documented. The module gives access to a prisoner's prior medical information based on necessity during the course of his or her treatment. It's used to write a thorough prescription for a prisoner based on his medical records.
The number of beds in the Medical Care Unit is determined by the number of convicts living in the ward. Dressers and compounders are offered for each medical care unit. Whew! Inmates and children (Staying with Female Prisoners) can be treated or medically treated in an emergency.

Jharkhand:

The state has mandated mandatory health screenings for all newly admitted convicts. In jail hospitals, indigent inmates receive medical care. They may also be referred to the district Sadar hospital, medical colleges and hospitals (RIMS, etc.), and even AIIMS, New Delhi, if necessary. The x-ray and ECG machines are available at Prion Hospital.

Manipur:

The convicts of the Manipur Central Jail in Imphal received regular physical exercise. A GYM

was established by a well-wisher to provide physical fitness for convicts at Manipur Central Jail, Sajiwa, where roughly 140 offenders use it on a daily rotation.

Tamil Nadu:

The State Government has approved a sum of Rs.51.75 lakhs in G.O.Ms.No.943, Home (Prison-IV) Department, dated 22.12.2015 for the purchase and installation of Reverse Osmosis (RO) Plants with accessories with a capacity of 1000 litres per hour in 9 Central Prisons and 500 litres per hour in 3 Special Prisons for Women at Pudukottai. The hospitals in all Central Prisons and Special Prisons for Women are well-equipped to meet the medical needs of the inmates. For the treatment of the prisoners in these hospitals, experienced doctors are supported by adequate paramedical staff.

For the treatment of the prisoners, these hospitals have been equipped with experienced doctors and adequate paramedical staff. In the Prison Hospitals, inmates who require specialised inpatient care are admitted.

Tobacco use and smoking have been banned in prisons as a measure of health care. In all Central Prisons, Integrated Counselling and Testing Centres (ICTC) have been established to check for H.I.V. among inmates.

After proper counselling, inmates in Central Prisons are subjected to HIV testing. In addition, all Central Prisons have Directly Observed Treatment Strategy Centres (DOTS) to eradicate tuberculosis among the inmates.

Life-saving equipment has also been installed in ambulances at the Central Prison, Puzhal, and the Central Prison, Madurai, as a welfare measure for inmates. Basic medical equipment has also been purchased and is being used in the Special Sub Jail in Salem, the Special Prison for Women in Tiruchirappalli and Puzhal, the Borstal School in Pudukkottai, and the Central Prisons in Coimbatore and Salem.
has taken a number of good initiatives to ensure that inmates' health is maintained. Here are a few examples:

Since June 2008, the Central Jail Hospital has had one Integrated Counseling and Testing Centre (ICTC) for HIV. ICTC (Integrated Counselling) status: -2599 males and 70 females counselled; 2600 males and 70 females tested for HIV; 170 males and 7 females found to be HIV positive.

Delhi

According to Standing Orders, inmates are referred to various Specialty and Super Specialty Hospitals for treatment. In 14 GNCTD hospitals, Nodal Officers have been assigned, and Safdarjungneed has been referred.

In addition, Specialist Doctors from eight different specialties are visiting Tihar Central Jail to provide at-door services. Outside referrals have been reduced as a result of this.

On the 28th of August 2016, Delhi Medical held a medical camp in Central Jail No. 3. AIIMS (Department of Dermatology and Venereology) held health camps in Central Jail No. 8/9 on 07.01.2016 and an Eye Check-up camp in Central Jail No. 4 on 26.11.2016. Saroj Hospital held a health camp at DJR Dispensary. Various NGOs held health checkup camps and distributed spectacles in Central Jail Tihar on a regular basis.

States with vocational training:

In the field of prison laws, training is one of the most important steps toward recovery. The training of prisoners in various vocational skills in prison institutions has now become very important in almost all States / UTs.

Inmate vocational training was provided to a total of 59,939 inmates in 2016. An examination of vocational training provided to prison inmates by state/UT reveals that vocational training benefited a large number of inmates in Delhi, Uttar Pradesh, Madhya Pradesh, Punjab, Haryana, Gujarat, Bihar, Jharkhand, Chhattisgarh, and Andhra Pradesh. There were a total of 6,680 (11.5%), 6,503 (11.2%), 5,326 (9.2%), 4,594 (7.9%), and 4,381 (7.9%). 4,271(7.4%), 4,188 (7.2%), During the year 2016, 3,297 (5.7 percent), 2,908 (5.0 percent), and 2,820 (4.9 percent) inmates in these states received various vocational trainings.

Madhya Pradesh (1,348) received the most training in agricultural operations, followed by Punjab (299). Carpentry skills were taught to a total of 488 convicts in Gujarat, 374 prisoners in Delhi, and 344 inmates in Madhya Pradesh. The majority of offenders that received canning instruction were in prison .Assam is a state in India (123). Inmates from Gujarat (956) and Punjab (948) are weaving. Punjab (307) and Andhra Pradesh (307)Inmates (303) are involved in the production of soap and phenyl. Inmates in Madhya Pradesh (531) and Jharkhand (69)During the year 2016, handloom skills were taught.

Arunachal Pradesh:

The state government of Arunachal Pradesh has yet to embrace the rehabilitation programme. However, in order for inmates to be self-sufficient, the state has engaged them in the production of native cane and bamboo handicrafts such as Murah, Japi, and brooms.
They are making a fine living from it. They are also involved in kitchen gardening. This is a good example.
They benefit from activity after they are released from prison since they may make money by practising the same trade.their farm as a source of income.

Bihar:

Through non-government organisations and jail industries, initiatives have been done to provide vocational training to inmates. The following are some of the different training programmes that are now being offered under the auspices of prisoner welfare:

• Computer training • Typing on a computer

• Drawing and painting

• Embroidery

• Handicrafts made from bamboo

• Making bangles

• Baking bread

• Making blankets and carpets

• creating wooden furniture

Uttar Pradesh:

The District Prison Ghaziabad has offered introductory education in technical education/training, computer in partnership with self-help and non-governmental organisations such as India Vision Foundation, New Delhi, for the welfare/rehabilitation of inmates. Prisoners in the prevalent baking business were taught how to use an electric motor wading machine, which would aid in their rehabilitation.

With the support of a social service agency, the District Jail in Sitapur has started providing regular sewing, weaving, and embroidery training to female inmates in order to assist them reintegrate into society. Male inmates who have already obtained training are assisting unskilled inmates with needlework and knitting skills in order to facilitate self-employment.

Under the rehabilitation programme, the Model Jail in Lucknow has provided training and practical job experience to inmates in various sectors including as powerloom, printing press, handmade paper, sewing indu**stry, bakery, and so on.** . In the work of agriculture, 110 prisoners are continuing to provide sugarcane harvest in the Indian Sugarcane Research Institute, Lucknow.

West Bengal: The Directorate, in collaboration with Footwear Design & Development Institute, has arranged a three-month course on basic training in making leather items at Presidency Correctional Home in Kolkata (FDDI). A total of 40 prisoners from various correctional facilities received skill training in the creation of a sophisticated leather purse, wallet, belt, mobile phone cover, and other items.

Telephone facility in different states

Andhra Pradesh:

Strengthening prisoner family links will go a long way toward rehabilitating them. To comprehend this, telephone facilities were established in all Central / District Jails, as well as some Sub Jails and Special Sub Jails in Andhra Pradesh. Prisoners are allowed to make (8) calls to family, friends, and attorneys a month under this system, which costs Rs.20 each call.

Haryana :

With state government clearance, the Prison Inmate Calling System (PICS) has been installed in all of Haryana's jails, with the exception of the extremely tiny ones, notably Panipat / Palwal and Rewari. Previously, convicts were allowed to communicate with their families twice a week. Male calling times have been increased from 10 minutes to 35 minutes per week, while female calling times have been increased from 10 minutes to 60 minutes per week. Family members of convicts who live in remote locations do not have to go through the inconvenience of travelling vast distances, saving time and money.

Family members of convicts who live in remote locations do not have to go through the inconvenience of travelling vast distances, saving time and money. Intercoms, fans, exhaust fans, sound proof glass, and other amenities have been installed in all of the prisons' contemporary interview rooms. They're equivalent to those found in any modern prison.

Jharkhand:

In the state of Jharkhand, prioners have access to outbound telephone services with audio recording capabilities in all jails.In all Jharkhand prisons, the web-based prison management

system (PMS) and Visitor Management System (VMS) are operational.

Maharashtra is a state in India. In a few jails, face-to-face interviews with detainees and their children under the age of 16 have begun. This has been identified as one of the most effective remedial techniques, and it will be phased into all jails.

Tamilnadu is a state in India. At a cost of Rs.2.01 crores, 54 telephone booths were erected in 9 Central Prisons, 3 Special Prisons for Women, and Borstal School, Pudukkottai to allow inmates to call their family, friends, and lawyers. Because the convicts may communicate with their family, friends, and Advocates, this facility significantly decreases their stress levels. As of June 30, 2016, the prisoner has utilised this facility 3,75,671 times.

Insurance scheme for prisoners and prison staff :

Andhra Pradesh:

As a welfare measure, the state has taken the initiative to insure all of the state's prisoners, with all life criminals being enrolled in the programme. MantriSurakshaBheemaYojana PradhanaMantriSurakshaBheemaYojana.

Tamil Nadu:

The Government has increased the existing insurance coverage of Prison Department workers from Rs.1.00 lakh to Rs.2.00 lakhs under the Group Insurance Scheme for those who die while on duty or in the event of an accident. From the rank of Grade-II Warders through Deputy Inspector General of Prisons, this scheme benefits the executive employees of the Prison Department.

Delhi:

Indian Bank has launched zero balance bank accounts for 3,500 inmates housed in Delhi's various jails. The PradhanMantri Jan DhanYojna was used to launch this campaign. Convicts can deposit their wages in this account and withdraw them as needed by their family under this programme. Following their release from prison, they will be able to take advantage of additional government programmes such as the Rehabilitation Grant. Efforts are being made to open these accounts for

willing participants in the scheme's trials. As a result, the Pradhan Mantri Suraksha Bima Yojna and Pradhan Mantri Jeevan Jyoti Yojna became available to these inmates. Administration of the prison.

Consequently, these inmates became beneficiaries of Pradhan Mantri Suraksha Bima Yojna and Pradhan Mantri Jeevan Jyoti Yojna. Prison administration has taken the initiative to educate the inmates about the benefits of these schemes.

Games and recreational activities:

Games have always played a major role in molding a person‘s health and state of mind. Playing game and being involved in the recreational activities scan make a person get rid of any sort of stress and the mental retardation.it also lead to the development of a better personality. The facilities provided in some of Indian state are a follows:

Goa:

Type of recreational facilities provided in jails during the year 2016 :

Television, playing games, organising events, library, musical classes etc.

Prisoners are allowed to play volleyball, football, cricket, table tennis, badminton, chess and carom. Literacy classes, higher education, vocational training etc.

Ganesh festival, Eid, Christmas, Diwali, Holi and National days.

Jharkhand:

Cultural therapy – viz. Art classes (painting) and musical programmes are promoted among prisoners. Indoor and outdoor games (volleyball, cricket, carom etc.) and tournaments are regularly organised in the State Prisons of Jharkhand.

Karnataka:

Facility for indoor and outdoor games and Inter prison prisoner‘s sports meet in prisons are being organized in the State Prisons of Karnataka. Television facility is also provided for the recreation purpose in the various jails of Karnataka.

Manipur:

Sports materials like volley ball, carom, badminton, Ludo, chess, daily local/national newspapers were

provided to the inmates for their recreation. Musical instruments such as harmonium, triple drum, flute, eco, guitar etc. are also provided to the inmates of Manipur Central Jail, Sajiwa for their group entertainment. Annual Sports Meet inside the Jails is conducted for the inmates lodged in the Jails of Manipur.

Delhi:

Prison inmates are encouraged to get involved in various game and recreational activities that would enhance their health and also release stress levels. Inmates are encouraged to participate in games like Cricket, Table Tennis, Badminton, Volleyball, Basketball on the regular basis to keep fit their body as well as to reduce the stress level. For promoting indoor games like Carom, Chess and Ludo etc., inmates are distributed Carom Board, Chess Boards and Ludos in their barracks.

Dedicated location has been opted for various types of games such as the Central Jail No. 1 is the venue of Cricket as there is a Stadium, CJ-2 is the venue of Volleyball, CJ-3 is the venue of Basket Ball, CJ-4 is the venue for Kabaddi& Tug of War, CJ-5 is the venue of Kho-Kho, CJ-7 is the venue of Carom, Chess and Badminton.

Matches have been hosted for Inter Jail Matches for the year 2016-2017 under the annually organized Tihar Olympics fest. The vision for this Inter Jail Competition has been to instill a fervent level of competitiveness amongst them that would help them to boost the confidence and spirit. An inter Jail Competition has been organized for all the above said sports at the said venues. Prizes were distributed to the winner teams.

Haryana:

The prisoners encouraged to participate in prayers and spiritual programs, games and sports and cultural programs. The assistance of voluntary agencies and non Govt. Organization has been taken for positive and correctional approach. An endeavor is made to give humane treatment to the convicts/Undertrials lodged in the jails of Haryana.

Assistance to prisoners:

A total of 1,989 prisoners were provided financial assistance on their release in the country during the year 2016. A total of 94,242 prisoners were given legal aid in the country during the year 2016. Delhi has reported highest number of prisoners 47091 who were given legal aid followed by West Bengal(5667) and

Tamil Nadu(5086) Various measures taken by States to provide legal aid to needy prisoners are discussed below:

Andhra Pradesh:

Legal Aid Cell for legal assistance is one of welfare measure that is being implemented in the State Prisons of Andhra Pradesh.

Haryana:

Efforts are being made to provide legal aid to the needy prisoners through the free legal aid society. Legal Aid Society members visit the jail regularly and undertake to defend their cases in the court. They also meet the prisoners collectively and individually to listen to their problems and sort out their grievances as per rules.

Jharkhand:

Following activities are being provided under Legal Aid Cell in the State Prisons of Jharkhand:
Free legal aid clinics have been established in all jails by DLSA.
Undertrial review committee has been set up in alldistricts under the Chairmanship of principal district &sessions judge. The Committee also considers the provisions of the Sec. 436A of Cr.PC.
Para legal volunteers (PLV‘s) have been appointed in all prisons by DLSA.
Jail adalats are regularly organised by DLSA in all jails. Special jail adalats are also organized on every 26th January, 15th August and 2nd of October in all jails.
Convict prisoners are being released on parole as per Jharkhand prisoners parole Rules 2012 (No. convicts released on parole till date – 68)
Victims are being paid 1/3rd amount of the Prisoners‘s remuneration (for the work done by the convicts) as per the Jharkhand victim welfare fund rules – 2014 (Rs.1,11,48,675.00 paid to 541 victims till date).
State sentence review board has been constitute and proposals for premature release of life term prisoners are considered as per Sec. 432,433A of Cr.P.C. 1025 life convict released by State Sentence Review Board.

Nagaland:

Legislative action such as, awareness on legal rights of prisoners through District Legal Service Authority, LokAdalat, Camp Court through Hon'ble Court of District & Session Judge are some of activities under Legal Aid Cell in the State Prisons of Nagaland.

Grievances

Prisoners those who are denied of their lawful right or subjected to cruelty can approach and file complaints with Magistrates, Prison Authorities, Human Rights Commissions, etc Complaint to national human rights commission **.**

A total of 345, 268 and 298 complaints were received by NHRC from prisoners or others (in-favor of the prisoners others can also lodge complaints) in 2014, 2015 and 2016 respectively, showing a mixed trend with a decrease of 22.32% in 2015 over 2014 and an increase of 11.19% in 2016 over 2015.During the year 2016, highest number of complaints received from the prisoners (or in-favor of the prisoners others can also lodge complaints) of the States/UTs of Delhi (52), Punjab (41) and Tamil Nadu (39).

A total of 242, 207 and 233 complaints of prisoners were disposed off by the NHRC in 2014, 2015 and 2016 respectively, showing a mixed trend with a decrease of 14.46% in 2015 over 2014 and an increase of 12.56% in 2016 over 2015. A total of 65 Complaints from prisoners are pending with NHRC for suitable action.

Complaint to state human right commission

In 2014, 2015, and 2016, the SHRC received a total of 598, 629, and 563 complaints from inmates or others (in favour of the inmates, others can also submit complaints), exhibiting a mixed trend with an increase of 5.18 percent in 2015 over 2014 and a fall of 10.49 percent in 2016 over 2015. The Punjab State Human Rights Commission (172), Kerala State Human Rights Commission (66), Madhya Pradesh State Human Rights Commission (66), and Odisha State Human Rights Commission (66) received the most prisoner complaints (59). In 2014, 2015, and 2016, the SHRC resolved 324, 329, and 418 prisoner complaints, respectively, representing an increase of 1.54% in 2015 over 2014 and 27.05% in 2016 over 2015. A total of 145 prisoner complaints were filed with separate SHRCs for appropriate action, with the biggest number of such complaints pending with

SHRCs in the states of Punjab (102), Karnataka (12), and Bihar (12). (10).
Some good practices adopted by Maharashtra and Tamil Nadu towards setting up of the Grievance Redressal System are discussed below:

Maharashtra

State has introduced Grievance redressal system for prisoners wherein Complaint boxes in every barracks have been setup, which are opened before the DIG only, Judges' complaint boxes are only opened in front of visiting judges. The anonymous, pseudonymous complaints of the inmates have nearly vanished as a result of this institution. Fast resolution of prison staff challenges, prompt promotions, open access to top officers, and human rights training have all aided us in improving prison staff behaviour with prisoners. Allegations and complaints to the Human Rights Commission have grown increasingly unusual in recent years.

Tamil Nadu:.

The Prison Department places a high priority on the resolution of inmates' grievances. In all Central Prisons, sealed complaint boxes are available for inmates to deposit their grievance petitions. On the first working day of each month, the District and Sessions Judge opens these boxes, and complaints are referred to the appropriate authorities for action. Apart from that, once a month, Sessions Judges and Chief Judicial Magistrates pay surprise visits to prisons to inspect the quality of food and other services supplied to inmates and to inquire about their complaints. The Additional Director General of Police / Inspector General of Prisons and Range Deputy Inspectors General of Prisons enquire about each and every prisoner's problems during annual inspections and take fast measures to resolve their problems. Every week, the Superintendents of Prisons hold an Inspection Parade for all inmates, listening to their complaints and resolving them. As of 2016, the total number of prisoners that were benefited from these schemes and methods are:
A total of 1,371 convicted inmates were rehabilitated during 2016.

A total of 1,989 inmates were given financial assistance on their release during 2016.

A total of 94,242 inmates were provided legal aid during 2016.

The number of prisoners benefitted from Elementary Education, Adult Education, Higher Education and Computer Course were respectively 54,776, 53,965, 12,923 and 8,779 during 2016. Also 57,939 inmates were imparted various vocational trainings by the jail-authorities during 2016.
A total of 89,464 inmates had benefitted from medical counselling while 74,088 inmates had benefitted from legal counselling during 2016.
The total value of goods produced by inmates during 2016 was `199.5 Crore.

There were 779 NGOs who were working exclusively for prison reforms during the year 2016.

A total of 298 complaints were received by National Human Rights Commission (NHRC) during 2016 out of which 78.2% complaints (233) were disposed of by them.
A total of 563 complaints were received by State Human Rights Commission (SHRC) during 2016 out of which 74.2% complaints (418) were disposed

PRISONS

When the response to crime was primarily punitive, there was no need to distinguish prisons, and they were all crammed into a single jail. Nonetheless, this scheme of universal criminal punishment turned prisons into a veritable hell on earth, filled with all kinds of vices. Overcrowding in jails has caused a situation where jail management has gone haywire and there is a lot of disorder in the prion system.

As the country surged towards the reformative theory of punishment, it was imperative to devise certain classes of prisons that could have a therapeutic approach towards prisoners.
After independence a committee a formed under Dr, WC Reckless, a technical expert of the united nations on crime prevention and treatment of offenders, to make recommendation in prison reform in 1951.some guideline issued were:
Correctional measures should form an integral part of the home department of each state.
Probation and parole should be used to reduce burden on prisoner.

OPEN AIR PRISONS:

Open-air prisons play a critical role in the process of prisoner reform, which must be recognised as one of the primary goals of prison administration. As some of the trademark aspects of the open-prison programme include the adoption of pay programmes, parole release, educational, moral, and vocational rehabilitation of the inmates, they are one of the most effective applications of the notion of individualization of punishment with a view to social re-adjustment.
Furthermore, open institutions are significantly less expensive than closed jails, and the programme has the added benefit of allowing the government to be employed in the workplace for the benefit of the general public, rather than the prison population, which would otherwise be idle. The financial returns are positive, and once implemented, open jails become financially self-sufficient.
The post-independence period in India saw a significant change in jail policies and offender management approaches. The traditional approach of holding criminals inside well-guarded jails has been abandoned because it failed to rehabilitate offenders once they were released. With the progress of human behaviour research, the importance of the psychosocial environment in the development of offenders has been highlighted. It was realised that inmates should be given every opportunity to participate in free society, and that the distance between inside and outside the jail should be as small as possible.

Open jails are special Jails that exclusively confines only convict prisoners. Convict Prisoners with good behaviour satisfying certain norms prescribed in the prison rules are admitted in open prisons. Minimum security is kept in such prisons and prisoners are engaged in agricultural activities.[50]
Open prisons are also helpful in reducing the overcrowding of the prisons which is urgently required in the case of Indian prisons. Appreciating the concept of open prisons in India the Supreme court in the case of ***Ramamurthy v. State of Karnataka***[51] held that-
though open-air prisons, create their own problems which are basically of management, we are sure that these problems are not such which cannot be sorted out. For the greater good of the society, which consists in seeing that the inmates of a jail come out, not as a hardened criminal but as a reformed person, no managerial problem is insurmountable. So let more and more open air prisons be opened. To start with, this may be done at all the District Headquarters of the country".
In India there are some states that excelled in the concept of open jails. One such is Rajasthan.

Uttar Pradesh was the first state to adopt the concept of open prisons but now the state lags behind in implementing the concept.There are certain lapses in the concept of open prisons. As we all know that the reformative reforms are for convicts, the under trial population in our jails, being almost 3/4 of the prison population is left out of these reforms.

Those who are not eligible for open prisons are-

1.Dacoits

2.Rapists

3.Thieves

Anyone serving life sentences will usually be candidates for open prisons. Further screening and less monitoring was carried out in open jails, often leading to convicts escaping. It in effect impacts the degree to which other convicts are given the opportunity.The Jail Reforms Committee suggested that the criterion for reserving prisoners to these open jails should not be long-term or short-term, but that the overall possibility of the inmate's propensity to reform and re-socialize should be considered in selecting prisoners for open prisons.

Only 17 States have reported about the functioning of open jails in their jurisdiction. Amongst these States, Rajasthan has reported the highest number of 29 open jails followed by Maharashtra (13), Kerala, Tamil Nadu & West Bengal (3 each) and Gujarat (2). The remaining 11 States – Andhra Pradesh, Assam, Bihar, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Odisha, Punjab, Telangana and Uttarakhand have one open jail each.

BORSTAL SCHOOLS

Borstal schools are juvenile prison institutes dedicated solely to youngsters and adolescents. The fundamental purpose of borstal schools is to guarantee that juvenile criminals are treated, educated, and recovered in a separate setting appropriate for minors, preventing them from contaminating the prison environment. Young offenders in confrontation with the law who are incarcerated at borstal schools get a variety of vocational training.

They are also given education with the help of trained teachers. Tamil Nadu has 12 borstal schools and 7 States namely, Himachal Pradesh, Jharkhand, Kerala, Maharashtra, Punjab, Rajasthan &Telangana (1 each) have reported borstal schools in their respective jurisdiction.

WOMEN JAIL:

Women jails are special Jails that exclusively confines only female prisoners & these Jails are called as Women Jail. Women jail may exist at sub-divisional, district & central (Zone/Range) level.

As of 2015 Women jails exclusively for women prisoners exist only in 13 States/UT. Tamil Nadu (5), having highest number of Women Jails followed by Kerala (3) and Rajasthan, Bihar, Delhi (2 each). Andhra Pradesh, Gujarat, Maharashtra, Odisha, Punjab, Telangana, Uttar Pradesh and West Bengal have one women jail each.[52]

There were 1,649 woman prisoners with 1,942 children as on 31st December, 2016.

Among these woman prisoners, 400 woman prisoners (with 459 children) were convicts while 1,192 woman prisoners (with 1,409 children) were undertrial inmates.

SPECIAL JAILS:

Special jail means any prison provided for the confinement of a particular class or particular classes of prisoners & provides limited access with the permission of higher authorities. Offenders may include prisoners involved in terrorist and extremists activities, inmates who have committed serious violations of prison discipline, inmates showing tendencies towards violence and aggression, habitual offenders, drug peddlers, etc. Out of the 13 States/UTs having Special jail, Kerala has the highest number of special jails (16) followed by West Bengal (5), Telangana (4), Tamil Nadu (3), Gujarat, Odisha, Uttar Pradesh and Puducherry (2 jails each) and Assam, Jammu & Kashmir, Karnataka, Maharashtra & Rajasthan (1 jail each).

STATISTICS:

According to national crime records bureau, as on 31st December, 2017 there are 1,361 Jails in the country. State of Tamil Nadu has the highest number (138 out of 1,361) of jails among the States/UTs followed by Rajasthan (128), Madhya Pradesh (123), Andhra Pradesh (105) Karnataka (104) and Maharashtra (97). These six States together covers 51.07 % of total jails in

the country as on 31st December, 2017.Total available capacity of all the prisons in the country is 3,91,574. Uttar Pradesh has reported the highest capacity of prisons (58,400) followed by Bihar (39,913), Madhya Pradesh (28,227), Maharashtra (24,745), Punjab (23,218), Tamil Nadu (22,792) and Rajasthan (21,879) as on 31st December, 2017. These seven States together have 55.97% of the total capacity of all prisons in the country as on 31st December, 2017.

As against this capacity, A total of 4,50,696 prisoners as on 31st December, 2017 were confined in various jails across the country. Uttar Pradesh has logged highest number of Inmates (96,383) followed by Bihar (40,186), Madhya Pradesh (38,708), Maharashtra (33,699), Punjab (24,048) and West Bengal (23,092). These six States together contributes 56.83% (2,56,116 inmates) of total inmates population logged in various Jails.

The highest number of inmates were lodged in jails of Tamil Nadu (256) followed by Punjab (219) and Kerala (67). The Occupancy rate of Borstal School at National level is 35.52 and none of the States/ UTs is showing overcrowding i.e States/ UTs where prison occupancy rate is more than 100%. However, overcrowding may differ on day to day and jail to jail basis.

A total of 3,334 inmate population consisting of 3,232 males and 102 females were lodged in various Open jails of the country against the total Capacity of 5,421 inmate consisting of 5,301 males and 120 females as on 31st December, 2017. The highest number of inmates were lodged in jails of Maharashtra (1,047) followed by Rajasthan (1,005) and Kerala (335).[53]

There are various method which are adopted by the government and the jail authorities for the purpose of rehabilitating and reforming the criminal. Many prisoners get the benefit of these methods but in certain circumstance these methods prove to be futile mainly because of overcrowding in prison. The figure on the next page shows the prisoner occupancy rate in the year 2106 across various states in India. Occupancy rate mean the number of inmate staying in jail against the authorized capacity for 100 inmates.

Occupancy rate 2016:

Prisoner occupancy rate all India average 113.7

CHAPTER-6

PROSPECTS AND LIMITATIONS OF REFORMATIVE THEORY: CHALLENGES AND OPPORTUNITIES FOR LEGAL REFORM

Physiological Perspective

Physiologists maintain that crimes are the result of physiological defects. And criminals shouldn't be prosecuted. Perhaps counselors or psycho-analysts should handle them in hospitals. That is why crime is not a deliberate act of violation on the part of the criminal according to this theory.It is only due to his mental instability.Criminal anthropologists claim that it is not acceptable to prosecute offenders. They should be cared in hospitals or reformatories, instead. The problem is, though, that not all offences are due to insanity or pathological defects. There are certain crimes that are deliberate breaches of the moral law and should be punished.

Sociological Perspective

Again there are certain crimes that are caused by social injustice. Theft is a criminal offence, for example. The validity of the moral law includes punishment of the individual involved in the theft. But if we properly investigate the case we understand that the poverty causes robbery or theft.Criminal sociologists therefore consider that we can not think of crime prevention without improving the social and economic conditions of the common people. Crimes will only be avoided if justice and equity are the foundation for restoring society. This view's proponents are called criminal sociologists.

Psychologists Perspective

Psychologists accept the idea. They argue that crimes are not caused by a willful breach of moral law. Instead, the offences are caused by mental illness or insanity. It is for this reason

that offenders will not be prosecuted. For reformation they should be treated at hospitals or reformatories. Criminal discipline should be pedagogical or medical rather than punishment.But there are some crimes committed by some people which are a deliberate violation of the moral law. So they should be punished. So, punishment prevents similar crimes from being committed by others. It can also refine the mind of the criminal not to go the wrong way.

According to reformist theory, a crime is committed as a result of the conflict between the criminal's character and motive. One can commit a crime either because the motive's temptation is stronger, or because the character-imposed restraint is weaker.The theory of deterrence, by demonstrating that crime never pays, seeks to act on the person's motive, while the theory of reform aims at strengthening the main character, so that he may not become an easy victim to his own temptation.[54] This theory would consider punishment to be curative or to perform the function of a medicine. According to this theory, crime is like a disease. This theory maintains that "you cannot cure by killing".

The exponents of the reformative theory believe that a wrong-doers stay in prison should serve to re-educate him and to re-shape his personality in a new mould. They believe that though punishment may be severe, it should never be degrading. To the followers of this theory, execution, solitary confinement and maiming are relics of the past and enemies of reformation.Therefore, the reformists' main aim is to seek to bring about a shift in the offender's temperament and character and make him a successful and useful member of society.The reformists argue that if prisoners are to be sent to jail for transformation into law-abiding people, jails ought to be transformed into nice dwellings. However, this argument is limited in its application and it must be remembered that in a country such as India, where millions live below the poverty line, it can even act as an incentive to commit crimes.

[54] rajendra k sharma, Criminology and penology 117.

WHERE DOES IT MUSTER SUPPORT FROM?

According to the reformative theory, the aim of punishment is the improvement of the offender himself. Modern age seems generally to favour and apply this theory. In this theory the behaviour directed at the criminal shows him the consideration due to an individual and not conduct ___analogous to treatment of objects and means. An offender is punished for his own benefit. This theory has been supported from many view points. Some of the major ones are the following:[55]

Criminal Anthropology:

Modern criminal anthropology argues that crime is a disease, a condition of pathology, or the state of degeneration inherited or acquired. Therefore a suspect should be treated rather than disciplined. Hospitals, lunatic asylums, and welfare houses are ideally fit for implementing crime prevention programs than jails. Crime is not the result of wilful breaches of moral law.The most popular causes of crimes are mental or physical defects. For example, kleptomania forces the patient to steal.

The main shortcoming of this criminal anthropology theory is that it assumes that the causes of a limited number of crimes are the causes of all crimes. If any criminal steals because of kleptomania, it should be meant for a hospital rather than a prison, but the number of kleptomaniacs among the thieves is negligible. All crimes cannot be attributed to diseased conditions. Offenders who resort to illegal means by the virtue mental or physical deformities form only a very small minority in the realm of criminals.Thus people who commit crimes owing to reasons other those should be curbed by other methods.

[55]rajendra k sharma, Criminology and penology 197.

Criminal Sociology:

Criminal sociology emphasises the responsibility of social circumstances in crime. Thus it is more efficacious to induce improvements in social and economic conditions, to remove inequalities and immoralities, than to punish the criminal. Crimes can be stopped not by punishment but by the organisation of human society on the basis of justice and equality.

The opinion of criminal sociology is as partial as is the opinion of criminal anthropology. Social equality is, of course the cause of some crimes and can be credited as such. But the causes of all crimes cannot be analysed in this way. Many people commit crimes wilfully conscious of the fact. And, especially the crimes of white-collar criminals cannot be included in the explanation offered by criminal sociology.

Cultural consistency:

One theory which partially accounts for many variations in the presence and implementation of the primitive reaction to "law-breaking" may be termed a theory of cultural consistency. There the social reaction to law-breaking and the methods used to implement or express that reaction show a general tendency to be consistent with other ways of behaving of the society. This may be observed in a number of ways : Two centuries ago criminals were disemboweled, quartered; hung in chains, branded and in other ways tortured, mutilated and ashamed. These practices occurred in a culture in which physical suffering was regarded as the natural lot of mankind and in which the means of preventing pain were not well developed. But today safeguards against physical suffering have been provided and the reaction to crime is not strictly punitive. Hence this theory is inconsistent with the modern ideas about crime and its treatment.

Social structure theories:

A few social scientists largely Europeans have attempted to relate many variations in the punitive reaction and its expression and implementation to variations in social structure. Variation have been accounted for by the availability of labour supply, the presence of the lower middle class, the division of labour and social disorganization. The underlying notion is that punitive reaction is afflicted by the general economic conditions of society. Rusche has advanced the thesis that the primary determinant of societal reaction to crime is the condition of labour

market. Some people contend that punishment is related to variation in punitive reaction to the presence or absence of the lower middle class. Durkheim attributed the fluctuations in the punitive reaction to changes in the division of labour of society. Durkheim's argument that as the principles of social organization change from mechanical solidarity to organic solidarity, the punitive reaction to law breaking tends to disappear and in its place is substituted restitution and reparations, holds good as an explanation of contemporary punitive reaction.[56]

[56]Criminology and penology rajendra k sharma198.

Legislative approach

In progressive states, provision is made for the prevention of habitual offenders. Borstal schools have been set up. Provision is made for a system of probation for First Offenders. This theory is being growingly adopted in the case of Juvenile Offenders**.** The oldest legislation on the subject in India is the **Reformatory Schools Act, 1890** which aimed at preventing the depraved and delinquent children from becoming confirmed criminals in the coming years. It applied to children under the age of 15 years. The Reformatory Schools Act has been extensively amended in its application to the various States by State legislatures.

The government of India passed in 1960 the Children Act which applies to the Union Territories. This Act was amended in 1978. This amendment broadened the aim of the **Children Act, 1960.**

The Probation of Offenders Act, 1958 has been passed with a similar object in view. About the Act, the Supreme Court observed in ***Rattan Lal v. State of Punjab*** that the Actis a milestone in the progress of the modern liberal trend of reform in the field of penology.

In ***Musa Khan v. State of Maharashtra*** the Supreme Court observed that this Act is a piece of social legislation which is meant to reform juvenile offenders with a view to prevent them from becoming hardened criminals by providing an educative and reformative treatment to them by the government.

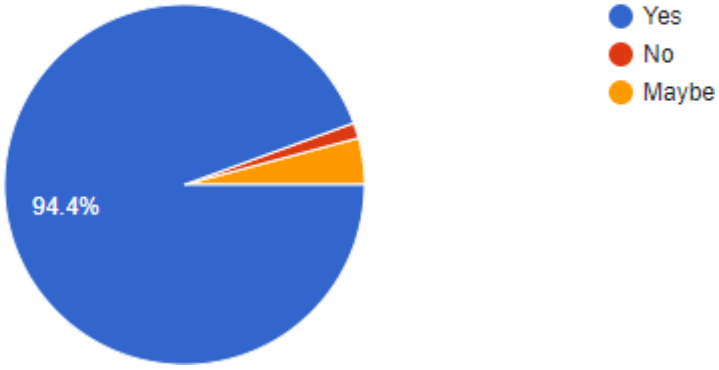
Section 27 of the Criminal Procedure Code, 1973 provides that any offence not punishable with death or imprisonment for life committed by any person who, at the date when he appears or is brought before the court, is under the age of 16 years, may be tried by the court of a Chief Judicial Magistrate or by any court especially empowered under the Children Act,196 or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.

Section 360 of the Code of Criminal Procedure, 1973 empowers the court to order the release on probation of good conduct or after admonition.

Analysis of the Survey

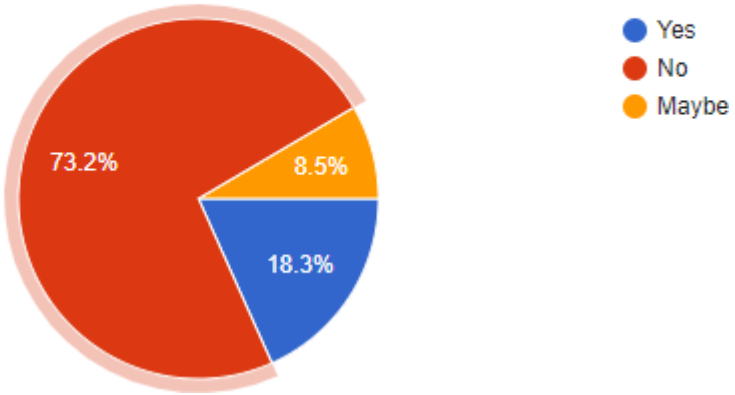
Are you aware of the crimes taking place in the society?

72 responses



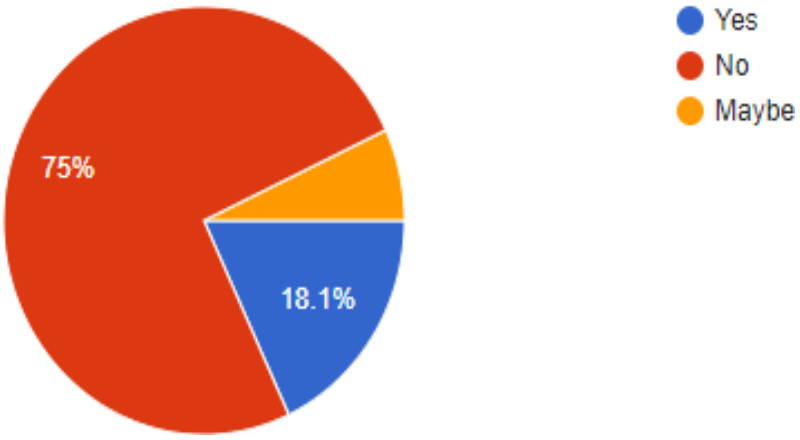
Are the punishments awarded for such crime sufficient?

71 responses



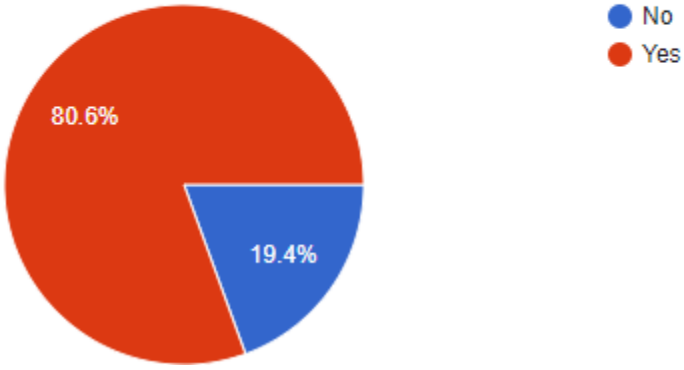
Should capital punishment be abolished?

72 responses



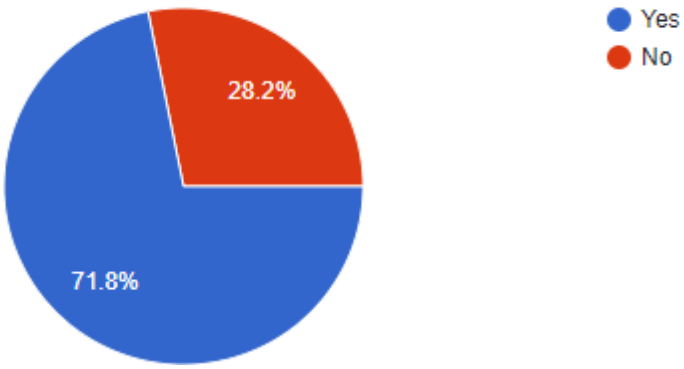
Is capital punishment justified?

72 responses



Are you familiar with the theories of punishment?

71 responses



What according to you should be the objective of punishment?

Give severe punishments to offenders.
To most extent reform people but personals with multiple crimes cannot be reformed.
So that the punishment can be set as example for others and prevent them from doing it again
To deter the person and set an example in the society.
How much bad work a person has done
Convicted should be reformed
Depending upon the seriousness of the crimes
More strict laws
To provide justice to the victim, and to deter others from committing the same offence.
To makntain stability and fear of crime in the society
Taking life of a person who is responsible to end some others life.

Set an example in society
To stop crime
To make the convict go through same pain he caused to victim
To punish them seriously...
To act as a deterrent
Message to society for not repeating crime
Maintain peace in society and threat to the wrong doer
To punish the criminal so that other people do not perform the same act
Deterrent Theory (To award rigorous punishment in order to set an example for others. Example- capital punishment))
The strong culture of deterrence currently non existing , can minimise such ghastly incidents. Lack of political will , poor policing , judicial delay , shoddy investigation , lethargic prosecution , social misogyny they all contribute in their own ways in encouraging such crimes.

contribute in their own ways in encouraging such crimes.

To set an example for others to not commit such crimes..the punishment should be brutal enough to teach such criminals till their last breathe.

Complete Justice, Peace and Tranquility in Society

To prevent others from committing crime and make them aware

Redemption

Serve justice & morality

To prevent others from doing crime

To prevent crime

that the accused suffers way more thn the victim

To have fear in the eyes before doing something wrong

In case of heinous crimes punishment should be very hard to set an example to others in society.

The purpose of punishment is to protect society, rehabilitate criminal offenders, and reduce recidivism.

Objective should be creating terror among the criminals,rapists so that they think twice before performing any such kind of act

The objective must be that no other individual in society can do that henious act or crime which the culprit has done

To set example that others do not even think of committing the crime

What they do to victim should be done to them

That the fear of law shall prevail in the mind of criminals

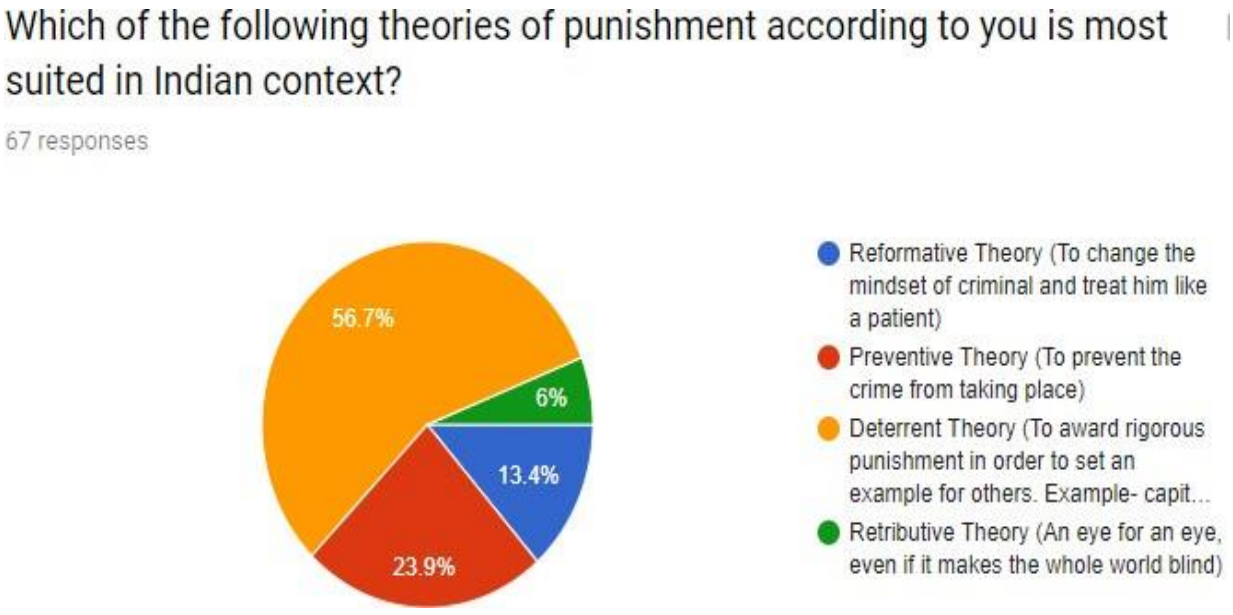
In pity offences we can opt reformative or preventive theories of punishment but against heinous crimes, crimes against women like rape and crime against nation like terrorism we must opt deterrent theory. We are living in civilised society so retributive theory cann' Be accepted.

To teach lessons to people who may do crime.

To deter the further criminals and stop further crimes

Terror
To curb it's occurrence
Non negotiable!
To set an example
Instrument of Justice
To decrease the rate of crime in the society
To end crime
To rehabilitate the normal offender and to set an example for hardcore/repeat offender
type of crime, and the environment in which, it took place
To teach a lesson to criminals
hanged

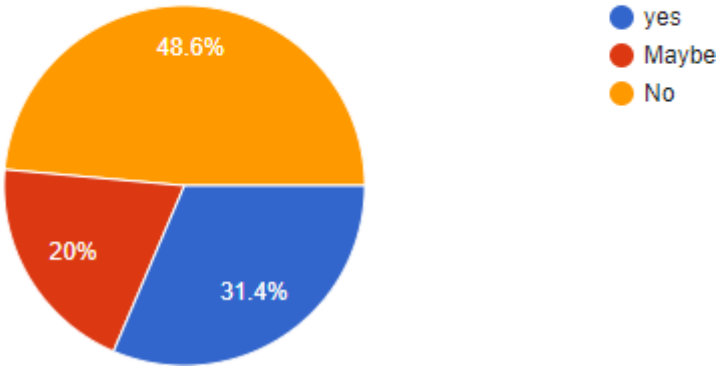
As we can see through the responses of the research conducted by the researcher as to what should be the objective of punishment, major segment of the society thinks that the objective of the punishment should be to serve deterrence rather than being reformative. With the rapid increase in the rate of crime these days, not many people favor the use of reformative approach of the punishment. People want the punishment to be such that it stays in the mind of people for along time and anybody else who even slightly thinks of committing any offence reconsiders his evil thought ten times. According to the responses the objective of punishment should be that it creates a fear in the mind of the offender and prevents others from doing so and acts as a lesson to the criminals. According to people pity offences can be served with the reformative or preventive theories of punishments but against heinous crimes, crimes against women and crimes against the nation like terrorism should be served with the deterrent theory of punishment. The strong culture of deterrence, which is currently nonexistent in our society, can minimize the rate of ghastly incidents which have been recently increasing day by day. To set an example for others to not commit such crimes, the punishment should be brutal enough to teach them as well as anyone who attempts to do so, a lifelong lesson, till their last breath.



Again, here it can be seen that a number of people think that reformative theory of punishment is not suitable in Indian context. people want the punishment to be deterrent. Though reformative theory of punishment is in practice in India ,taking the proliferation of crimes in consideration ,it is evident that the reformative theory has become futile to some extent.

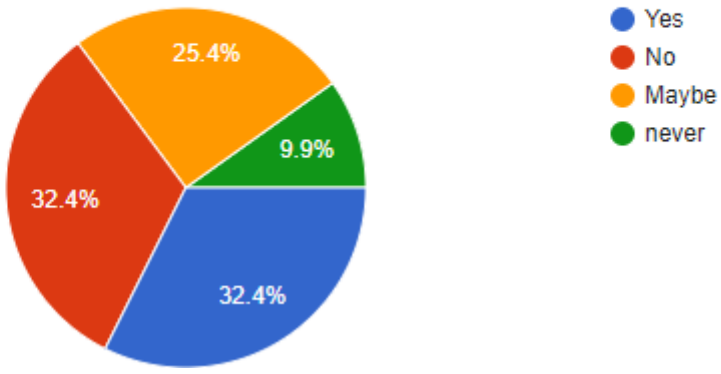
are there enough laws in India to deal with crimes?

70 responses



should the rights of criminals as a human being be protected?

71 responses



CHAPTER 7

CONCLUSION AND SUGGESTIONS

The mood and temper of public concerning the treatment of crimes and criminals is one of the unfailing tests of the civilization of any country.-Sir Winston Churchill said while addressing the House of Commons. The justification of punishment possesses one of the most difficult jurisprudential issues. There are different theories of punishment prevalent in various ages and different justifications are offered among different countries according to variations in culture and

civilizations. It is cruel to expose the guilty to useless sufferings when the punishment is too severe; on the other hand, is it not cruel still to leave the innocent to suffer? When the result of such punishment is too mild to be efficient punishment must be severe enough to act as deterrent but not too severe to bebrutal. Similarly, punishment should be moderate enough to be human but cannot be too moderate to be ineffective.

Certainty of punishment is most important for any legal system that makes the punishment less severe and any deficiency in certainty makes punishment more severe. Severe punishment demands higher standard of proof of guilt. Obviously, conviction rate would be less that is not a healthy sign of criminal justice. Certainty of punishment much depends upon the simplicity of laws and good method of procedure. Criminal justice must balance between "Justice delayed is justice denied" and "Hurried justice is buried justice" which are two important basic concepts of criminal justice.

The Malimath committee observations better explains the nature of criminal justice system prevailing in India.

The system devised more than a century back, has become ineffective, a large number of guilty go unpunished in a large number of cases. The system takes years to bring the guilty to jutice and ha ceaed to deter criminal. Crime is increasing rapidly every day and the type of crime are proliferating. The citizens live in constant fear.

Each theory of punishment has its own merits and demerits. Therefore, criminal justice would not be healthy if it relies on any one theories of punishment. Section 53 of IPC prescribes different kind of punishment namely, death, life Imprisonment, Imprisonment of rigorous or simple, forfeiture of property, and fine but does not mention the object of punishment that depends upon the theory of punishment. Indian Penal Code, excluding exceptions prescribes the maximum punishment and leaves imposition of appropriate punishment in the hands of judiciary, which makes the IPC flexible. The capital punishment that is pan of traditional deterrent theory is retained and continued in the Indian legal system. Under the new Criminal Procedure Code of 1973, the court has to record reasons for awarding death sentences that means life sentence is rule and death sentence is exception. In Rajendra Prasad v. State of UP., Justice Krishna Iyer held that giving discretion to the judges to make choice between death sentence and life imprisonment on special reasons under section 354(3) CrPC would be voilative of Article 14 which condemns arbitrariness. Nevertheless, the Supreme Court up held the Constitutional validity of death sentences in Bachan Sing v. State of Punjab, by saying it does not violate the Article 21 of the Constitution because the death sentence is an alternative and

would be imposed in the most heinous crimes.

The Malimath Committee has also endorsed the view of retaining the death sentences because of new kinds of crime like terrorism, organized crime and drug trafficking which have threatened the security of society.More reliance on deterrent theory would be at the risk of humanitarian. Death sentences in rarest of rare cases give more scope for reformation theory. Section 360 of CrPC gives a wide power to court to adopt lenient view in respect of young offenders. Punishment like rigorous or simple, forfeiture of property and fine are appropriate to use as the tool of reformative punishment. The Supreme Court in ***Narotam Sing v. State of Punjab***[59] has rightly said that reformative approach to punishment should be the object of criminal law, in order to promote rehabilitation without offending community conscience and to serve social justice. However, in ***M.H. Hoskot v. State of Maharashtra***[60], Supreme Court cautioned the judiciary for showing more leniency to offenders based on reformative theory that would amount to injustice to the society. The offences like serious economic offences and other offences, the balance has to be maintained between the security of society and rights of offenders. In Dr Jacob George v. State of Kerala, the Supreme Court held that the object of punishment should be deterrent, reformative, preventive, retributive and compensatory. Preferring one theory to other is not sound policy of punishment. Each theory of punishment should be used independently or combined according to the merit of the case. Human beings neither are angels capable of doing only good nor are they demons determined to destroy each other even at the cost of self- destruction. Taking human nature as it is, complete elimination of crime from the society is not only impossible but also unimaginable. Criminals are very much part of the society and society has to reform and correct them and make them sober citizens. Society has also to look from the point of victim. If victim relies that the State is reluctant to punish the offenders in the name of reform and correction, they may take law in their own hands, they themselves may try to punish their offenders and that will lead to anarchy. Bentham's theory of penal objectives that pain of punishment of offender should be higher than the pleasure he enjoys by commission of crime. Nevertheless, this must have proportionality and uniformity too.

When drawing up a penal system for crime prevention and criminal care, it must be borne in mind that human nature is complicated and can not be completely understood. That is the reason why in a given situation, not all human beings respond in the same way.This fundamental realization has led to the innovation of several methods of treatment for offenders. Instead, the prisons are no longer known as custodial facilities, they have taken on a new dimension as recovery and rehabilitation

centres for those who break legislation. The emphasis has now shifted from custody to training as offender re-education, and from mere isolation to community rehabilitation.It has been realized that protection of society can be better ensured if the offender is corrected and reformed through individualized treatment. History has shown that simple care in prisons does not enable the inmates to eventually rehabilitate because of the stigma culture attached to the discharged prisoners. Therefore, an effective aftercare system is vitally essential for the therapeutic rehabilitation of released inmates. In the case of minors or first offenders, an appropriate disciplinary approach would turn to reformation and rehabilitation for recidivists and hardened criminals. For this purpose, contemporary penologists put more focus on systemic methods of punishing the criminal than on conventional forms of punishment that have become outdated and obsolete. The penal system should be so devised as to cause minimal suffering to offenders and at the same time inculcates social morals and social discipline among citizens.

In short, it should neither be intolerably severe nor unrealistically lenient.

An effective criminal justice system inevitably needs to ensure that the society is protected from the criminals by stamping out the inherent criminal tenderness.

This can be achieved through the adoption of a penal policy that imposes appropriate sanctions Emphasising on this aspect of penal justice, the Supreme Court in ***Ankush Maruti Shinde v. State of Maharashtra***,

reiterated that, "in perpetuating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. Imposing of sentence without considering its effect on social order may be in reality a futile exercise..... It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was perpetuated or committed."

Despite of the reformative theory in practice in India it has proven to be futile to some extent either because of the of improper implementation of the policies or the failure in the part of the government to pay heed to the prison problems. Taking in consideration the proliferation of the crimes in the present era it can be said that the punishment should also have deterrence in itself. Since crime isinevitable and every criminal cannot be reformed, there should be a proper balance between the three theories of punishment i.e. reformative, preventive and deterrent.

Some criminals incorporate crime as habit in them. The delinquent tendencies cannot be taken out from them easily. These people are recalcitrant towards the laws and regulations or the code of conduct prescribed for the people in a society. The reformative theory cannot be applied to hardcore criminals. If prisons are comfortable then it will become dwelling house for poor and unemployed. While the theories of deterrence and reformation somewhat coincide, there is also some dimension of disagreement between the two. The theory of deterrence would enforce the punishment of incarceration, fine, or even whipping and death penalty, but all types of punishment other than incarceration are barbaric according to reformist philosophy. Imprisonment and probation are the only instruments available for the purpose of a purely reformative system. The next question to be answered, in view of this conflict between the deterrent and reformative theories of punishment, is whether it is possible to have a penal system having the reformative element as the sole standard of punishment. Salmond, in his treatise on Jurisprudence, points out that there are in the world, men who are incurably bad. With them, crime is not so much of a bad habit as an ineradicable instinct. The reformative theory might be quite helpless in the case of such persons.

Therefore, according to him, the perfect system of criminal justice is based neither the reformative, nor the deterrent principle exclusively, but is the result of a compromise between them. In this compromise, it is the deterrent principle which wields the predominant influence. Salmond further adds that the present-day acceptance of the reformative theory is, in a large measure, a reaction to the conservative approach to the question of punishment. The extreme inclination towards the reformative theory may be as dangerous as the complete acceptance of the old code of punishment. It

is true that in the olden days, too much attention was paid to the crime, and very little to the criminal. It is also true that criminals are not generally ordinary human beings. They are often mentally diseased abnormal human beings; but, if all murderers are considered as innocent and given a lenient treatment, is it not possible that even ordinary sane people might be tempted to commit that crime, in view of the lenient attitude of law towards crime? Thus, in course of time, this theory would crumble down. The theory may be effective in the case of very young and the completely insane offenders, but in other cases, some deterrent element in the punishment must be present. deterrent and reformative theories of punishment, is whether it is possible to have a penal system having the reformative element as the sole standard of punishment. Salmond, in his treatise on

True, the reform dimension has been long ignored in the past. While reformation is an important element of punishment, it can not in itself become the sole end. It must not be ignored but it must not be permitted to take on undue significance at the same time.The chances of long-lasting reformation are higher in the case of juvenile offenders and first offenders than in the case of repeat offenders. In trained and stable societies, more reformatory therapy is more likely to be successful than in chaotic or underdeveloped populations.

There are also people in the society who think that the form of punishment which should be followed is the reformative approach which, these days is the approach of maximum prisons, etc. they think that that crime is a disease and it should be eradicated from then and should be treated, accordingly the punishment should be served. But with the increasing rate of crimes day by day it is impossible to rule out the capital punishment from the legal system, such heinous crimes are taking place day by day, like murders, sexual offences, etc. If we talk about the rapid incidents increasing of the rapes of women in our country, it is alarming, everyday news flashes that one or the other woman was raped and not only the women but the girls who have hardly achieved their maturity or girls who are just born are being raped. Everyday people gather and take out a candle march for the rape victims, acid attack victims etc but nothing is changing in the country. In this scenario if these types of criminals are treated with the reformative approach and before punishing them, their rights and humanity is considered the only change the country is going to face is the increasing number of such heinous crimes nothing else. For these kinds of offenders, Capital Punishment is a must because, at the end of the day, they are habitual offenders and only strict and grave punishment should be served to them according to their crimes. To curb the sexual offences, one of the solutions can be legalizing Prostitution in our country. By doing so, there are high chances that this type of offence can curtail.

Another thing which is basic is sexual Education, which should be given to all the children in the schools, women should be treated equally and a sense of patriarchy should be thrown out the minds of people as because of this thinking only, in many places, considering women of lower dignity, these offences take place.

At the other hand, juvenile offenders and the first offenders and victims of minor offences should be punished with a lighter sentence and should be given the opportunity to change when they face their future so it should be hoped that, after serving the sentence when released, they will be an asset to society rather than a liability. The solution would be to rehabilitate the convict, train them and engage them in such activities that they can come out as a better person after the completion of their sentence. When even the criminals are put under inspection at this point so it will deter them from committing the crime and becoming a hardened criminal.

The sole objective of reformative approach of punishment is the reformation of offenders through the method of individualization, even if the offender commits the crime; he does not cease to be a human being. Hence, It is difficult to put one theory of punishment forward as the only one suitable one for our country, with the changing definition and dimension of crime. Any theory, be it deterrent, or reformative or preventive, can be used which is best suited to curb the crime rate in our country.

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