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Concept of Punishment and Its Justification in Indian Perspective: An Overview

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Abstract
Punishment is a foundational element of criminal justice, serving as society's response to crime. This paper provides a comprehensive overview of the concept of punishment and its various justifications, examined through a blend of legal, philosophical, sociological, and criminological perspectives with a focus on India. We outline the major theories of punishment – retributive, deterrent, preventive, reformative, and restorative – and discuss their philosophical underpinnings and goals. The evolution of penal thought in India is traced from ancient times (as reflected in texts like the *Manusmriti* and *Arthashastra*, which emphasized order and retribution) through the colonial era (which introduced a uniform penal code focused on deterrence and authority) to the modern Indian legal system (which strives to balance multiple objectives of punishment). We analyze how Indian law and courts have justified and applied punishment, highlighting key developments such as the enshrinement of "rarest of rare" doctrine for capital punishment and an increasing emphasis on reform and rehabilitation in recent decades. Sociological issues, including the high proportion of undertrial prisoners and challenges like prison overcrowding and recidivism, are discussed to assess the effectiveness and humaneness of the current system. The paper concludes that while India's penal philosophy officially endorses a reformative outlook in many contexts, in practice a combination of justifications – retributive for heinous offenses, deterrent for potential offenders, preventive for habitual criminals, and limited restorative measures – co-exist. It calls for a more structured sentencing framework and greater incorporation of rehabilitative and restorative justice principles to ensure punishment in India meets its aims of justice, public safety, and social betterment.

Keywords: Punishment; Retributive Justice; Deterrence; Rehabilitation; Preventive Theory; Restorative Justice; Indian Penal Code; Criminal Justice (India)

Introduction
Punishment, in the context of criminal law, refers to the sanction or penalty imposed by the state on an individual who has been found guilty of an offense. It is **the state's formal response to crime**, intended to uphold law and order and express societal disapproval of the prohibited conduct. The concept of punishment has deep philosophical roots – raising fundamental questions about *why* society punishes and what it seeks to achieve by inflicting penalties on wrongdoers. Over centuries, different theories have emerged to justify punishment, each grounded in distinct visions of **justice, social welfare, and human behavior**. These justifications range from exacting retribution or vengeance for a wrong, to deterring future

crimes, reforming the offender, protecting the community, and even healing the harm caused. In practice, modern penal systems often incorporate elements of all these rationales.

India's perspective on punishment has been shaped by a unique combination of indigenous philosophical thought, colonial influence, and post-independence constitutional values. In ancient India, punishment (*danda*) was viewed as a fundamental duty of the ruler – a divine tool to maintain cosmic order and social harmony[1][2]. Texts like the *Manusmriti* proclaimed that **"punishment alone governs all created beings; it protects them"**, underscoring a belief in strong authoritative justice to uphold *dharma* (righteous order)[3][2]. At the same time, ancient lawgivers recognized punishment's utilitarian role: four forms of punishment were enumerated – reprimand, fine, bodily pain, and death – applied with the aim of both **deterring wrongdoing and purifying the offender of sin**[3][4]. In the medieval period, Islamic criminal law under the Delhi Sultanate and Mughal Empire introduced its own set of severe penalties (such as amputations or executions for certain offences), reflecting a retributive and deterrent ethos grounded in religious law.

The **colonial era** brought a pivotal shift. The British, after consolidating power, instituted the *Indian Penal Code (IPC) of 1860*, which endures as the backbone of India's criminal law. The IPC was crafted with Victorian British sensibilities and aimed to systematize punishments for a wide array of offenses across colonial India. The colonial approach was largely **retributive-deterrent** – punishment was meant to be stern and exemplary, to assert imperial authority and discourage challenges to it[5][6]. As Home Minister Amit Shah noted in 2023, the colonial legal mindset was more about *"giving punishment, rather than justice"*, with harsh laws (like those on sedition) used to suppress dissent[7]. The legacy of this punitive mindset persisted in independent India, as the IPC (only modestly amended) remained in force, still prescribing severe sentences including the death penalty for certain crimes.

Since independence, India's democratic Constitution and judiciary have gradually infused the penal system with **constitutional humanism and a reformative orientation**. Article 21 of the Constitution guarantees the right to life and personal liberty, which the Supreme Court has interpreted as requiring that punishments not be arbitrary or cruel. Over time, courts began emphasizing that punishment should not only fit the crime but also the criminal, advocating individualized sentencing that accounts for the offender's circumstances and potential for reformation. For instance, in *Narotam Singh v. State of Punjab* (1978), the Supreme Court observed that **a reformative approach to punishment ought to be the primary objective of criminal law**, to rehabilitate offenders back into society[8][9]. Simultaneously, however, the public and political appetite for retribution remains strong in India for heinous offenses (such as brutal sexual crimes or terror attacks), which has led to retention of the death penalty and periodic enhancements of penalties in law (for example, the 2013 criminal law amendments introduced tougher sentences including death for repeat rape). Thus, India today wrestles with a **balance between multiple penal philosophies** – trying to reform offenders on one hand, while on the other hand imposing exemplary punishments to satisfy societal demands for justice and deterrence.

In the sections that follow, this paper will delineate the principal theories or justifications of punishment recognized in criminology and jurisprudence, and examine how each finds expression (or lack thereof) in the Indian context. We will then review the historical evolution of punishment in India – from antiquity through the colonial period to modern times – highlighting how the aims and methods of punishment have changed. Next, the Indian legal framework on punishment is discussed, including the types of punishments provided by law and the judiciary's approach in sentencing. We further analyze sociological aspects such as the effectiveness of punishments in reducing crime and recidivism, and current issues like the overuse of imprisonment and the condition of prisons. Through this multidisciplinary overview, we aim to provide insight into **how the concept of punishment is understood and justified in India**, and what challenges and reforms are pertinent in making the penal system more just and effective.

Theories of Punishment: Justifications and Aims

Punishment of criminals has been justified on various theoretical grounds. The major theories of punishment can be categorized as follows: **retributive**, **deterrent**, **preventive (incapacitative)**, **reformative (rehabilitative)**, and **restorative**. Each theory offers a distinct rationale for why society should punish wrongdoing. In practice, these justifications often overlap, and a legal system may draw on multiple theories simultaneously. Below, we discuss each theory and its key features, and later we shall see how they manifest in the Indian scenario.

Retributive Theory

The retributive theory is one of the oldest justifications for punishment. It is grounded in the idea of **just deserts** – that a person who has committed a wrong *deserves* to suffer a penalty in proportion to the harm caused or the moral blameworthiness of their conduct. Retribution is often encapsulated by the phrase "**an eye for an eye**," reflecting a moral calculus that the punishment should inflict a pain or deprivation on the offender commensurate with the offense. Under this theory, punishment is not primarily about future benefits (such as crime reduction) but about **moral accountability and vindication of justice**. It serves as a societal expression of outrage at the crime and a means to balance the scales of justice by giving the offender their "due." Crucially, retributivism insists that the guilty be punished because they deserve it, and equally that the innocent *must not* be punished – justice is about punishing only actual wrongdoers, and in proportion to their wrongdoing[10][11].

Retributive theory has deep resonance in Indian ethos, both ancient and modern. Traditional Hindu jurisprudence viewed the king's punishment (*danda*) as not only a tool of order but also a moral sanction – a way to ensure that evil acts were met with deserved consequences, thereby upholding *dharma*. The *Manusmriti* states that **"both the victim's and society's intolerance of criminal behavior is expressed in the form of punishment"**, indicating a retributive attitude of societal vengeance or requital[12]. In independent India, retributive justice finds voice in public outcry for severe punishment in cases of gruesome crimes – for example, there is strong support for the death penalty for particularly heinous murders or gang-rapes, rooted in a feeling that anything less would be unjust to the victims. The Supreme Court's doctrine of "rarest of rare" for capital punishment (laid down in *Bachan Singh v. State of Punjab* (1980)) is essentially a retributive principle tempered by prudence – it permits the **ultimate penalty of death** only in the rarest cases where the crime's brutality shocks the conscience to such an extent that no lesser

punishment would suffice as just[13][14]. Retribution in India is thus present but regulated; the state does not endorse vengeance or torture, but through fair trial and proportional sentencing it aims to give offenders their just deserts and thereby satisfy the community's sense of justice.

Deterrent Theory

The deterrent (or *utilitarian*) theory of punishment is forward-looking. Its central premise is that **punishment is justified by its ability to deter future crimes**, either by dissuading the punished offender from re-offending or by making an example of the offender to discourage others in society from committing similar acts. Deterrence comes in two forms: *specific deterrence* (the impact of punishment on the individual offender to discourage them from future offending) and *general deterrence* (the impact of seeing offenders punished on the general populace, instilling fear of punishment and thereby preventing potential crimes)[15][16]. An additional form sometimes noted is *educative deterrence*, meaning punishment teaches society at large about moral boundaries, reinforcing norms of acceptable behavior[17].

Under deterrence theory, the emphasis is on the **certainty, swiftness, and severity** of punishment as factors that influence its efficacy in preventing crime. The idea is that rational actors will weigh the pain of punishment against the pleasure or benefit of the crime and refrain if the former outweighs the latter. Therefore, proponents often argue for punishments that are sufficiently severe to instill fear. However, deterrence has a pragmatic limit – too draconian a punishment (disproportionate to the offense) might deter effectively but would violate principles of justice and humanity. Moreover, punishments can only deter if potential offenders perceive a real risk of being caught and punished; thus, an effective criminal justice system (with high conviction rates and prompt sentencing) is crucial for deterrence.

In India, the deterrent rationale has been highly influential, especially in legislative policy. The British colonial administration favored deterrent punishments to impose order – e.g., they introduced penal transportation and rigorous imprisonment, and frequently used public executions and flogging in the 19th century to set examples. Independent India's lawmakers too have often responded to spikes in crime or public anger by **increasing the severity of penalties** to deter would-be offenders. For instance, after a surge in violent crimes against women (notably the Nirbhaya gang-rape case of 2012), the Parliament enacted the Criminal Law (Amendment) Act, 2013, which *enhanced sentences* for rape, introduced the death penalty for repeat rape offenses, and criminalized new forms of violence – explicitly seeking to create a stronger deterrent against such crimes. The underlying belief is that **harsher punishments will reduce crime through fear**. Deterrence is also evident in judicial reasoning: courts sometimes explicitly mention the need for the sentence to serve as a warning to others. In one Supreme Court decision, it was noted that punishment is **"not merely to punish the wrongdoer but also to strike a warning to those inclined to similar crimes"**[18]. This "message to society" approach shows the general deterrence objective at work.

It must be noted, however, that the actual effectiveness of deterrence in India is subject to debate. Despite stringent laws, crime has not vanished; for example, very severe punishments (including death) exist for terrorism or rape, yet these crimes still occur. Criminological research suggests that **certainty of punishment matters more than severity**. In India, conviction rates for many

serious offenses are modest (for instance, the conviction rate for crimes against women in 2021 was around 27.8% as per NCRB data, meaning a majority of accused are not convicted). Such statistics weaken the deterrent effect because potential offenders may assume they can offend without punishment. Moreover, a large body of global research (and India's own experience) indicates that factors like social conditioning, impulse, or desperation often drive crime more than a rational calculation that can be altered by threatening harsher punishment. Thus, while deterrence remains a key rationale – and indeed no legal system can ignore the preventive value of punishment – **its limitations are recognized**. In India, there is increasing awareness that deterrent laws must be accompanied by better policing, faster trials, and social reforms to truly impact crime rates, rather than relying on severity of punishment alone.

Preventive (Incapacitative) Theory

The preventive or incapacitative theory justifies punishment as a means to **prevent the offender from committing further crimes, by disabling or restraining them**. The idea here is not so much about influencing the offender's or others' behavior through fear (as in deterrence), but rather directly protecting society by **removing the offender's capacity to re-offend**. This can be achieved in various ways: imprisonment physically restricts the offender from being at large in society; in earlier eras, corporal punishments like cutting off a thief's hand literally incapacitated him from stealing again; capital punishment permanently incapacitates by ending the offender's life. Preventive theory shares a forward-looking, utilitarian goal with deterrence, but operates by isolation or elimination of the criminal threat rather than by fear of consequences[19][20].

A pure incapacitative approach might support long or indeterminate sentences for habitual criminals, **life imprisonment without parole** for dangerous offenders, or civil preventive detention for those deemed a continuing risk (even if not yet convicted of a fresh crime). The justification is often framed as the **protection of the public**: if an offender is likely to recidivate, incapacitation is a sure way to avert those potential future crimes. However, this theory raises ethical concerns because it can lead to punishments not proportioned to the gravity of the past offense but to a prediction of future behavior. Punishing someone *more* than their past crime warrants, purely because we believe they *might* commit another crime, challenges the fairness principle. As critics point out, extreme incapacitation blurs into punishing *propensities* or *dangerousness* rather than actual crimes – something a just legal system must be cautious about[21].

In the Indian context, incapacitation has always been a part of the penal philosophy, though balanced with other aims. The concept of **imprisonment** in the IPC (Sections 53, 55 etc.) is inherently incapacitative – while an offender is in jail, they are kept out of society, unable to harm the public. Life imprisonment in India, which as clarified by the Supreme Court means imprisonment for the remainder of the natural life (unless remitted)[22], is a quintessential incapacitative sentence for the most dangerous crimes like murder. The death penalty, reserved for the "rarest of rare" cases, is justified by courts partly on the ground that certain offenders must be **permanently prevented** from repeating heinous crimes when rehabilitation is deemed impossible[23][24]. Preventive rationale is also evident in legal provisions for **habitual offenders**: the IPC (Chapter XVIII) contains sections (e.g., Section 110 CrPC, provisions for "preventive detention" of habitual offenders under special acts) that allow enhanced measures

against repeat offenders. For example, laws allow extended detention of goondas or dangerous individuals under state security acts, not as punishment for a new offense but to proactively prevent anticipated crimes – a direct application of incapacitative logic.

At the same time, Indian jurisprudence has been wary of unfettered use of incapacitation. The Constitution (Article 22) and various Supreme Court rulings impose limits on preventive detention, emphasizing it should be used only in exceptional circumstances (like threats to state security or public order) and with adequate procedural safeguards. When sentencing, courts often weigh the likelihood of reformation; only if they conclude that the offender is beyond reform and poses a continuing threat do they lean towards the maximum incapacitating sentence. For instance, in some death sentence confirmations, judges have cited the **"no possibility of rehabilitation"** of the convict as a reason that life in prison would be inadequate, thus choosing execution to fully incapacitate[14][25]. Conversely, if there appears any chance that the person can reform, the judiciary prefers a lesser sentence to allow that opportunity. This reflects a blend of incapacitation with reformative considerations in India's sentencing philosophy.

Reformative (Rehabilitative) Theory

The reformative (or rehabilitative) theory is grounded in the belief that the primary purpose of punishment should be to **reform the offender** so that they can return to society as a law-abiding and contributing member. It views crime largely as a product of social or psychological factors that can be corrected – for example, through education, therapy, skill training, or moral guidance – rather than as an expression of a fixed evil character. According to this theory, **punishment is not an end in itself but a means to heal or cure the offender's deviance**. The focus is on the offender as a human being capable of change, rather than on the offense alone. Reformative theory thus tends to oppose harsh, degrading punishments that might harden an individual, and instead promotes measures like probation, parole, open prisons, and reformatory institutions, where the offender can be rehabilitated.

In reformative justice, **individualization of punishment** is key. Each offender's background and the circumstances of the crime are considered to tailor a sentence that will best foster reformation. A first-time young offender, for example, might benefit more from counseling and community service (with supervision) than from jail, which might turn them into a habitual criminal. As one jurist famously put it, "hate the sin, not the sinner" – the deed is condemned, but the doer is treated with compassion and given a chance to improve. Many penologists assert that successful rehabilitation not only benefits the individual but also enhances long-term public safety, since a reformed offender is one less criminal to threaten society.

India's penal system, especially post-independence, has increasingly endorsed reformative ideals at least in theory. The **Constitution of India, in its directive principles (Article 39A, etc.) and in the human rights orientation of Article 21**, supports humane treatment of prisoners and rehabilitation. The Supreme Court of India has often stressed that **"reformative approach to punishment should be the object of criminal law"**[26]. Pioneering judges like Justice V. R. Krishna Iyer in the 1970s championed the cause of rehabilitating offenders, introducing concepts such as the need for "creative, regenerative response" to crime rather than mere retribution. In *Mohd. Giasuddin v. State of Andhra Pradesh* (1977), Justice Iyer eloquently stated that the

criminal should be treated as a patient to be cured rather than as a foe to be destroyed, reflecting a purely reformative sentiment.

Concrete reflection of reformative theory in India can be seen in several areas: - **Probation and Suspended Sentences:** India enacted the Probation of Offenders Act, 1958, which allows courts to release certain offenders (particularly first-time convicts of minor crimes) on probation instead of sending them to prison. The rationale is to avoid the corrupting influence of prison for corrigible offenders and give them a chance at reform under supervision. The Act's very preamble highlights reformation and prevention of recidivism as goals. - **Juvenile Justice:** Perhaps the clearest commitment to reformative philosophy is in the treatment of juveniles (persons below 18 years). The Juvenile Justice (Care and Protection of Children) Act, 2015 embodies the principle that juveniles in conflict with law should **not be punished like adult criminals but rehabilitated** through counseling, care, and correctional homes. Juvenile courts in India do not hand down prison terms; instead, they may order reformative measures like special school, community service, or release on probation. The Act explicitly forbids death penalty or life imprisonment for juveniles, no matter how serious the offense, illustrating the triumph of reformative justice in that domain. - **Prison Reforms:** Modern Indian prisons (at least in policy documents and model prison manuals) are referred to as "Correctional Institutions." Efforts are made, albeit with varying success, to provide inmates with education, vocational training, yoga, and spiritual programs, and to maintain facilities like open prisons where select prisoners can work in an open environment with minimal security constraints as a step towards reintegration. Several states have introduced **open jail systems** and liberal parole regimes, which rest on the premise that trust and gradual reintegration help rehabilitation. - **Commutation and Remission:** The President and Governors in India have constitutional powers of clemency (Article 72 and 161). Exercise of these powers often aligns with reformative justice – for instance, when good conduct or evidence of reformation leads to **commutation of a death sentence to life** or remission of part of a prison term. A notable example is the Supreme Court's ruling in *Shatrughan Chauhan v. Union of India* (2014) that undue delay in deciding mercy petitions can entitle a death-row convict to commutation to life imprisonment, partly because prolonged solitary confinement on death row is seen as inhumane and counter-reformative[27]. The Court in that case underscored that **even a condemned prisoner has the right to dignity and the opportunity for reform**, consistent with human rights. - **Judicial Quotes on Reform:** The Supreme Court has repeatedly injected reformative principles in judgments. In *State of Punjab v. Prem Sagar* (2008), it lamented the lack of structured sentencing guidelines and pointed out that **consistency in sentencing and considering the reformation potential of the accused are vital** for a just system[28][29]. More recently, in a 2022 decision commuting a death sentence, the Court quoted Oscar Wilde – "the only difference between the saint and the sinner is that every saint has a past and every sinner has a future" – highlighting that every convicted person should be given a chance of redemption[14][23]. The judgment explicitly recognized one of the basic principles of restorative (reformative) justice: to give the offender an opportunity to repair and to become a useful individual upon release[23].

Despite these positive facets, the implementation of reformative theory in India faces serious challenges. Prisons remain overcrowded and under-resourced – as of 2021, Indian prisons were at about 130% of their official capacity on average[30][31] – conditions that are hardly

conducive to rehabilitation. Overcrowding and custodial violence can instead **dehumanize prisoners**. The vast majority of prisoners are undertrials (discussed later) who may not have access to rehabilitative programs. Moreover, society's stigma towards ex-convicts means true reintegration is difficult (issues like lack of employment opportunities and social acceptance for former prisoners persist). Nonetheless, reformative ideals have firmly taken root in Indian jurisprudence, and there is ongoing effort through policy and civil society initiatives to turn prisons into reform centers – for example, Tihar Jail in Delhi offers courses and factory work to inmates, and some states have introduced halfway homes and rehabilitation grants for released prisoners. The shift is evident: from seeing punishment purely as *"paying for one's crime"*, the narrative is slowly moving to *"correcting one's ways"*.

Restorative Justice Theory

Restorative justice is a relatively newer paradigm that expands the focus beyond the offender to include the **victim and the community** in the justice process. The restorative theory posits that crime is fundamentally a **harm to relationships** – it damages the victim, the offender, and the societal equilibrium. Thus, the aim of justice should be to **restore the harm** as much as possible, rather than only to inflict harm (punishment) on the offender. Restorative justice emphasizes healing, dialogue, and making amends: it often involves bringing together the victim and the offender (sometimes with community representatives) to discuss the impact of the crime and to agree on steps the offender can take to repair the damage – such as apology, restitution/compensation, or community service. This approach seeks to give victims a voice and validation, hold offenders accountable in a more personal and morally engaging way, and ideally reconcile the parties. The hallmark of restorative practices (like victim-offender mediation, reconciliation programs, sentencing circles, etc.) is that they are **voluntary and centered on problem-solving** rather than adversarial punishment[32][33].

In many Western countries and even some developing ones, restorative justice has shown promising results, particularly for juvenile offenders and less serious crimes – leading to greater victim satisfaction and lower recidivism in some studies. In India, restorative ideas have traditionally existed in forms such as caste *panchayats* or village councils which would mediate disputes and have the wrongdoer compensate the victim (though these traditional systems had their own issues of fairness and are not formal law). The formal Indian criminal justice system, being based on IPC/CrPC, has been largely retributive/deterrent, but **elements of restorative justice are slowly making inroads**: - **Compensation to Victims:** Indian courts and statutes increasingly acknowledge victim compensation. Section 357 of the Code of Criminal Procedure (CrPC) allows courts to direct that fines recovered be paid as compensation to victims. Additionally, Section 357A (added in 2008) mandates every state to set up a Victim Compensation Scheme for compensating victims of crime, particularly where the offender is not traceable or lacks means. While these provisions still treat compensation as ancillary to punishment, they reflect a **shift towards addressing victims' needs**, a core restorative principle. - **Mediation in Criminal Cases:** Certain categories of minor offenses (like trivial hurt, defamation, marital discord cases under Section 498A IPC, etc.) have been allowed to be settled through mediation or compromise, either under Section 320 CrPC (compounding of offenses) or under inherent powers of High Courts to quash cases when parties settle. The higher judiciary has encouraged mediation for compoundable criminal cases, effectively enabling a restorative

outcome where the accused may apologize or pay damages and the victim forgives, leading to dropping of charges. The Supreme Court in *Gian Singh v. State of Punjab* (2012) and subsequent cases recognized that **criminal proceedings involving private wrongs can be quashed if genuine settlement occurs**, to promote peace and restoration. - **Juvenile Justice and Restorative Practices:** The Juvenile Justice Act, 2015 explicitly incorporates **restorative justice principles**. It provides for setting up Juvenile Justice Boards that include social workers and child experts, which focus on counseling and reconciliation. The law encourages disposal of juvenile cases through advice, admonition, community service orders, or group conferences that involve the juvenile's family and the victim, aiming to make the juvenile understand the harm caused and take responsibility. The Supreme Court noted that the *objective of the Juvenile Justice Act is to foster restorative justice*, highlighting that meaningful rehabilitation of a child offender is not possible without restorative elements like community involvement and victim's voice[34][35]. - **Restorative Interventions by Courts:** In a few modern judgments, the Supreme Court has directly invoked restorative justice. In *State of Gujarat v. Hon'ble High Court of Gujarat* (2003), the Court observed that criminal justice should aim at restoring peace in the community and that "*the concept of restorative justice needs to be kept in mind while awarding sentences*". In a 2015 suo motu case concerning children in orphanages, the SC stated that **restorative justice is not just mediation; it's about restoring victims' interests and involving them in the process**[36]. Moreover, in the *Mohd. Firoz* case (2022) discussed earlier, the Supreme Court's reasoning in commuting a death sentence leaned on giving the convict a chance to become a better person (which is restorative towards the offender) and indirectly referenced the idea that society is served when even offenders are reformed and reintegrated[23][37]. - **Community Service Orders:** The brand-new Bharatiya Nyaya Sanhita (BNS) of 2023, proposed to replace the IPC, for the first time introduces **community service** as a punishment for certain petty offenses. This is a clear nod towards alternatives to incarceration that have restorative value – the offender gives back to the community, which can both rehabilitate the offender and compensate society. While community service is limited so far (the Vidhi Centre's analysis found it's prescribed for only a half-dozen minor offenses in the BNS)[38][39], it marks a conceptual shift in Indian penal law.

It must be said that restorative justice in India is still at an emergent stage and faces skepticism. The mainstream system is burdened and oriented toward conventional punishment; victims often are not even aware of their rights or options to participate. Serious crimes like rape or murder are generally not seen as suitable for mediation or restorative processes, given the gravity and the public interest in punishment. Additionally, there are legitimate concerns: poorly executed "compromises" can mask coercion or power imbalances (e.g., in domestic violence cases, pushing victims to forgive may expose them to further harm). Therefore, the incorporation of restorative justice has to be cautious and supplementary to, not a replacement for, formal justice in such cases.

However, at a broader level, restorative justice aligns with Indian values of harmony and *satyagraha* (truth-force) championed by Mahatma Gandhi, and it offers a **humanizing complement to the rigid criminal justice system**. By addressing victims' trauma and aiming to reintegrate offenders, restorative measures could help alleviate two oft-quoted weaknesses of our current system: the neglect of victims (who currently feel left out once the trial begins) and the

high recidivism fueled by stigma and lack of rehabilitation. Some legal scholars and practitioners in India are actively advocating for restorative practices, especially in juvenile justice, minor offences, and community policing initiatives. The future may see a greater blending of restorative techniques within the formal system – such as court-referred mediation in appropriate criminal cases, structured victim-offender dialogue programs in prisons, and community-based dispute resolution for local crimes – all with the goal that justice should **ultimately heal and restore social bonds, not only punish**.

Table 1 below summarizes the key aspects of the major punishment theories and how each is reflected in the Indian context:

Theory of Punishment	**Core Aim**	**Key Features**	**Reflection in Indian Context**
Retributive	Justice as moral retribution; give offender their "just desert" for the past act.	– Backward-looking, focuses on the crime already committed. – Punishment proportionate to culpability and harm ("eye for an eye"). – Emphasizes *desert*: the guilty deserve to be punished, innocent must not be punished.	– Strong public sentiment for severe punishment of heinous crimes (e.g. death for brutal murders). – Ancient texts like *Manusmriti* advocated strict punishments according to offense (and even offender's social status). – The "rarest of rare" doctrine for death penalty (SC in *Bachan Singh*, 1980) is rooted in retributive logic for exceptional cases. – Courts often speak of punishment meeting the ends of justice for the victim/society.
Deterrent	Prevention of future crimes by fear of punishment.	– Forward-looking, aims to discourage offender (specific deterrence) and others (general deterrence) from crime. – Requires certainty and swiftness of punishment as well as severity for effectiveness. – Punishment serves as an *example* or warning.	– IPC and other laws prescribe harsh sentences for many crimes to serve as a general deterrent (e.g. strict penalties in anti-terror and anti-corruption laws). – Periodic enhancement of punishments by legislature (e.g. for sexual offenses in 2013, 2018) reflects deterrence motive. – Judicial rhetoric: SC in multiple cases has said sentences should have a "deterrent effect" on like-

Theory of Punishment	Core Aim	Key Features	Reflection in Indian Context
			minded offenders[18]. – Challenges: low conviction rates dilute deterrence; heinous crimes persist despite heavy punishments, raising questions on reliance solely on fear.
Preventive (Incapacitative)	Protect society by incapacitating the offender (removing ability to re-offend).	– Emphasizes security of community over individual reform. – Methods: imprisonment, death penalty, or other restraint that physically bars offender from future offense. – Justifies prolonged detention of repeat offenders as a preventive measure. – Can conflict with proportionality if used excessively (punishing not just for past crime but potential future crimes).	– Life imprisonment and death penalty in Indian law are partly justified by need to permanently neutralize dangerous criminals (e.g. terrorists, serial killers). – Habitual offender laws (e.g. Goonda Acts, IPC habitual offender sections) allow enhanced or preventive detention based on repeat behavior. – **Preventive detention** laws (e.g. NSA, PSA) used for national security or public order – non-punitive but incapacitative (hold suspects to prevent anticipated crimes). – SC upholds some incapacitative measures but insists on due process; arbitrary preventive detention is constitutionally limited.
Reformative (Rehabilitative)	Reform the offender into a law-abiding citizen; address root causes of criminal behavior.	– Looks at offender as capable of change; punishment as correction/rehabilitation rather than pain. – Favors individualized treatment (counseling, education, vocational training, therapy). – Often uses alternatives to incarceration (probation, parole, open prisons) or	– Guiding principle for juvenile justice in India: focus entirely on rehabilitation of youth (no harsh penalties for juveniles). – Probation of Offenders Act allows many first-time or petty offenders to avoid prison and undergo reform measures in community.[40] – Several SC judgments (e.g.

Theory of Punishment	Core Aim	Key Features	Reflection in Indian Context
		improves prison conditions to aid reform. – Success measured by offender's reintegration and reduced recidivism.	*Narotam Singh* 1978, *Santa Singh* 1976) advocate sentencing that leans towards giving a chance of reformation to the convict. – Many prisons have initiated reform programs (literacy, workshops, meditation courses); open prisons exist in states like Rajasthan and Maharashtra allowing inmates to work and gradually rejoin society. – Parole and remission systems provide incentives for good conduct and steps toward societal re-entry. – However, overcrowding (130% occupancy in 2021)[30][31] and lack of adequate resources impede full realization of rehabilitative goals.
Restorative	Repair the harm caused by crime; reconcile offender, victim, and community.	– Crime seen as violation of people and relationships, not just law. – Involves victim-offender dialogue, mediation, community conferencing to decide on restitution or other steps to make amends. – Victim's needs and perspective central; offender encouraged to take responsibility and understand impact of their actions. – Aims for healing for victim and reintegration of offender, rather than punitive	– Concept still emerging in formal system, but traditional community justice in villages had elements of restitution and apology. – Growing use of **mediation/compounding** for minor criminal cases (e.g. assault, matrimonial disputes) in courts, leading to settlements and quashing of cases when victims agree – a restorative outcome focusing on resolution over punishment. – Victim compensation laws (CrPC 357A) and court orders for

Theory of Punishment	Core Aim	Key Features	Reflection in Indian Context
		outcome. – Works best for less severe crimes or where parties are willing; not typically used for violent felonies (except as supplementary process).	compensation reflect a shift toward addressing victim's harm, aligning with restorative aims. – Juvenile Justice Boards incorporate restorative approaches (e.g. involve parents/guardians, focus on victim's loss) to craft dispositions for juveniles that help restore harmony.[34][35] – Some judges have experimented with concepts like sentencing circles or community service orders in appropriate cases as a way to satisfy community and victim while rehabilitating the offender (community service is formally introduced as punishment for certain offenses in the proposed BNS 2023). – India's Supreme Court has cited restorative justice principles in a few cases, advocating for victim's interests and offender's reformation to both be considered in sentencing[41][42]. Still, its application remains limited compared to other theories.

Table 1: Major Theories of Punishment – Aims, Features, and Reflections in India.

Evolution of Punishment in India: A Historical Overview

To fully appreciate the contemporary approach to punishment in India, it is essential to trace how penal philosophies and practices have evolved through the subcontinent's history. Indian civilization has witnessed markedly different justice systems – from ancient Hindu jurisprudence, to Islamic law during medieval periods, to British colonial law, and finally the post-colonial modern Indian system. Each era had its own conception of why and how offenders should be punished, influenced by prevailing social, religious, and political ideologies.

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Ancient India: Danda & Dharma

In ancient India (approximately 1500 BCE up to 1200 CE, covering Vedic age to late classical age), the idea of punishment (*danda*) was deeply embedded in religious and ethical thought. Hindu philosophical texts portrayed punishment as a necessary instrument of the ruler (King) to uphold *dharma* (the moral and cosmic order). According to the **Dandaniti** (policy of punishment) articulated in scriptures like the *Manusmriti* and the *Arthashastra* of Kautilya, punishment was considered an expression of sovereign authority and a guarantor of societal welfare.

Manu, the ancient lawgiver, famously stated: *"Punishment alone governs all beings; it protects them while they sleep; it is the law's sure support"*. This underscores that **punishment was thought to be indispensable for maintaining social order**[3][43]. It was believed to have a quasi-divine legitimacy – the king, by meting out just punishment, was an agent of God ensuring justice in the world. The *Arthashastra* (circa 3rd century BCE), a treatise on statecraft, also stressed that the happiness of the populace depended on the king's wielding of danda judiciously; if he failed to punish the guilty or if he punished the innocent, it would lead to disorder or tyranny respectively.

The objectives of punishment in this period combined **retributive and deterrent** rationales, within a religious framework. Punishment was often severe and public, serving to instill fear and thereby deter others. The *Manusmriti* and other *smritis* (legal compendia) list numerous corporal punishments: mutilation of the limb used to commit an offense, branding, public humiliation (such as shaving the offender's head and parading them), and death by various methods for the gravest sins[44][2]. For example, a theft could result in the cutting off of a hand, and murder could lead to death or other extreme penalties. Such punishments clearly aimed at **deterrence by terror** and incapacitation of the offender. They were harsh by today's standards – described even in historical retrospect as "cruel, inhuman and barbarous" for some offenses[45][2].
However, ancient Indian law also had a concept of proportionality and *gradation of punishment*. Typically, four stages of penalties were laid out: 1. **Warning or admonition** – for very minor first-time wrongs, the king could issue a reprimand. 2. **Monetary fines** – these were extremely common and could vary widely based on offense and the offender's means. 3. **Physical/corporal punishment** – ranging from flogging to mutilation to life-long servitude. 4. **Death penalty** – reserved for the most egregious crimes (like brazen murder, treason, or crimes that deeply disturbed social order).

Punishments were also tied to the social hierarchy (the caste system). In general, **ancient laws were not egalitarian in punishment**: they prescribed different punishments for the same offense depending on the varna (caste) of the offender and the victim. For instance, as noted in the *Manusmriti*, if a lower-caste (*Shudra*) insulted a higher-caste (*Brahmin*), the punishment might be corporal (like cutting off the tongue), whereas a Brahmin who insulted a Shudra might just be fined[2][4]. In some provisions, punishments escalated if the offender's caste was *higher* – the logic being that a person of higher caste should know better and thus deserves stricter punishment for abusing their position[46][47]. These inconsistencies reflect that punishment was intertwined with maintaining the social order as conceived then; *justice was not blind* in that era, but stratified.

It is also noteworthy that ancient Indian thought recognized a form of **expiatory theory**: certain texts allowed offenders to perform penances or religious rituals to atone for their sins, thus spiritually "cleansing" the crime. In some cases, undergoing the king's punishment was itself viewed as purgatorial – cleansing the soul of sin, which is an expiatory rationale (the idea that punishment is good for the offender's own spiritual redemption). This aligns with the concept that punishment by a legitimate authority prevents private vengeance and blood-feuds, thereby restoring cosmic and social balance.

By around 3rd century BCE, the influence of Buddhism and Jainism – with their emphasis on non-violence and compassion – started introducing some tempering of harsh punishments. The Mauryan Emperor Ashoka, after converting to Buddhism, in his edicts advocated for **mild and humane punishments**, and historical records suggest he abolished torture and perhaps reduced use of death penalty during his reign. There was also the concept of mercy: kings would sometimes grant pardons or commute sentences (especially on auspicious occasions or in response to pleas). Thus, while severity was the norm, the idea of reformation was not entirely absent. The *Arthashastra* encouraged the king to attempt re-education of certain offenders and mentioned rehabilitating former criminals as informants to help catch others[48][49], hinting at pragmatic rehabilitation.

Medieval India: Sultanate and Mughal Punishments

Medieval India (roughly 12th to 18th century) was characterized by the rule of various Islamic dynasties in large parts of India – from the Delhi Sultanate to the Mughal Empire. The penal philosophy during this period was influenced by Islamic law (*Sharia*), though in practice it was often a hybrid of Islamic principles and local customary laws.

Islamic criminal law classically divides offenses into categories like *hudood* (fixed severe punishments mandated by the Quran/Hadith for certain grave sins such as theft, adultery, apostasy), *qisas* (retributive justice, e.g. "eye for an eye" retaliation in cases of murder or injury, unless the victim/family forgives or accepts *diya* (compensation)), and *tazir* (discretionary punishments for other offenses). Under rulers like the Delhi Sultans, punishments such as **flogging, amputation, branding, blinding, and execution** were known to be employed, particularly for serious crimes and political dissent. The Mughals, who ruled a more diverse empire, often showed relative leniency and favored fines or imprisonment for many crimes, reserving mutilation or death mostly for heinous crimes or rebellions. Emperor Akbar, for instance, was noted for a more humane administration – he encouraged forgiveness and commutation of death sentences. Nonetheless, **the punitive landscape remained quite harsh by modern measure**, and deterrence as well as retribution were clearly evident. Political punishments (for rebels, conspirators) were exceptionally brutal at times (e.g. impalement or being trampled by elephants were recorded as methods of execution in medieval chronicles).

A salient feature of medieval justice was the role of the ruler's dispensation – justice was personalized to a degree. The king or emperor was the fountain of justice, often holding open court (*durbar*) where petitions, including for mercy or grievance against punishments, could be presented. The idea of **individualization** appeared in that the ruler might pardon someone on

account of personal appeal, service, or special circumstances (a discretionary act rather than a right of the offender).
The late Mughal era and various regional kingdoms saw incremental changes – with the coming of ideas from the West (via the British East India Company) and the gradual formalization of laws. By the 18th century, the concept of **codified law** and standardized punishment was emerging, setting the stage for the next phase under colonial rule.

Colonial Era: Codification and the IPC
The advent of British colonial rule brought **drastic changes to the Indian penal system**. The British were motivated to impose a uniform set of laws to administer the vast territories they controlled, replacing the myriad of customary and religious penal systems that varied across regions. Thomas Babington Macaulay's draft of the Indian Penal Code in 1837 (enacted in 1860) was a monumental step: it represented one of the world's first comprehensive criminal codes. The IPC listed specific offenses and prescribed specific punishments for each, introducing a **consistent and secular penal law for India** that largely persists to this day (even as India is now moving to update it with the Bharatiya Nyaya Sanhita).
The philosophy behind British codification was utilitarian in nature (inspired by thinkers like Bentham) – aiming for a rational system that could deter crime and protect colonial interests efficiently. Punishments under the IPC were influenced by contemporary English law but also tailored to Indian conditions. Notably, **corporal punishments like mutilation were abolished** by the British. The IPC did not sanction whipping as a general punishment (though a separate Whipping Act later provided for whipping for selected offenses). Instead, the colonial regime heavily institutionalized **imprisonment** as the primary punishment. Fine was also common, and for the gravest crimes, **capital punishment** (hanging) was retained.
One hallmark of colonial punishment was the notorious practice of **"transportation for life"** – essentially exiling convicts to penal colonies (such as the Andaman Islands' Cellular Jail) to remove them from the population and subject them to hard labor. Transportation was included in the IPC as a sentence for serious offenses (it was formally abolished only in 1955, replaced by life imprisonment). The idea was incapacitative and deterrent – these convicts were out of sight (incapacitated) and the very fear of being sent across the sea for life was intended to deter potential offenders. Countless Indian freedom fighters (regarded as political offenders by the British) were subjected to this punishment, indicating also its use as a tool of repression. Colonial rule thus used penal law instrumentally: *punishment as a means of asserting authority*. For example, laws like Section 124A (sedition) of IPC, introduced in the 1870s, carried life imprisonment and were invoked to **silence nationalist voices**, showing the deterrent theory deployed in service of imperial stability[50][51].

During British rule, **deterrence and retribution were dominant rhetoric**, but there was also an undercurrent of reformative thought emerging by late 19th and early 20th century. The British introduced the concept of the **modern prison** with an emphasis (at least on paper) on discipline and possibly reformation – influenced by the prison reform movements in England. Prisons in India got somewhat standardized under the Prisons Act, 1894. Yet, in reality, colonial prisons were harsh, with rampant use of hard labor, meager provisions, and strict regimens.

Rehabilitation was minimal and not a priority for the colonizers beyond rudimentary vocational training in some jails.
In the early 20th century, some reformative measures did start: the concept of **probation** was trialed (though a full Probation Act came only post-independence), and juvenile reformatories were set up (Madras Children Act 1920, etc., which separated child offenders from adults). These were influenced by evolving humanitarian values globally. The British also eventually reduced the list of capital crimes; by 1940s, not all murders automatically got death – judges had discretion to award life imprisonment, showing a slight tempering of retribution with a utilitarian approach that perhaps lifelong labor was equally effective.

It is critical to note that **the colonial penal system was criticized for being "foreign" and not aligned with Indian social realities**. Mahatma Gandhi and other leaders often decried that British justice was aimed at ruling by fear rather than truly reforming Indian society. The colonizers' justice was also perceived as inequitable: Europeans in India often received lighter treatment than Indians for similar offenses. The Rowlatt Act of 1919 (which allowed detention without trial) and other Draconian measures further alienated Indians, and these experiences sowed seeds for post-independence penal reform.
By the end of the colonial period (1947), India had a fully developed **Western-style legal system** with codified crimes and punishments, heavily based on deterrence and retribution, but with some reformative institutions beginning (e.g., open prisons experiment started in 1930s in Bombay presidency on a small scale). This system was inherited by independent India.

Post-Independence India: Continuity and Change
After gaining independence in 1947, India faced the task of aligning its penal system with the values of a sovereign, democratic republic committed to liberty, equality, and justice. In practice, **India chose continuity with the colonial penal code** initially – the IPC, CrPC, and Indian Evidence Act remained in force, providing much-needed legal stability. However, the new Constitution (1950) and the ethos of freedom prompted re-examination of punitive policies.
One immediate change was the rhetoric around punishment. Unlike colonial rulers who had no political incentive to rehabilitate Indian convicts, the Indian government had a duty towards its own citizens, including those convicted of crimes. The focus gradually shifted towards reform and social defense. A series of committees and commissions were appointed in the subsequent decades to suggest improvements: - The **All India Jail Reforms Committee 1957-59 (Dr. W. C. Reckless)** and later the **Mulla Committee (1980-83)** examined prison conditions and recommended making rehabilitation a central goal of prisons. They pushed for classification of prisoners, vocational training, after-care programs, and an overall more humane regime behind bars. Many of their recommendations (like engaging prisoners in productive activity, establishing open prisons, remunerating prison work) were accepted in principle, though implementation has lagged. - The **Probation of Offenders Act, 1958** was enacted, reflecting a decisive move towards reformative justice for deserving cases. Courts across India started increasingly granting probation to young offenders and those convicted of minor crimes, instead of sending them to jail. - In 1960, **corporal punishment was fully abolished** in the criminal justice system (whipping was abolished by repeal of the Whipping Act). This was a significant departure from centuries of corporal punitive traditions, aligning with the constitutional ban on

"human degrading treatment" (Article 21 read with Article 14 and 19). - Capital punishment became a subject of debate. The judiciary in *Bachan Singh* (1980) imposed the aforementioned "rarest of rare" standard, narrowing the scope for death penalty. And while India did not abolish the death penalty, its use declined; death sentences (though still given by trial courts) are often commuted or not executed for years. A **Law Commission report in 2015** even recommended abolishing death for all crimes except terrorism-related, citing no compelling evidence of a deterrent effect unique to capital punishment and moral arguments against it[52]. This indicates a changing perspective, weighing reformative/humanitarian considerations against retributive instincts. - The **Code of Criminal Procedure, 1973** brought in new provisions that indirectly furthered rehabilitative and restorative goals: it expanded the system of conditional release on bond (good behavior bonds under Sections 360- Barb), provided for compensation to victims (357(3) which allows courts to award compensation even when no fine is imposed), and introduced the concept of plea bargaining much later in 2005 (which, while mostly a case management tool, also allows accused to take responsibility and victims to get some closure faster). - India also ratified various international human rights instruments (like the International Covenant on Civil and Political Rights) which advocate reformative treatment of prisoners and proportionality in punishment. These global norms influenced Supreme Court judgments on prisoners' rights – for example, *Sunil Batra v. Delhi Administration* (1978, 1980) where the SC took a strong stance against barbaric jail practices (like bar fetters, solitary confinement beyond need, and custodial torture), affirming that prisoners do not shed their fundamental rights at the prison gate and that **incarceration is the punishment, not the additional physical abuse**. The Court asserted that rehabilitation is part of prison management and that the approach to prisoners should be "corrective".

Despite such progressive developments, many aspects remained unchanged in practice. The IPC's structure of punishments remained largely the same (with additions like more economic offenses punishable by fine/imprisonment, etc.). Courts continued to hand out long prison terms for serious offenses. The state's response to waves of crime or insurgency often reverted to deterrence-heavy measures (stringent acts with enhanced punishments). For instance, after periods of extremist violence, laws like TADA (1987) and POTA (2002) were enacted which included harsh punishments and curtailed procedural safeguards, reflecting a swing towards incapacitation and deterrence at the expense of reformative ideals during crises.

A persistent issue in post-independence India has been the **implementation gap** between penal philosophy and reality. Officially, prisons are aimed at reformation, but in reality, overcrowding, understaffing, and lack of rehabilitative resources have made many prisons merely warehouses for offenders. As of 2021, about 77% of prisoners in India were undertrial detainees (not yet convicted)[53], meaning a large number of people are effectively being punished (by imprisonment) without trial outcomes – a violation of both retributive fairness and utilitarian efficiency. This is a legacy of systemic backlog and overuse of pre-trial detention, which the Supreme Court has tried to address through guidelines for bail and speedy trial (e.g., the landmark *Hussainara Khatoon* cases in 1979 led to release of thousands of undertrial prisoners who had been detained longer than the maximum sentence of their alleged offense). The **1979 Law Commission Report (78th Report)** explicitly lamented that over half of India's jail

population were undertrials and asserted that *"jails should primarily be meant for lodging convicts and not for housing persons under trial"*[54]. This sparked some bail reforms and periodic undertrial release drives. The undertrial situation, however, remains dire (in 2022, it was reported to be around 75% undertrials, the highest in decades). This reality challenges the justification of punishment – it unintentionally creates a class of people effectively punished without conviction, undermining the retributive principle of punishing only the guilty and raising human rights concerns.

On a brighter note, **India's judiciary has increasingly infused a human rights approach in sentencing and prison jurisprudence**. Concepts like social justice, just deserts (tempered by mercy), the dignity of the individual (even if a convict), and the opportunity for reformation are now part of the judicial vocabulary. Sentencing hearings have been given importance (Section 235(2) CrPC) – after conviction, an accused can present mitigating factors for a lesser sentence, institutionalizing individualized sentencing to some extent. Courts have cited factors such as young age, lack of prior criminal record, possibility of reform, as reasons to give lighter sentences – reflecting the reformative rationale in action.

In contemporary times, India is also witnessing an ongoing debate on criminal law reforms. In 2023, the Government introduced bills to replace the IPC, CrPC, and Evidence Act with new codes (Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, etc.). These drafts propose some changes in punishments (for example, BNS 2023 includes community service as mentioned, and simplifies some sentences) but also retain many old features. The Home Minister argued that the new code would remove "the colonial mindset" and focus more on justice than mere punishment[7]. It remains to be seen how these reforms will shape the justification of punishment – whether India will move closer to a victim-centric and restorative model or continue emphasizing deterrence and retribution for certain crimes.

The Indian Legal Framework on Punishment

Having examined the theoretical underpinnings and historical evolution, we now turn to the present legal framework governing punishments in India. The principal source is the **Indian Penal Code (IPC) of 1860**, along with a plethora of special and local laws that prescribe penalties for specific offenses (such as the NDPS Act for drug offenses, POCSO Act for sexual crimes against children, etc.). Additionally, the **Code of Criminal Procedure (CrPC) 1973** outlines the procedures for sentencing and execution of sentences, and various prison laws (like the Prisons Act 1894 and rules thereunder) regulate the manner of carrying out sentences and treatment of convicts.

Types of Punishments in IPC: Section 53 of the IPC enumerates the punishments that can be imposed for offenses under the Code. Traditionally, these were: 1. **Death** – the capital punishment, to be executed by hanging as per the method in the CrPC. (In military courts, shooting is a method, but that's outside civilian courts.) 2. **Imprisonment for Life** – which means imprisonment for the remainder of the person's natural life, unless commuted or remitted by government authority. Earlier, as noted, this was "transportation for life". 3. **Imprisonment** – of two descriptions: *Rigorous* (with hard labor) or *Simple*. The IPC often gives a maximum term

(e.g., “up to 7 years rigorous imprisonment”). The nature (rigorous vs simple) can be decided by the court depending on the offense and circumstances. Rigorous imprisonment entails work requirement (like in prison industries), whereas simple imprisonment does not force labor (though in practice most able-bodied convicts are assigned some work). 4. **Forfeiture of property** – IPC originally provided for forfeiture in certain cases (for instance, property used to commit an offense could be forfeited, and for offenses against the state). However, most forfeiture provisions were repealed after independence (except in a few special laws), because the idea of property forfeiture as punishment fell out of favor. Now forfeiture is rarely used except under specific acts (like Smugglers and Foreign Exchange Manipulators Forfeiture of Property Act, 1976). 5. **Fine** – monetary penalty. Many offenses in IPC carry fines either standalone or in addition to imprisonment. There is wide discretion on the amount unless a minimum is prescribed by law. Fines go into the state treasury, though courts can direct that a portion be given as compensation to victims under Section 357 CrPC.

In addition to these, post-independence amendments and special laws have introduced a few innovative punishments: - **Community Service**: As mentioned, the proposed new code (BNS 2023) explicitly lists community service as a punishment for some minor crimes. Even under current law, judges have occasionally imposed community service in lieu of other punishment (especially as conditions for release on probation or under plea bargains). This trend is likely to grow. - **Public Censure**: Not formally a punishment in statutes, but in rare cases like under the Contempt of Court Act or in some judgments, courts have used methods like reprimand or public apology as a way of censure for certain contemnors or minor offenders, which is akin to old admonition punishment. - **Disqualification**: Certain convictions can lead to disqualifications (not as a separate punishment, but as a legal consequence) – e.g., a person convicted of corruption might be barred from public office, a driving offense can lead to suspension of driving license. These are preventive/incapacitative measures attached to punishment.

Sentencing Process: Indian courts have significant discretion in sentencing within the limits prescribed by law. After a conviction, the CrPC (Section 235(2) for sessions trials, Section 248(2) for warrant cases, etc.) requires the court to hear the accused on the question of sentence. This is where mitigating factors (like age, background, remorse, etc.) and aggravating factors are presented. However, except in capital cases where a separate detailed hearing is mandated (per *Bachan Singh* and *Machhi Singh* guidelines), sentencing hearings in lower courts are often perfunctory due to heavy case loads.

There are few statutory sentencing guidelines (some special laws have minimum sentences or mandatory sentences which bind the judge). For instance, many sections in IPC have a broad maximum and sometimes a minimum term. The lack of structured sentencing guidelines has resulted in some inconsistency. The Supreme Court acknowledged this in *State of Punjab v. Prem Sagar* (2008), highlighting the need for guidelines to ensure uniformity[28][55]. As of now, the judiciary relies on case law precedents and their own judgment. A trivial theft might get a few months, whereas a grievous hurt might get a few years – but outcomes can vary widely by judge.

Despite the discretion, appellate courts (High Courts and the Supreme Court) do moderate sentences to keep them in line with established norms – they have reduced or increased sentences on appeal where the trial court's sentence seemed too harsh or too lenient. The superior courts often lay down principles: e.g., *Ravji v. State of Rajasthan* (1996) erroneously said "nature of crime, not the criminal" matters in death penalty – a view later disapproved to reaffirm that criminal circumstances also matter (2014 Shankar Kisanrao Khade case). Generally, **for most offenses the trend is not to award the maximum unless warranted** by exceptional facts, indicating an unwritten norm of proportionality.

Special Sentencing Laws: Some laws, especially those dealing with sexual offenses, narcotics, corruption, scheduled castes/tribes atrocities, have minimum sentences to signal society's disapproval and ensure deterrence. For example, under the POCSO Act (Protection of Children from Sexual Offences), penetrative sexual assault has a minimum 10-year imprisonment. The idea is to avoid overly lenient punishments in serious offenses. However, rigid minimums also curtail judicial flexibility.

Executive Clemency and Remission: India's system allows the executive branch certain powers over sentences: - The President and Governors can grant pardons, reprieves, respites, or commute sentences (Articles 72 and 161 of the Constitution). This acts as a safety valve for individual cases – used, for example, to commute many death sentences to life (especially if some humanitarian grounds exist). The exercise of mercy powers in India has been subject to judicial review if there is undue delay or arbitrariness (as in *Shatrughan Chauhan* 2014, where SC laid down that inordinate delay in deciding mercy petitions can entitle a death convict to commutation[27]). - The Code of Criminal Procedure (Sections 432-434) provides for **remission** and **commutation** by the appropriate government. State governments frequently use remission policies – for instance, on Republic Day or major anniversaries, states may remit a certain number of days from sentences of well-behaved prisoners (except those convicted of certain serious offenses). Similarly, after a convict serves a certain portion of a life sentence (typically 14 years), states have guidelines on considering them for premature release. Remission is a reformative tool, rewarding good conduct and aiding reintegration by releasing convicts when they are assessed to no longer pose a threat. However, remission has to be exercised case-by-case and cannot violate court orders (for example, if a judge specified "life means life without remission" in a rare case, as SC did in some gang rape-cum-murder cases, then ordinarily no remission will apply). - Recently, a controversial instance of remission was the release of 11 convicts in the Bilkis Bano gangrape case by a state government board after they served about 15 years, which sparked debate on whether retributive justice was sacrificed. The Supreme Court is now examining if that remission was lawful. This highlights tension: **executive leniency vs. societal sense of justice**.

Implementation – Prisons and Beyond: The prison infrastructure falls under state governments in India. There is variation in how different states implement rehabilitative measures. Some states (like Kerala, Tihar Jail in Delhi) have more progressive programs – open prisons, inmate employment, etc., whereas others struggle with basic conditions. The **Model Prison Manual**

2016 issued by the central government tries to standardize practices emphasizing rehabilitation, but not all states have fully implemented it.
After punishment, **recidivism** rates in India have been officially recorded as relatively low (around 5-10% of released prisoners are reconvicted within a few years, per NCRB figures)[56][57]. However, these numbers are debated – some argue actual re-offending is higher but undetected, while others say they genuinely reflect that many offenders do not return to crime. The low figure is partially attributed to the large number of undertrials (first-timers) skewing the stats and the fact that family and community ties often absorb released convicts. Nonetheless, managing recidivism through **after-care programs** (halfway homes, vocational placement, etc.) is still nascent in India. There are voluntary organizations and some government schemes (like the scheme for rehabilitation of released bonded laborers, or occasional grants to released prisoners), but these need expansion.

Recent Trends: The justice system has started to acknowledge victims' rights more. The **Victim Compensation** schemes now exist in every state (though quantum of compensation is often modest given budget constraints). Courts also have begun allowing **Victim Impact Statements** at sentencing in some cases (especially at the stage of deciding death penalty vs life imprisonment). This adds a restorative dimension, letting the victim's voice be heard regarding the harm suffered.
Additionally, alternate dispute resolution (ADR) in criminal matters (for compoundable cases) is rising – many courts run **Lok Adalats** (people's courts) where petty criminal cases are settled by compromise or admonition, relieving burden on courts and providing quicker, amicable resolution. This indirectly infuses a restorative approach at the grassroots level for minor offenses.

Challenges: The Indian punitive system faces a dual challenge: **Justice Delay and Justice Severity**. On one hand, delay in trials causes long pre-trial detentions (punishment before conviction) which is unjust. On the other, when convictions do occur in serious crimes, sentences are sometimes severe but not necessarily effective (for example, the death penalty's existence has not visibly reduced murder rates, and its application has been error-prone leading to many commutations on appeal – a Law Commission study found most death sentences by trial courts do not stand on final appeal). There is also public pressure in high-profile cases for harsher punishments (even extra-legal measures, as seen when police killed rape-murder accused in Hyderabad 2019 to public acclaim, raising human rights concerns). Balancing these pressures with principled punishment is an ongoing task.

India stands at a crossroads where it is **reforming its century-old penal laws**, giving an opportunity to incorporate modern penological advances. The new Bills propose, for instance, making mob lynching and certain types of organized crime specific offenses with stringent punishment, showing a response to new crime phenomena (deterrent motive). They also propose more rationalized sentencing ranges for some crimes and greater victim compensation rights (restorative element). The success of these reforms will depend on how well they integrate the diverse goals of punishment into a coherent policy that the judiciary and executive can implement.

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Effectiveness and Justification: A Critical Analysis

Having detailed the theories and the framework, it is important to critically analyze **how well the justifications of punishment hold up in India's current reality**, and what challenges remain in aligning practice with principle.

Deterrence – Does it work in India? Deterrence is frequently cited by lawmakers when increasing penalties, but empirical evidence of its efficacy is mixed. Crime statistics in India do not show a simple cause-and-effect where higher punishments equal lower crime rates. For example, despite the death penalty being available for murder, India still sees thousands of homicides annually. After the 2013 law raised rape penalties, reported rapes actually increased in subsequent years (though that could be due to better reporting). Similarly, very strict anti-corruption laws and long prison terms have not eradicated corruption. The **certainty of punishment** remains low – according to NCRB, the overall conviction rate for IPC crimes was about 57% in 2021[58][59], but this masks that for violent crimes it's lower (e.g. rape conviction ~ 28%, as noted) and for some property crimes it's also low. Would-be offenders are likely more influenced by the chance of being caught than by the severity of the sentence on paper. In India, delays and backlogs mean punishment (if it comes) is far from swift. This dilutes general deterrence. Furthermore, a significant portion of crime in India is impulsive or driven by social factors (mob violence, domestic violence in anger, etc.) where perpetrators do not conduct a rational cost-benefit analysis in the moment. Thus, while deterrence remains an important goal for the justice system, it **faces practical impediments**: need for police reforms, speedy justice, and public legal awareness. Without those, simply harsher laws may not translate into safer society. The recent penchant for populist "instant justice" (e.g., public cheering of police encounters of suspects) is a worrying sign that people find the formal deterrent channels inadequate, which can erode rule of law. The answer would lie in strengthening investigative and judicial capacity so that law's deterrence is credible rather than taking extra-legal shortcuts.

Retribution and Public Sentiment: Retributive justice finds strong resonance in a diverse country like India where communities often feel aggrieved and demand stern punishment to feel a moral balance. In high-profile cases like the Delhi gang rape (2012), public protests explicitly called for death for the perpetrators (which was ultimately awarded and carried out in 2020). This shows that **retributive impulses are alive** as a form of collective catharsis. The Indian state by and large has accommodated retributive sentiment within legal bounds – through death penalty in rare cases, life sentences, etc. The Supreme Court often mentions "collective conscience" of society when justifying a death sentence in rarest of rare cases. Yet, from a principled perspective, retribution alone cannot be the sole guide in a modern democracy. There is a tension between **emotional retribution** and **constitutionalism**. For instance, calls to execute rapists or chemical castrate them, etc., crop up regularly – but the judiciary and legislature have to ensure punishments remain within humane limits. The move to hang the Nirbhaya case convicts was consistent with law, but had they been lynched extrajudicially (as some clamored), that would violate the rule of law. Thus, India's challenge is to **satisfy the need for justice to be seen** (for victims and society) without descending into vengeance or brutalization. Generally, the Supreme Court has tried to emphasize that **retribution cannot become "revenge"** – for example, it disapproved excessive punishments like castration for sex offenders as unconstitutional. It has also commuted death sentences where it felt the trial court was too swayed by retributive

emotions without adequate consideration of mitigating factors. Overall, retribution is justified to the extent it affirms the worth of victims and the wrongness of crimes, but it must be balanced by mercy and proportionality – a balance India's higher courts often stress, even if public opinion is more bloodthirsty at times.

Rehabilitation – Ideal vs Reality: India's Constitution and courts wholeheartedly endorse reformative goals, but the on-ground situation in prisons raises questions: How much rehabilitation is actually happening? Overcrowding at 130% capacity means many prisons cannot effectively run educational or vocational programs for all inmates. Undertrial overcrowding means convicts (who should ideally be separated and given focused correction) often share space with undertrials. Mental health services, addiction treatment, psychological counseling – all crucial for reform – are severely lacking in most facilities due to resource constraints (the model prison manual suggests these, but implementation lags). Consequently, there is an argument that prisons may be "criminal universities" where first-time offenders may become hardened. **Recidivism figures**, though officially low, might not capture those who relapse into crime in unreported ways. Still, numerous anecdotal success stories exist of reformed prisoners (some have come out and become writers, social workers, etc.). What seems to work is giving prisoners literacy and work skills – some states, e.g., Kerala, have almost all inmates working in prison enterprises (from tailoring to farming) and earning a small wage; this keeps them engaged and builds habits useful post-release. Open prisons in Rajasthan have had good outcomes – those prisoners have far lower absconding rates and seem better adjusted. These pockets of success need scaling.

The **parole and remission system** in India is an asset for reform, but its uneven application causes grievances (like some convicts, often the powerful or well-connected, seem to get more frequent paroles or earlier remissions, leading to perceptions of bias). A transparent, rule-bound remission policy is needed so that convicts feel incentivized to improve.

An interesting development is the increase of **education programs behind bars** – several prisons now offer opportunities for inmates to study for degrees (Indira Gandhi National Open University has study centers in many prisons). Such measures align well with rehabilitative justification, giving offenders tools to live differently when free.

The **biggest barrier to reformation** perhaps lies outside prison – the stigma of a criminal record in Indian society. Employers, neighborhoods, even families, often shun ex-convicts. Without acceptance and opportunities, many drift back to crime. Restorative justice initiatives, discussed next, might help here by involving community and victim in reintegration.

Restorative Justice – Scope for Growth: Restorative justice is at a nascent stage in India but holds promise especially in community-level dispute resolution and juvenile justice. Its justification lies in the fact that pure punishment often leaves victims dissatisfied (they are passive spectators in trials and may not gain closure or reparation) and offenders isolated (labeled as "bad" without reconciliation). Some pilot projects by NGOs in India have attempted victim-offender mediation in juvenile cases with good results, fostering apologies and compensation that satisfy victims more than a formal judgment might. The Juvenile Justice law encourages such approaches and could be a model to extend carefully to adult cases like minor assaults, property disputes, etc., where parties have an ongoing relationship.

One area calling for restorative approach is **victim compensation and support**. Many crime victims in India undergo trauma and financial loss (e.g. breadwinner's murder leaves family destitute). Punishment of the offender doesn't directly help them materially. Though courts and governments now provide compensation schemes, these need expansion and efficient delivery. If victims see that the system cares for their rehabilitation too, not just punishing the offender, trust in justice increases. The **Delhi High Court's Restorative Justice Cell** (set up in 2022) is an interesting initiative aiming to integrate restorative practices in the justice process for suitable matters.

Ensuring Proportionality and Fairness: A fundamental tenet of any justified punishment system is that it be proportional to the offense and applied fairly. India's system has sometimes been critiqued for **disparities** – for example, poor and illiterate convicts often get harsher outcomes perhaps due to lack of good legal representation, whereas affluent convicts manage to avoid or delay punishment using legal resources. There's also an urban-rural divide in access to reform programs. The justification of punishment suffers if people perceive it as arbitrary or biased. Strengthening legal aid, standardizing sentences (guidelines), and judicial training in sentencing can help reduce unwarranted disparity.

The principle of **just desert** also implies not over-punishing. Some colonial-era strictures have been moderated (like adultery was a crime punishing disloyal husbands lightly but wives not at all – it was struck down in 2018 by SC as unconstitutional and unjust). Likewise, section 377 IPC that criminalized consensual homosexual acts carried a disproportionate punishment (up to life); its reading down by SC in 2018 removed an unjust law. These changes show the system's ability to self-correct on what deserves punishment.

However, new challenges arise, like calls for chemical castration of rapists or public execution of child rapists after some horrific cases. While stemming from societal anger, **such punishments would violate human rights norms** and likely be counterproductive (experts warn extreme punishments can drive offenders to kill victims to eliminate witnesses). So far, Indian lawmakers and courts have not yielded to such populist demands, which is important to maintain a just, humane system.

The Death Penalty Dilemma: The most severe punishment, death, remains contentious in terms of justification. Retributivists argue it's deserved for the "worst of the worst" crimes; deterrent theorists claim it deters potential heinous offenders (though evidence is not conclusive); incapacitation-wise it certainly prevents re-offense by that individual. On the other hand, reformative logic finds no place in an execution (since it terminates the possibility of reform), and restorative justice cannot operate after the offender is dead. In India, the Supreme Court has tried to ensure death is rare, but inconsistencies and subjectivity in what constitutes "rarest of rare" have been pointed out by studies. The Law Commission's 262nd Report (2015) favored abolition for ordinary crimes, essentially questioning whether the state needs to take life when life imprisonment is available and sufficient[52]. Yet, the report did not sway policy immediately; on the contrary, Parliament added death penalty for some new offenses (like certain rape cases in 2018 amendments). The justification debate here is between an emotional societal desire for the ultimate retribution versus principled arguments of human rights and risk of wrongful convictions. Notably, since independence, dozens of people sentenced to death have later been

acquitted on appeal, proving the **irreversibility problem** of capital punishment. This fact alone strengthens the case of those who argue that a fallible system cannot justify an infallible (irreversible) punishment except perhaps in cases with zero doubt. Indian courts now require consideration of mitigating factors like young age, mental illness, etc., which is a step to ensure death is truly justified only if the person is beyond reform. The future of the death penalty in India remains uncertain – it might persist for terrorism (politically sensitive) but there is a gradual shift in judicial attitude to prefer life imprisonment plus (like whole-life terms) as an alternative.

Undertrial Incarceration – An Unjust Punishment? A glaring issue undermining any lofty justification is the plight of undertrial prisoners. At 75-80% of jail population, many undertrials are in for periods longer than the sentence they would likely get if convicted, basically undergoing "punishment without conviction." This is arguably one of the biggest injustices in Indian criminal justice today. It violates the basic retributive tenet (punish only proven guilty), the deterrent logic (it deters arbitrarily, often the poor who can't afford bail are detained, not necessarily the dangerous), and certainly the reformative principle (since undertrials languish without programs, often co-mingled with seasoned offenders). The system is aware – Supreme Court has passed orders for bail for those in long detention for minor offenses, National Legal Services Authority has campaigns to release those eligible for bail. Yet numbers remain high due to systemic factors: slow investigation, court delays, overburdened judiciary, and in some cases cautious approach in granting bail (especially under stringent laws like UAPA where bail is hard). Reducing undertrial incarceration is crucial to restore moral legitimacy of the punishment system. A person must not be punished more for being poor (unable to post bail) or for systemic inefficiencies. Solutions like fast-track courts, plea bargaining (introduced in 2005 for lesser offenses, though uptake has been low), and better judicial infrastructure can help. There is a constitutional dictum from *Sanjay Suri v Delhi Admin* that "bail is the rule, jail is the exception," which needs stronger adherence especially for non-heinous crimes.

Gender and Punishment: It's worth noting how the justification of punishment intersects with gender. Traditionally, women offenders have been a small fraction of prisoners (~4% in India). There has been a tendency, reflective of paternalism, to be somewhat lenient if the offender is a woman (especially if she has young children, etc.), integrating a sort of welfare approach. The law also provides some relief (pregnant women cannot be executed, for instance; women get bail more easily in some offenses as per CrPC special provisions). This aligns with reformative/humane justification. At the same time, for women victims, the system's responsiveness through punishment has increased (strict punishments for acid attacks, sexual assaults, etc.). Balancing victim's right to justice and offender's scope for reform is tricky in these emotive cases. For example, there's discussion globally on restorative justice for sexual violence – some believe it could help heal victim and reintegrate offender better than adversarial trial, but others fear it might minimize the gravity of offense. India has not embraced that route widely (given severity and public sentiment, it sticks to punitive justice in such cases). So not all crimes might be apt for restorative approach – a calibrated usage is needed, which is a learning process.

Caste and Class Dimensions: Lastly, the Indian perspective cannot ignore caste and class. As seen historically, caste dictated punishment severity. Modern law is equal, but in practice, marginalised communities often face harsher realities at the hand of law enforcement (e.g. higher likelihood of being arrested, abused in custody). Prisons are disproportionately filled with the poor, Dalits, Adivasis, and minorities – NCRB data consistently show over-representation of these groups among inmates relative to their population percentages[60][61]. This suggests socio-economic factors in crime and policing – raising issues of fairness and the need for social reform in tandem with penal reform. A purely punitive approach to problems that are rooted in poverty or social inequality might not achieve genuine justice. Therefore, justification of punishment in India increasingly incorporates ideas of **social justice** – recognizing that prevention (through welfare, education, addressing inequality) is as important as deterrence or retribution. The Supreme Court in *State of Gujarat vs Hon'ble High Court of Gujarat* (1998) observed that "it should be the endeavour of the state to see that the system of punishment is such as to bring about the rehabilitation of the offender" and also spoke of tackling root causes like lack of education.

Conclusion

Punishment in India, as in any society, serves multiple ends: it is at once a mode of *justice delivery*, a tool for *social defense*, a mechanism for *moral education*, and increasingly, a means for *victim consolation*. Over the vast canvas of India's history and cultural ethos, the concept of punishment has undergone significant transformation – from the king's **danda** aimed at preserving cosmic order in ancient times, to the colonizer's instrument of deterrence and domination, and finally to the republic's endeavor to balance **retributive justice with reformative compassion and deterrence with human rights**.

In the **Indian perspective today**, punishment is constitutionally bound to uphold human dignity even as it addresses crime. The judiciary's pronouncements make it clear that *the ultimate aim of criminal justice is reform and social reintegration of offenders whenever possible*, with punishment serving not as an end in itself, but as a means to a safer and more just society[62]. At the same time, the system recognizes the need for **proportional retribution** – society's outrage at grievous wrongdoing must be acknowledged through commensurate penalties, lest public confidence in the rule of law erode. Thus, for heinous crimes that shock the collective conscience, Indian courts do not shy away from imposing the highest sanctions (life imprisonment or even death in the rarest cases), articulating that such retributive action is necessary to **assuage the society's demand for justice** and to reinforce societal norms[23][37].

However, India's commitment to reformative justice is evidenced by numerous progressive developments: the widespread use of probation and suspension of sentences for first-time and minor offenders, special legislation and procedures that emphasize rehabilitation of juveniles, open prisons and vocational programs showing positive results, and the Supreme Court's frequent reminders to the state about humane prison conditions and rehabilitation schemes[41][42]. These all underline a philosophy that **every sinner may have a future** – that many offenders, given the opportunity and support, can transform into law-abiding citizens. It aligns with India's cultural narrative of redemption and second chances.

In tandem, there is a gradually growing **restorative undercurrent**. The criminal justice system, traditionally focused only on offenders, is beginning to incorporate the victim's perspective. Compensation mechanisms and mediation in appropriate cases point towards an appreciation that justice is also about healing the wounds of victims and communities. This is an area ripe for further development in India, especially in the context of communal conflicts or minor offenses where mutual settlement can yield more societal harmony than adversarial verdicts.

Nonetheless, this overview would be incomplete without recognizing the **challenges and the distance yet to be traveled**. The best of penological theories can flounder if the system is overburdened and under-resourced. As analyzed, issues like long undertrial detentions, overcrowded prisons, inconsistency in sentencing, and occasional public clamor for extrajudicial measures all pose serious concerns. They remind us that the **justification of punishment is not only a matter of theory or law on the books, but also a function of practical justice**. A punishment system is justified to the extent that it actually achieves justice and security for society, while respecting individual rights. In India, reforms are ongoing: from fast-track courts for swift justice in rape cases, to decriminalization of outdated colonial offenses (e.g., abolishing laws against homosexuality and adultery), to proposals for sentencing guidelines to reduce arbitrariness. These efforts reflect an understanding that a credible, fair, and effective penal system is essential for a rule-of-law society.

In conclusion, the concept of punishment in India today is characterized by a **synthesis of various justifications**: - From **retribution**, it draws the principle that punishment must be justly deserved and proportionate, giving moral vindication to victims and society. - From **deterrence**, it imbibes the goal of crime prevention, aiming to send a message that law-breaking incurs sure consequences. - From **incapacitation**, it accepts that for the most dangerous offenders, long or permanent removal from society may be necessary for public safety. - From **reformation**, it embraces the humane ideal that offenders are fellow human beings capable of change, and that the system should provide avenues for their improvement and reintegration. - From **restorative justice**, it begins to learn that involving victims and repairing harm can create more lasting peace than purely punitive measures.

The Indian perspective does not see these theories in isolation, but rather uses them in combination as the situation demands ("a delicate balance" as often cited in judgments). The Supreme Court put it succinctly in *State of Madhya Pradesh v. Bablu Natt* (2009): *"The object of sentencing should be to protect society and deter the criminal. However, sentencing should also aim at rehabilitation of the offender. The Courts are expected to consider both these aspects and to mould the sentence accordingly."* This encapsulates the Indian ethos – **protection of society and reformation of the individual** are both paramount[63][64].
Moving forward, if India can successfully streamline its processes, reduce undue delays, and strengthen rehabilitative infrastructure, it would go a long way in enhancing the efficacy and moral authority of its punishment system. The journey from a punitive past to a more **just, humane, and effective penal future** is clearly underway. With continuous legal reforms, judicial wisdom, and societal support, India's criminal justice system strives to ensure that when

it punishes, it does so with justification – that punishment is not only warranted by the crime, but is also wielded in a manner that upholds justice, secures society, and affirms human dignity.

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