EXPLORING THE RELEVANCE OF DETERRENCE PUNISHMENT AND ITS IMPLICATIONS TO SOCIAL STABILITY AND LEGAL SANCTION

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1. Introduction
The idea of a society without crime is fiction. Crime and criminals have become an indispensable part of any society. It is not something which is expected, yet it exists, due to the interplay of various factors. In essence, the idea of crime is tied to the social structure. A person’s interests are best served by being part of a community/society. Everyone has obligations to their fellow humans as well as rights and privileges that they want others to protect for them. The behaviour of the people inside a society is governed by this sense of respect and trust for one another’s rights. Even if the majority of individuals adhere to the “live and let live” maxim, there are others who, for one reason or another, stray from this accepted pattern of behaviour and connect themselves with anti-social forces. This lays a duty on the State to keep society functioning normally. Protecting law-abiding individuals and punishing lawbreakers is a difficult responsibility that falls under the purview of the State, which carries it out with the aid of the law. For this reason, Salmond described law as a “rule of action” governing people’s behavior in society. While actions that are permitted by the law are regarded as lawful, those that are banned by the law at a certain time and location are recognized as crimes or wrongdoings. According to the law of crime, the wrongdoer who commits a crime is punished for his culpability.

Primitive societies only knew the law of wrongs and did not distinguish between the laws of crime and torts. In response to this, Frederick Pollock and Maitland noted that because the link of family was far stronger than that of the community and the wounded party and his kindred were able to exact private retribution and self-redress, English society before to the eleventh century conflated crimes with torts. During this time, using a judicial remedy was just seen as an optional complement to self-redress. The perpetrator was required to provide the victim with compensation, the amount of which was determined by the severity of the wrong and the victim’s status. The payment of compensation, or "bot," removed the wrongdoer’s guilt and put him in a situation where it looked as if he had done nothing wrong. The earliest Anglo-Saxon rules included the smallest of details regarding the compensation (bot) that was due for various wrongs with the intention of assisting the individual who had been harmed in obtaining redress. But if bot was rejected, the law lacked another way to make sure it was paid. In that case, the victim or his kin would be responsible for bringing a “blood-feud” against the culprit, and the law could only assist him by designating the wrongdoer as a “outlaw” who may be pursued by anybody and killed like a wild animal.

There were certain more wrongs that required additional fines (wite) due to the King in addition to the offences that may be atoned for by paying compensation to the victim. Aside from that, there were other crimes that could not be absolved by money; instead, the perpetrator had to face penalty. Such offences carried a death, mutilation, or property forfeiture penalty to the King. Early “botless” offences that required mandatory punishment under state law included breaking into houses.

harbouring criminals, refusing to serve in the military, and breaching the peace, among other things. The modern concept of crime has emerged from these "botless" offences. The contemporary idea of crime has its roots in these "botless" offences. After the eleventh century, there was a significant increase in the amount of "botless" offences. Thus, a clear distinction could be made between wrongs that could be atoned for by the payment of compensation (bot) and those that could not be atoned for through monetary recompense (botless), for which the King would punish the perpetrator. Over time, the former became known as civil wrongs or "torts," whilst the latter became known as "crime." As a result, it can be seen that, unlike today, the law did not play a significant role in controlling social relations in the early days. In contrast to early cultures, where the law was only applied when both parties consented to accept the verdict, current legal systems mandate that as soon as an offence is committed, the law is immediately put into action regardless of the preferences of the party who was hurt.

The guilt or innocence of the wrongdoer was considered based on the system of ordeals by ‘fire or by water’ which was another distinctive aspect of this time period (1000 to 1200 A.D.) in the history of crime. This may have been caused by the early domination of religion and the superstitions of the populace, who held the view that an omnipotent supernatural force was in control of their social interactions.

Ordeal, according to the authors of the Dharamashastra, was an active institution in India. Epigraphic and judicial sources demonstrate that throughout the beginning of Indian history, the ordeal has been conducted strictly in accordance with the Dharamashastra laws. The ordeals have been referred to as divine techniques by ancient writers under many names, including Samayakriya, Sapatha, Diva, or Pariksa. Trials were viewed as a divine way to establish an accuser's guilt or innocence. The requirement for divine intervention at a pivotal point in the administration of justice was one of the two main characteristics of ordeals, which were (i) they indicated the divine aspect of trial, and (ii) the fundamental idea behind this type of trial. As a result, the practise of ordeal was a long-standing institution and custom in ancient India. Five different types of ordeals are mentioned by Yajnavalkya: Balance, Fire, Water, and Poison, Kosa.

In the balance test, the complainant was weighed against a stone; if the stone was heavier, the accusation was established as false; otherwise, it was deemed to be proven. The four primary components of the fire ordeal were (i) walking over blazing fire, (ii) pulling an iron object out of boiling oil, (iii) licking the red-hot iron bar with one's tongue, and (iv) travelling through nine circles while holding a red-hot iron ball.

In a water trial, the defendant was brought to a deep river with swift currents or a deep well filled with water. Then he was to say to the water, "Kill me if I lie and angels rescue me if I utter the truth, for thou art of the pure angels and knowest both that which is private and that which is public." The accused was then taken by five men and dropped into the sea. He wouldn't perish by drowning or dying if he was innocent.

A method of investigation was also employed during the poison ordeal. The defendant was forced to consume the poison or remove a real, moving black snake from a pot. He was meant to be innocent if he made it out unharmed; else, he would be considered guilty.

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10 Dr. Pendse S.N.: Oaths and Ordeals in Dharamsastra (M.S. University, Baroda Publications, 1985) p. 24.
The mildest torture designed for widespread use was the kosa type. The defendant was brought to a temple. The accused was then given holy water to drink after the priest had finished washing the deity (idol) with water. In either case, he would immediately vomit blood. The concept of divine judgement served as the foundation for the first three trials. However, with time, they were no longer used.

With the passage of time, human reasoning developed, and the King took on more responsibility for catching offenders—a job that had previously been the unique responsibility of the person who had been hurt. The evolution of criminology as a distinct field of study was a result of the changes in civilization, society, and scientific understanding as well as a change in how crime was seen.

2. Crime and Punishment

2.1 Notions of Crime

The task of giving a specific definition of "crime" is by no means simple. Almost all civilizations, in general, have some rules, beliefs, habits, and traditions that its members implicitly accept as beneficial to their well-being and healthy growth. A violation of these revered standards and traditions is viewed negatively as antisocial behaviour. As a result, "crime" has been described by various writers as anti-social, immoral, or sinful behaviour. The legal meaning of "crime" is, however, any course of behaviour that is seen to be socially damaging in a State and as such outlawed by law under the threat of penalty. Consequently, according to Tappan, a crime is "an intentional act or omission in violation of criminal law, performed without any defence or justification and punished by the state as a felony or misdemeanor."\(^{11}\)

According to Kenny, "crimes are wrongs with penal sanctions, and are in no way remissible by any private person, but are, if remissible at all, only remissible by the Crown.\(^{12}\)" However, this concept has drawn criticism because some compoundable offences are actually remissible with the parties' permission.

According to Roscoe Pound, who expressed his opinions on the definition of crime, "a final definition of crime is impossible because law is a living and changing thing, which may at one time be based on sovereign will and at another time on juristic science, which may at one time be uniform and at another time give much room for judicial discretion, which may at one time be more specific in its prescription and at another time much more general.\(^{13}\)"

According to Keeton, a crime is any unwanted behaviour that the State deems most appropriate to correct by starting processes to impose a punishment rather than leaving the choice of remedy up to the injured party.\(^{14}\)

According to the definitions of crime provided by various authors, a crime has three major characteristics, namely:

i. It is a harm caused by a person's antisocial behaviour that the State wants to stop;

ii. Punishment is the preventive measure the State has adopted;

iii. The Code of Criminal Procedure's standards of criminal law procedure and the law of evidence control the legal proceedings required to determine whether an accused person is guilty or not.

Modern criminal jurisprudence has usually recognised a more functional approach to the notion of crime as a public wrong. The function of the law of crimes is maintenance of public order and protection of citizens against anti-social conduct of criminal perpetrators.

According to the aforementioned definitions, a crime is a wrong to society that involves the violation of a legal wrong and has criminal repercussions, such as possible prosecution by the State in a criminal court and punishment for the perpetrator.

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\(^{11}\) Tappan Paul W: Crime, Justice & Correction, p. 80.

\(^{12}\) Kenny, C., 2017. Prosecuting crimes of international concern: Islamic state at the ICC. Utrecht J. Int'l & Eur. L., 33, p.120.


The legal definition of crime has drawn criticism for its relativism and changing content, although Halsbury’s definition\(^{15}\) is likely the most acceptable when compared to others because of its detailed, precise character and element of certainty. Additionally, it includes provisions for the tools and processes needed to spot violations and apprehend perpetrators.

2.2. Concept of Punishment

It would be appropriate to understand the concept of punishment before discussing the theories of punishment. While embracing Grotious’ concept of punishment, Sir Walter Moberly believes that punishment implies that: what is inflicted is ill, that is something unpleasant;

i. it is a reaction to a behaviour that was forbidden by authority;
ii. there is some correspondence between the punishment and the act which has evoked it;
iii. punishment is administered, meaning it is voluntarily imposed;
iv. The criminal receives punishment, or someone who is intended to answer for him and his wrongdoings receives punishment on his behalf.

2.3 Justification for Punishment

There are valid reasons for justification of punishment to offenders who are convicted for an offence. They may briefly be stated as follows:

i. Deterrence.- By making punishment harsh enough to make the advantage or pleasure gained from the offence outweigh the pain and likelihood of punishment, punishment serves to deter a person from future wrongdoing.

ii. Incapacitation.- Prison confines the prisoner and renders him incapable of committing a crime because to his physical condition. For their wrongdoings, the most dangerous criminals may receive life sentences in jail or possibly the death penalty for egregious and brutal crimes like murder.

iii. Restoration.- Fines or the payment of compensation to the victims of the crime or their family or relatives may be used as punishment for some minor offences.

3. Emergence of Society and Social Norms Consequences of Punishment for Social Stability

3.1 Interplay of law and society

Criminal Law is basically based upon balance of interests between the individual and society. The Indian Penal Code is the substantive part of criminal law, which provides punishments. Society pre-determines certain acts which may shake the conscience of the society and therefore through its pre-judgmental theory abhors such acts and provides punishments to the individual who commits Such acts, i.e. the theory of abhorrence.

Essential object of criminal law is to protect society against criminals and lawbreakers and for this purpose penal laws provide the punishments. However, mere punishments will not serve, as empty threats do not have any deterrent threat in order to create the deterrent threat the crpc provide the mechanism to punishment individual for wrong to society. However, while doing so, the balance is sought to be between the larger social interest in prosecuting, convicting, and punishing the accused on one hand and protecting the basic rights of the individual accused. Even if the person is accused of having committed an offense he deserves to be provided with minimum fair treatment. Any provision of deprivation of his fundamental right. to life and liberty under Article 21 must be fair and not arbitrary and just, therefore CrPC,1973 maintains this balance of natural justice by providing so many safeguards to the accused.

3.2 Theories of Punishment

It has long been a recognized duty of all civilized states to punish criminals. However, as the social structures of contemporary countries have changed, so too has the way criminologists see punishment. Penologists today are concerned with a key issue about the purpose of punishment and its position in criminal law.

Though perspectives on how to punish criminals have always varied, ranging from long-standing traditionalism to more recent modernity, four distinct sorts of views can be found to predominate. These days, criminologists refer to them as “theories of punishment.” However, the boundaries between these theories are such that they cannot be entirely isolated from one another. Utilitarianism, which emerged in the eighteenth century, developed a social policy that served as a guide for Benthamite-era legal and penal changes in England. With the exception of the notion of retribution, which is largely disregarded in contemporary correctional programs, the main theories of punishment established during that person’s lifetime are still valid today. Here is a brief summary of these theories:

3.2.1 Retributive Theory
While the retributive theory viewed punishment as an aim in and of itself, the deterrence theory viewed it as a means to social security. It was mostly founded on retributive justice, which holds that wrongdoing should be punished with equal severity regardless of the consequences. Supporters of this viewpoint did not regard punishment as a tool for ensuring the welfare of the general populace. Therefore, the thought emphasized the concept of vengeance or revenge. As a result, the punishment the criminal would get had to be more painful than the pleasure the crime gave him. In other words, the retributive view proposed that punishment is a manifestation of society’s disapproval of the criminal act committed by the offender.

“Judicial punishment can never be used merely as a means to promote some other good for the criminal himself or civil society, instead, it must in all cases be imposed on him only on the ground that he has committed a crime; for a human being can never be manipulated merely as a means to the purposes of someone else.”

He claims that since society believes that a bad person must ultimately face punishment and that a good person deserves praise, punishment is an end in and of itself and that vengeance is a justification that comes naturally.

Sir Walter Moberly noted that the theory of retributive theory is founded on the idea that punishment is a specific application of the general concept of justice, which is that men should be given their just compensation. A healthy-minded community’s righteous wrath toward transgression is expressed and satisfied through punishment. It can therefore become an end in itself at times.

It must be acknowledged that the philosophy of vengeance derives from the basic animal instinct of a person or group to take revenge when harmed. However, the contemporary perspective does not support this claim because it is neither wise nor desirable. Instead, it is typically viewed as a vengeful tactic against the wrongdoer.

The idea of expiation which involves erasing the guilt by accepting an acceptable punishment is strongly related to retributive theory. This idea, that guilt plus punishment equals innocence, forms the basis of the mathematical formula for crime.

The majority of criminologists reject the idea that punishment should be used to force offenders to make amends. The reason is because as soon as an offender serves out his or her sentence, they believe their guilt has been erased and they are free to commit crimes once more. In defence of the theory of retribution, Sir James Stephen asserted that “criminals deserved to be hated and the penalty should be so devised as to give voice to that hatred, and to justify by gratifying

20 Id.
a healthy natural passion. Retribution in the sense of vengeance is rejected by current criminology, but it must always be a crucial component of any form of punishment in the sense of reprobation.

3.2.2 Prevention Theory

The idea behind the preventive approach to punishment is "not to avenge wrongdoing but to prevent it." It assumes that the need for criminal punishment results purely from social requirements. By punishing the offender, the community fortifies itself against antisocial behaviour that could harm its members' lives or property, as well as the social order as a whole.

Numerous writers have disputed this approach on the grounds that changing criminals' behaviour can also reduce crime. It is obvious that neither theory can serve as the only benchmark for punishment in the ideal penal code. Therefore, the proper perspective appears to be that the ideal criminal justice system is the product of a compromise between the tenets of all ideologies.

The goal of legislation must be to protect society, which can be done through enforcing just punishment. A sentence's or its system's malfunction can make people less likely to respect the law. The application of suitable punishment is preferred in order to meet social needs and serve as a deterrent to other potential offenders. Although there isn't a pre-made formula that can be used in this situation, the goal should be to ensure that the crime is not left unpunished and that the victim of the crime as well as society are satisfied that justice has been served. It is impossible to disregard aggravating variables, and mitigating conditions should be given proper consideration.

Therefore, rather than infrequently carrying out the threat, the true goal of the penal code is to make it widely recognised. It is successful at deterring anti-social behaviour and a better alternative to deterrence or retribution, which are currently viewed as ineffective ways of dealing with crime and criminals. This makes the "preventive theory" realistic and humane.

3.2.3 Deterrent Theory

The majority of earlier forms of punishment had a deterring effect. This type of punishment entails imposing harsh penalties on criminals in an effort to prevent future criminal activity. Jeremy Bentham, the creator of this idea, based it on the hedonism principle, which held that a person would be discouraged from committing a crime if the penalty was rapid, certain, and harsh. According to this theory, punishment is bad but nonetheless required to keep the peace in society.

By giving convicts proper punishment and exemplary treatment, the deterrence approach also aims to instill a sense of terror in the minds of others, keeping them away from criminal activity. Therefore, the severity of punitive discipline serves as an adequate warning to both offenders and other people. Therefore, despite the fact that deterrence always fails in practise, it is unquestionably one of the effective policies that practically every prison system supports. Since hardened criminals infrequently respond to harsh punishment, deterrence as a measure of punishment falls particularly short in these cases. Because many crimes are performed on the spur of the moment without any prior intention or design, it also fails to discourage common criminals.

The fact that many seasoned offenders return to prison quickly after being released illustrates the inadequacy of deterrent punishment. They would rather stay behind bars than live freely in society. As a result, the goal of deterrent punishment is clearly achieved. This opinion is supported by the fact that many people committed crimes like as pick pocketing, stealing, assault, or even murder in those men-only gatherings when capital punishment was openly administered by hanging the victim to death in public places.

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It should be noted that the idea of deterrent punishment has a long history of being strongly related to archaic theories of crime and criminal responsibility. In the past, crimes were thought to be the result of the offender's "free-will" or the influence of a "evil spirit." Because the soy saw the offender's voluntary perversion as a threat to God or religion, it advocated harsh and deterrent punishment. The punishment ought to be a terror to evil-doers and an awful warning to all others who might be tempted to imitate them. This contention finds support in Bentham's observation, who said:

"General prevention ought to be the chief end of punishment.... An unpunished crime leaves the path of crime open, not only to the same delinquent but also to all those who may have some motives and opportunities for entering upon it. We perceive that punishment inflicted on the individual becomes source of security for all. Punishment is not to be regarded as an act of wrath or my vengeance against a guilty individual who has given way to mischievous inclinations, but as an indispensable sacrifice to the society."

However, Bentham thought that the process of rehabilitation had to provide convicts a chance at reformation. From this perspective, his idea can be regarded as futuristic because it focused more on the repercussions of punishment than the wrong that had been committed, which cannot be changed because it is a fact.

The Supreme Court in State of Karnataka v. Sharanappa Basanagouda Aregoudar, rightly stated that: The court's punishment should be appropriate for the nature of the offence and serve as a deterrent to future offenders. Naturally, when it comes to sentencing, courts have the discretion to consider a wide variety of facts that may be important for determining the length of the sentence, but that discretion must be used with due consideration for the larger interests of society. It goes without saying that the imposition of a sentence is likely the criminal justice system's most visible aspect. The need for deterrent-effect sanctions, particularly for some categories of offences, has been brought up in court.

Deterrence based on Action An action-based deterrence theory's fundamental premise emphasises the value of each individual's activities in fostering happiness and preventing crime. This interpretation claims that punishing offenders makes society as a whole happier. Think about someone breaking into a store. If we imprison the thief as punishment, it will help us so that future robberies by that particular robber are no longer a possibility. In addition, since the thief is in jail, many would-be robbers who were thinking about robbing stores would think twice about doing so.

In other words, the penalty also acts as a form of deterrent. Overall, it is possible to defend punishment as a clear instance of societal benefit. But in order to take this into account, we must be certain that the heist he committed was not his only one. Furthermore, we must presume that the punishment will encourage future thieves to stop robbing people. I think it will be very challenging to refute these allegations. Instead of delving into the concerns right now, let's concentrate on the specifics of the idea of individual action with which we began the debate. In this case, punishment is seen as a measure that fosters happiness and welfare, much like how we view crime as fostering unhappiness.

What is at risk when deterrence is based on action? I think that by contrasting two instances of punishment and no punishment, we can get to the heart of this theory. Think about the robbery incident from earlier. It must be proven that there is less happiness in the world where the thief is punished than there is in the world where he is not punished for the action theory to be valid. According to the action theorist, punishment is therefore justifiable assuming that such a comparison

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31 Appeal (crl.) 407 of 2002
has been made because we always favour a world with more happiness. Since this form of the deterrence theory of punishment is straightforward, let's analyse the objections before moving on to its application.

3.2.3.1 Rule based Deterrence
We observed that the unit of justice is weighed as an action in the deterrent that is action oriented and results in deterrence. The question of whether the behaviour is ethically deserving of punishment is then raised. If it deserves punishment, the action theorist responds that it does so because it is morally right to do so. There are three crucial elements in the rule-based deterrence process that results in deterrence. Three factors must be considered: the specific offence, the rules on which the offence is determined deserving of punishment, and the reason for the rule in question.

Let's refer to this deterrent strategy as "rule theory." The retributivist in levels one and two described above is essentially the rule theorist. She/he is a deterrentalist, though, when the topic of how the rule was made comes up. Think about a theft trial, for instance. Think about a theft case where the defendant is facing trial. In the initial stage, the judge is simply concerned with determining if this person has committed the offence and is guilty. We already reach a retributive desert judgement about the person's moral culpability on these two levels. The judge then decides on his punishment.

3.2.4 Reprobation
This idea takes advantage of the reprobate component of punishment. It's common to interpret expressions of censure, disapproval, or condemnation as having reprobative overtones. This point of view, which I'll refer to as the "reprobate theory," interprets punishment as an expression of the sanctioning authority's disapproval of the offender. According to Hart, this viewpoint is as follows:

"What distinguishes a criminal from a civil sanction and all that distinguishes it . . . is the judgment of community condemnation which accompanies and justifies its imposition".

In this case, the freedom to express disapproval is used to understand and defend the right to punish. Duff views punishment as a form of censure in which the idea of punishment being harmful is refuted. In this perspective, punishment is typically mild and symbolic. Consider sanctions like a minor fine or community service requirement. This would convey that the state disapproves of the person who was punished. In this case, punishment is employed as a psychological tool to assist the offender understand that society does not approve of his or her behaviour.

3.2.5 Reformative Theory
With time came fundamental changes in criminological thinking as a result of advancements in the field of criminal science. The issue of crime and criminals was approached from a novel perspective. Individualized care has become the guiding idea for offenders' rehabilitation. The reformative philosophy of punishment embodied this viewpoint.

The reformative approach to punishment, in contrast to deterrent, retributive, and preventative justice, seeks to transform the offender's perspective and restore him within the society as a law-abiding citizen. Instead, of torturing or harassing the offender, punishment is utilized as a measure to recapture him. All forms of corporal punishment are forbidden by reformative theory. The reformist movement places a strong emphasis on the rehabilitation of prisoners in penal institutions in order to make them become law-abiding citizens. There are either maximum or minimal security measures in place in these prisons. The reformers support treating prisoners humanely inside of prison facilities. Additionally, they advocate for providing inmates with the necessary training to help them acclimate to life outside of institutions after they are released.

36 Spadigam (J.) vs State Of Kerala, (1970) ILLJ 718
The finest ways to return criminals to society as transformed individuals are suggested to be through organizations like parole and probation. According to a reformatory perspective on criminology, punishment is only justifiable if it looks to the future rather than the past. "It should not be regarded as settling an old account but rather as opening a new one". Therefore, the proponents of this viewpoint defend imprisonment not simply as a means of isolating offenders and removing them from society, but also as a means of bringing about a change in their perspective through successful reformation efforts while they are serving their sentences.

Modern criminologists unquestionably assert their belief in reformative justice, but they are adamant that it should not be overused. Women, first-time offenders, and juvenile offenders have found the reformative tactics to be effective. Additionally, sex psychopaths appear to respond well to the individualized treatment paradigm of punishment. However, the reformist ideology is not well received by repeat offenders and hardened criminals. Salmon noted that although an universal switch from deterrence to reformation could appear terrible, it is sometimes required, especially for abnormal and degenerates who have less moral character. Therefore, it follows that punishment should not be seen as a means in and of itself, but rather as a tool to achieve the final goal of the offender's social security and reintegration into society.

The "rehabilitative ideal" and the "reformist ideology" that underpin the individualized treatment approach have been criticized by some criminologists because in practice they are more harsh, unfair, and brutal than punishment or deterrence. Peter Kropotkin noted in a piece about the state of prisons in France and Russia that "prisons are seen as symbols of our hypocrisy regarding rehabilitation, our intolerance for deviants, or our refusal to deal with the root causes of crime such as poverty, discrimination, unemployment, ignorance, over-crowding, etc." Therefore, it is untrue to assert that institutional incarceration for reformation is not a kind of punishment. Even though it doesn't involve any physical pain or suffering, close monitoring and surveillance are nonetheless punishing in and of itself. Few scholars have criticized reformist ideology, saying that most of its more influential supporters gave it little more than lip service and that prison managers who supported it did so because it gave them more control over prisoners. It is common knowledge that punishment always carries a negative connotation because it restricts a person's regular freedom. In order to maintain social control, it has grown to be a crucial component of law enforcement. Recidivism is inevitable for habitual lawbreakers, who will always face punishment. Due to their incapacity to follow the social standards that are expected of them, serial offenders have a tendency to repeat crimes. Investigative research has revealed that criminal behaviour is caused by mental depravity; as a result, a therapeutic treatment programme seems necessary for the rehabilitation of such criminals. However, it is necessary to categorize criminals for this purpose based on their age, sex, the seriousness of their offences, and their mental state.

41 Kamenka & Brown: "Ideas and Ideologies Law and Society", p. 112.
This goal is accomplished by scientifically classifying criminals into different groups, such as first-time offenders, habitual offenders, recidivists, juvenile offenders, criminals with mental illnesses, sex pedophiles, etc. Since crime is primarily a result of a conflict between the interests of society, the right strategy would be to treat punishment as a form of social surgery.

3.3 Diverging Concerns of Different Theories

For a long time, the majority of the literature on punishment was devoted to the promotion of one doctrine over another. The other hypotheses were rejected by proponents of the rehabilitation hypothesis, while proponents of the deterrence theory disputed the veracity of all the other theories, and so on. For instance, prison must be evolving into a home far too luxurious to act as any effective deterrent to those groups from which criminals are mostly drawn if criminals are brought there in order to be changed into good citizens by physical, intellectual, and moral training.

People who are incorrigibly evil or some guys who, due to a natural vice, are incapable of being changed even when they are young are examples of incorrigible offenders.

In the circumstances of incorrigible criminals, there are individuals who are inherently terrible or certain guys who, due to a natural vice, are incapable of being changed, even when they are young. The deterrent principle would have the most impact in this agreement, and its proponents would have the final say. This is the fundamental and main goal of punishment. All others are incidental and secondary.

The essential significance of the deterrent element in criminal justice must therefore be emphasised in light of current theories and practices. It's important not to ignore the reformative component. For instance, odds of effective reformation are higher for juvenile offenders and first-time offenders than for adults who have committed crimes.

4. Efficacy of Deterrence in Curbing Punishment

The most crucial question we pose is whether the deterrence theory as it is now applied to the criminal justice system in India works effectively. The majority of the general public is deterred from committing crimes by even the threat of being detected. It works on a straightforward principle: since we are raised with moral principles, it is more and harder for us to violate our own personal codes of conduct as we get older.

In a perfect world, this would prevent students from cheating on tests, but in times of need, people may feel compelled to go against their moral convictions and break the law. There should be consequences for those who override their fear of committing crimes in such circumstances. We can see the penalties and are aware of them, but for those who are unaware of or have little awareness of these rules, there is a need for education.

In rural areas of our nation, laws that serve as deterrents are still not well known. The crimes that are committed but are not reported by the victims and are only made public after a police or media investigation are evidence of this. This says a lot about our criminal justice system, which depends on the populace understanding the process and nuances of the law to provide fundamental access to justice. As a result, outside interference in the system is eliminated, allowing the general public to assert their rights rather than wait for justice to be served. People have a healthy distrust of the judicial system because it costs money and takes time. Even with fast-track courts operating well, criminal litigation is costly and time-consuming.

The populace will determine how well a deterrence theory works. This deterrence theory is thought to only be effective in sensible populations. Crimes are frequently irrational acts or conduct by someone acting on impulse. Such actions cannot be stopped until and until the perpetrator is persuaded or reasoned with, which is a difficult effort in and of itself. The regular conventions that are established to prevent someone from committing a crime are not followed by criminal brains. Deterrence in this case can only prevent those who lack genuine criminal intent. For the most part, crime is no different from any other action, such as drinking water. "The effectiveness of a law as a deterrent obviously depends on the understanding of the law and the severity of the punishment."

5. Review of the Effect of Deterrence in Curbing Punishment by Analyzing NCRB Data and other sources
The crimes committed in any society are the reflection of its peace and order situation. One of the significant objectives of penalties is to create deterrence and prevent similar crimes in the future. The National Crime Records Bureau of India (NCRB) is the nodal body for recording crimes in India. Indian criminal justice system considers deterrence as one of the objectives for inflicting penalties. For crime-related statistics in 2021, a new edition of “Crime in India,” the National Crime Records Bureau’s (NCRB) annual report, was published on August 29. Over the years, NCRB reports have been a vital source of statistics on a variety of crimes, from economic and financial crimes to crimes against women. The researcher seeks to review the crimes as recorded by NCRB at various time spans. The data available on the official website of NCRB is considered as a secondary source for the present research paper.

In comparison to 2020, there was a 7.6% overall drop in reported crimes in 2021. In 2021, the crime rate per lakh people dropped from 487.8 in 2020 to 445.9. But crime numbers don't often tell the whole story, and just because there are fewer crimes reported somewhere doesn't indicate that place is inherently safe. Some of the key conclusions from the National Crime Records Bureau (NCRB) data for 2021 specific to the national capital include an increase in crimes against women and children of over 40%, the fact that only 31% of IPC cases result in chargesheets, and the fact that there has been an increase in cybercrimes of 111%.

The majority of IPC cases, according to data, involve robbery, kidnapping, and theft, which reflects a surge in horrific and street crimes. Children make up a large portion of the victims; crimes against them have grown 33% from the previous year. Data indicates that 14,277 incidences of crimes against women were reported in Delhi last year. In comparison, major cities like Bengaluru and Mumbai saw 3,127 and 5,543 cases, respectively. Most women between the ages of 18 and 30 are “vulnerable,” which makes them targets for husbands, family members, or friends. Despite the fact that chargesheets have been filed in 71% of these cases, more than 16,000 cases from prior years are still pending. A 41% increase from the prior year, 1,374 POCSO incidents and 1,125 rape cases have also been reported in 2021.

From the previous years, there has been a sharp increase in cybercrime cases in Delhi. According to data, the number of incidents of online fraud, online harassment, the publication of sexual information, etc. increased by 111% in 2021 to 356 cases from 168 in 2020. For publishing and transmitting sexually explicit content where the complainants/victims are women or juveniles between the ages of 12 and 17, the majority of offenders were arrested.

According to records, 11,793 violent crimes were committed in Delhi in 2021, however just half of those offences have been charged. The majority of instances involve rape, robbery, attempted murder, causing great bodily harm, etc.

Out of the 19 major cities in the nation, Delhi has the most murder cases (454). In such circumstances, victims tend to range in age from 18 to 35. According to the police, many incidents include unavoidable personal animosity and financial issues. However, they claimed that in less than 48 hours they were able to charge the accused in 95% of registered murder cases. Compared to the prior year, abduction cases in the city climbed by 36% in 2021. According to data, just 8% of instances have resulted in chargesheets, and there are currently 9,507 victims from prior years who have not been located. More than 5,888 people were kidnapped or abducted last year.

6. Punishments for Deterrence
There has been a huge increase in the number of recorded cases of violence and mystery murder as a result of increased media attention. Rape and sexual assault incidents have risen to prominence

46 NRCB Report, India, 2020, Available at: https://ncrb.gov.in/sites/default/files/CII%202020%20Volume%201.pdf
throughout time and are now fiercely reported. The victims in these cases are left defenseless, and the perpetrators are not publicly identified, therefore deterrence has failed to achieve its goal. Only weak-willed people and those who don't act firmly on their convictions are successfully deterred by deterrence. Regardless of deterrents, criminal minds have carried out their impulses. Sanctions and penalties have evolved into barriers that offenders must get beyond. Clearly, this is not what India's criminal justice system needs. The rate of crime in India, as we see it, is not changing despite hefty penalties and fines, and the number of instances has risen.

7. **Need for Reforms:**

According to utilitarian Jeremy Bentham, while the principle of using punishment to reduce crime is sound and appears to be working on paper, in practice it is not cost-effective and does not work to prevent criminals from committing crimes. Bentham supported the use of inexpensive, minor fines and believed in the greater good for a larger population. Everyone would benefit if a system had fewer severe penalties at cheaper costs. However, this theory would not be entirely realised. Although it was conceivable to lessen punishment in order to lower the expense of deterring offenders, the danger was much higher. The discussion focused on properly rehabilitating and discouraging criminals at a specific time rather than controlling the financial side of the criminal justice system.

8. **Crime and Punishment: Need for a Re-look**

Modern thinking holds that harsh punishments can serve as a deterrent to lawbreakers as a price for breaching the law. It has often been noted that developing nations like India place more emphasis on punishments than on how effectively they are implemented. As is currently evident in India, a culture of public and private violence, lawlessness, and impunity is a result of poor law enforcement and severe penalties.

The regulations that are becoming more and more popular throughout the nation, such as Article 377 on homosexuality, beef prohibitions, and prohibition laws, are accompanied by excessively stringent punishments. Even in states without a prohibition law, like Delhi, having a few cases of beer or more than nine bottles of single-malt whiskey might result in a three-year prison sentence. Upholding criminal defamation under Section 499/500 IPC has been added to the list. In essence, defamation is a civil wrong that was made illegal during the British era when public order was threatened by duels to uphold honor and reputation. Instead of continuing to use criminal defamation, India urgently needs to increase the promptness with which civil defamation matters are resolved.

Decriminalization of offences including marijuana use, homosexuality, defamation, etc. is a current global movement. Criminalizing more and more offences is a sign of an unjust system of administering justice. It is unfair that the impoverished and dalits are frequently apprehended or arrested by arbitrary law enforcement. They are forced to serve years in prison as unconvicted defendants without access to swift justice. The Law Ministry is now working to remove the old laws, but it should go further and examine several contemporary legislation in order to alter or repeal them for the sake of society as a whole.

The use of severe penalties is not a positive trend in the contemporary world. With respect to crime and punishment, whose parameters are constantly changing as a result of social change, there is a need to preserve equilibrium. These modifications cannot be ignored by the criminal code or the penal system.

9. **Conclusion and Suggestions**
It must be kept in mind when creating a penal programme for the deterrence of crime and the treatment of convicts that human nature is complicated and impossible to fully understand. This explains why no two people react the same way to a particular scenario. This fundamental realisation sparked the development of numerous offenders’ treatment strategies. Prisons no longer serve as institutions for holding prisoners; instead, they now serve as training and therapy facilities for people who break the law. As re-education of offenders and protection of society can be better ensured if the offender is rectified and given individualised treatment, the emphasis has now switched from custody to training. Experience has demonstrated that because of the stigma society associates with released prisoners, simple treatment does not contribute to the eventual rehabilitation of offenders. Therefore, a good after-care programme is crucial for the corrective therapy of released inmates.

The goal of punishment is to stop the offender from harming other people in the future and to discourage others from doing the same. It is now widely accepted that punishment is a retributive activity. A liberal defence of punishment demonstrates how society requires the threat and use of punishment. Additionally, it is obvious that the public is unlikely to give up the idea of punishment.

The basic ideas that all criminality is disorder, disease, or something like, and not at all a question of offences committed voluntarily, must be considered in light of a wider truth. There is absolutely no broad or expanded concept of disorder, illness, or anything similar in this great truth. It only relates to disorders, illnesses, or conditions of the like that are currently recognized as such by ordinary and conventional medical judgment (Honderich, 2006). To improve offenders’ behavior and decrease the frequency of offences, it is therefore advised to use treatment rather than punishment.

An ideal criminal justice system would use deterrent for repeat offenders and seasoned criminals, and reformation for young offenders. Due to the outdated nature of the conventional means of punishment, current criminologists place more focus on institutional punishment. The criminal justice system should be designed to punish offenders while also fostering civic virtue and discipline. In other words, you shouldn’t be either unreasonably harsh or unrealistically lenient. It must be acknowledged that criminal law represents the response to crime; as a result, the motivation for punishment should primarily reflect the social structure and recognized norms and values of a particular society. What is required now is a rehabilitation programmed for all prisoners, together with a significant reduction in the use of incarceration and incarnation.

In the case of young offenders, a penal strategy should focus on rehabilitation, while recidivists and seasoned criminals should instead be subjected to deterrence. For this reason, institutional techniques of punishment are given more weight by modern criminologists than the archaic, out-of-date ways of punishment. The criminal system should be designed to punish offenders while also fostering social discipline and morality among citizens. In other words, you shouldn’t be unreasonably lenient or intolerably harsh. It must be noted that criminal law represents the response to crime; as a result, the motivation for punishment should primarily reflect the social structure and recognized norms and values of a particular culture. The necessity of the hour, in fact, is for a rehabilitation programmed for every prisoner with a significant reduction in the use of incarceration and incarnation.

By eliminating their innate criminal propensity, a successful criminal justice system must necessarily ensure that society is protected against criminals. Adopting a punitive policy that enforces suitable penalties can help with this. In Ankush Maruti Shinde v. State of Maharashtra, the Supreme Court emphasised this component of criminal justice and reaffirmed that, “Law should embrace the corrective apparatus or the deterrence based on factual matrix in order to continue the sentencing

47 Swamy Shradhanand alias Murli v. State of Karnataka, AIR 2008 SC 3040
48 AIR 2009 SC 2609.
system. It may be pointless to impose a punishment without first contemplating how it would affect social order. Therefore, it is the responsibility of every court to avoid imposing the appropriate penalty in light of the nature of the offence and the way it was committed or perpetuated.”

According to some criminologists, the type of punishment used in response to crime varies and fluctuates depending on the stage of development that a certain community or country is in. For instance, harsh punishments such as the death penalty, exile, solitary confinement, confiscation of property, etc., may be frequently utilised during times of revolution or conflict, but they may not be appropriate during times of peace and tranquilly. The death sentence for terrorists may be perfectly justifiable in the Indian context, even though it must only be employed in the “rarest of rare circumstances” due to the uninterrupted increase in terrorist assaults.

Similar to the widespread corruption at all levels, particularly among high-ranking bureaucrats, politicians, corporations, etc., a fine of thousands of rupees along with the confiscation of illicit wealth as a punishment would be more appropriate than incarceration, and perhaps even the execution of such offenders would be more effective.