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AN ANALYSIS OF THEORIES OF PUNISHMENT AND ITS RELEVANCE IN THE ADMINISTRATION OF JUSTICE IN INDIA

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I. ABSTRACT

Society enforces rules, and violators face punishment for various reasons. Theories of punishment outline the reasons or objectives for punishment, which can be awarded to offenders for various reasons within society. The paper delves into an in-depth analysis of various theories of punishment and their application within the Indian justice system. It investigates punishment theories such as deterrence, retribution, prevention, and expiation, offering insight on their philosophical foundations and implications for India's justice system. The paper critically analyses these theories, assessing their compatibility with the Indian legal system and their efficacy in combating criminal behaviour. The paper presents a detailed overview of the evolution of punitive measures in India by dissecting its historical viewpoint, from ancient times to the medieval period. Furthermore, it covers the evolution of India's existing legal system, with a focus on a reformative approach to criminal justice. The Indian Constitution's role in defining criminal justice and governance is also underlined, with a focus on protecting individual rights, victims' rights, and accused persons' rights. This analysis tries to add to a comprehensive understanding of the complexity surrounding the Indian justice system and the various ideas of punishment that drive it. This paper also looks into the recent developments in the justice system, as the new criminal laws have been introduced and to be affected with an intention to modernise the justice system. The paper utilises the literature available to analyse the effect of the theories of punishment in administration of justice in India.

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II. KEYWORDS

Administration of Justice, Deterrence, Punishment, Retribution, Reformative.

III. INTRODUCTION

The background of this paper goes back to the social contract theories which were made to transfer the rights of individuals to a supreme authority or state with the purpose to safeguard the rights and interest of the individuals. The state has the legitimate authority to regulate the conduct of individuals and thus, any act which is against the community interest is referred to as an offence. To regulate such behaviour state formulated laws which all the citizens are bound to follow. The societal fabric is woven with laws and conventions that guide individual behaviour while maintaining harmony and order. Deviation from these established norms frequently results in punitive measures intended to uphold social order and fairness. The administration of justice in any culture is inextricably related to the punitive conceptions that underpin the legal system.

This study conducts a thorough examination of the various theories of punishment and their significance to the Indian legal system. These theories help to further understand the underlying principles which effect the administrative system. The state has the obligation to protect the interest of all the individuals which also gives the state the authority to punish. However, the administrative system of justice depends on the philosophy the state follows to ensure that every individual gets justice. The different theories of punishment affect the system of administration of justice in India and the legal system. This research paper analyses the theories of punishment with the aim to understand the legal system in India.

By analyses of the theories, the paper tries to evaluate the implications of them in administration of justice. By analysing the historical development of punitive measures and other components of legal system, the paper argues for a balanced approach between the various theories of punishment for effectively address the criminal behaviour and uphold the principles of justice and fairness in Indian

legal system. The paper aims to contribute to the comprehensive understanding of Indian justice system and complexities surrounding it.

A. RESEARCH PROBLEM

The core problem addressed in this paper is understanding the efficacy and applicability of various theories of punishment within the Indian legal framework. This study by critically analysing theories such as deterrence, retribution, reformation, prevention, and expiation, aims to assess their philosophical foundations and practical implications for the administration of justice in India.

B. Research questions:

1. How do different theories of punishment, such as deterrence, retribution, reformation, prevention, and expiation, form the basis for the punishment measures in the Indian legal system?
2. How has the evolution of punitive measures in India, from ancient times to the present day, influenced the legal system's approach to administration of justice?

C. Objectives:

1. To analyse the theories of punishment such as deterrence, retribution, reformation, prevention, and expiation, within the Indian legal system.
2. To understand the efficiency of these theories in administration of justice in India.
3. To identify the theory or philosophy applied in Indian legal system.
4. To explore the development of punishment practices from the ancient to the modern day in India.

D. Scope and limitation:

The scope of this research is limited to an examination of punishment theories and their practical ramifications in the Indian legal system. While the study

intends to give a thorough examination of these theories, certain constraints, such as resource and time limits, may limit the scope of the research.

E. Methodology:

This study takes a qualitative research approach, doing a thorough analysis of the current literature on punishment ideas and their implementation in the Indian legal system. The analysis will include a critical evaluation of scholarly publications, legal documents, and historical viewpoints in order to understand the intricacies of punishment theories in the Indian context while also exploring the contemporary developments.

IV. THEORIES OF PUNISHMENT

A. Deterrent Theory of Punishment

The word 'deter' means to discourage someone from doing something by instilling doubt or fear of the consequences. This theory proposes punishment as a tool to deter the individuals from committing crime. The state imposes exemplary punishment to the offender to deter others from committing crimes. By sentencing the state induces fear in the minds of others to the consequences of their acts, which results in deterrence. So, when a crime is committed by an individual, he will be given punishment such that others are discouraged from doing such acts in the society. This theory can be connected to the sociological school of jurisprudence, where law and society are related. It suggests that law is a social phenomenon, with a relationship to society which is both direct and indirect. Deterrence impacts the real or possible motives of the offenders. By giving offenders appropriate penalties and exemplary punishment, the deterrent theory also aims to instil fear in the minds of others, discouraging them from committing crimes.

The deterrent theory may be traced to the works of classical philosophers Thomas Hobbes (1588–1678), Cesare Beccaria (1738–1794), and Jeremy Bentham (1748–1832). The deterrent theory represents utilitarianism. To understand this better it can be said that "The man is punished not only because he has done a

wrongful act, but also in order to ensure the crime may not be committed". It also explained in the words of Burnett J, "*Thou art to be hanged not for having stolen a horse, but in order that other horses may not be stolen*".

According to Bentham, the committed offences are act of past and provides opportunity to punish the offender to discourage the future offences. The main aim of this theory is to show that the result of a crime is never profitable. Thomas Hobbes relies on his assumption that all individuals act in self-interest for their own benefit and not concerned about the harm they cause to others. thus, he derived his theory of 'social contract' where everyone gives up their rights to the sovereign, the supreme commander. According to this social contract, individuals are punished for violating the social contract and deterrence is the reason for it to maintain the agreement between the State and the people, in the form of a social contract workable[2].

The proponents of this theory identified three major components namely, *Severity, Certainty and Celerity*.[3] *Severity* indicates the degree of punishment given to prevent crime and encourage individuals to obey the law. *Certainty* means that the punishment to be certainly given when a criminal act is committed. *Celerity* describes the swiftness in sentencing for a crime. Henceforth, the proponents believe that if punishment is given based on three components, a prudent person by measuring gain and loss will be deterred from committing crime.[4]

However, this theory has its own criticisms. It is criticised for giving punishment to individual to deter others and not to punish him. The guilt of the offender is not looked into, and sole purpose of punishment becomes deterrence of others

[2] Tiwari, P. (2022) *Concept of deterrent theory*, *International Journal of Law Management & Humanities*. Available at: https://ijlmh.com/paper/concept-of-deterrent-theory/ (Last visited on: 05 March 2024).

[3] More, A.H. (2023) *Deterrent theory of punishment*, *The Legal Quotient*. Available at: https://thelegalquotient.com/criminal-laws/criminal-jurisprudence/deterrent-theory-of-punishment/1145/ (Last visited on: 07 March 2024).

[4]Johnson, B. (2019) *Do criminal laws deter crime? deterrence theory in Criminal Justice Policy: A Primer*, *MN HOUSE RESEARCH*. Available at: https://www.house.mn.gov/hrd/pubs/deterrence.pdf (Last visited on: 05 March 2024).

in committing crime[5]. A habitual offender may not be feared of the punishment, and it fails to understand the offences committed in excitement without pre-mediation. Further, the theory has also been criticised for its 'deterrence' effect in the society. many laws are made, and severe punishments are given to deter, however there has been no concrete result showing the effect of such deterrence. The crime rate is increasing day-by-day which posed a question in the minds of scholars as to the real effect of the punishment in deterring others. This resulted in a shift in the way punishment is executed, with judges now awarding punishment as a deterrent only in a few serious cases.

B. Retributive Theory of Punishment

The Theory of Retribution or the Theory of Vengeance is based on the doctrine of *Lex talionis*[6] which means 'eye for an eye'. The theory suggests that the punishment should be given to the perpetrator in such a way it acts as deterrence and even though may not create any good. This theory sees it is essential to punish the offender in proportion to the crime committed thereby restoring a proper balance. Sir John Salmond asserts that the goal of a retributive punishment is to exact vengeance on a criminal for the harm they have caused to society[7]. Accordingly, proponents of the retributivism theory contend that the wrongdoer ought to pay a price in proportion with the harm he has caused to a particular person or to society at large. Retributive theory guarantees that the punishment meted out must be commensurate with the severity of the injury that occurred, and it does not punish someone who has not yet committed a crime or who intends to commit one.

This theory can be observed in cases of heinous crimes such as rape, murder, etc. people might think that it is considerate to punish based on the graveness of the

[5] Karim, Ezazul, *The Critical Evaluation of the Different Theories of Punishment*, The Jahangirnagar Review, Part-C, Vol. 29, pp 471-489 (2020).
[6] "lex talionis," Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary/lex%20talionis. Last visited on 5 March 2024.
[7] Gupta, D. (2024*) Theories of punishment*, Manupatra. Available at: https://articles.manupatra.com/article-details/Theories-of-punishment (Last visited on: 18 March 2024).

crime. It neglects other aspects in awarding punishment. According to Hart, there are three tenets in punishment under the retributive theory (Bedau, H. A. 1978)[8]:

i) If someone has intentionally done something wrong, only then may they be punished.

ii) The severity of the punishment must correspond to or be greater than the offense's wickedness.

iii) The justification for punishing someone is that it is morally right or justifiable for them to suffer in return for their voluntary commission of moral evil.

All the three principles are subsequently called as Principle of Responsibility, the Principle of Proportionality and the Principle of Just requital.[9] Retributivism suggests a perpetrator should be punished for the immoral act he has done. Retributivism has both positive and negative dimensions,[10] positive retributivism suggests that punishment is deserved because a person did something wrong and the negative retributivism suggests that punishment shall be given to only those who have committed a wrong not to others.

This theory has its own advantages such as, it acts as a strong deterrent, it provides moral justice to the victim and it instils a feeling of trust in the society towards the judiciary.[11] However, it also follows disadvantages. It is important to ensure that severe offences are punished with retributive measures, as this can prevent the emergence of strong, negative, or vindictive sentiments within the community. Furthermore, if there is no legal accountability for the approval of the death penalty, the state may have hegemony over it and utilise it as a tool of

[8] Bedau, Hugo Adam, *Retribution and the Theory of Punishment*, The Journal of Philosophy, vol. 75, no. 11, 1978, pp. 601–20. *JSTOR*, http://www.jstor.org/stable/2025477 (Last visited on: 5 March 2024).
[9] *Id.*
[10] Walen, Alec, *Retributive Justice*, *The Stanford Encyclopedia of Philosophy* (Winter 2023 Edition), Edward N. Zalta & Uri Nodelman (eds.), https://plato.stanford.edu/archives/win2023/entries/justice-retributive/ (Last visited on : 7 March 2024).
[11] GYAN SANCHAY, https://gyansanchay.csjmu.ac.in/wp-content/uploads/2022/08/Retributive-Theory-of-punishment.pdf, (Last visited on: 7 March 2024).

torture. Thus, the theory is criticised for sometimes being disproportionate in sentencing and for its effect on the state developing feelings of vengeance and becoming autocratic.

C. Preventive Theory of Punishment

Utilitarians such as Jeremy Bentham vigorously supported the preventive theory of punishment, believing that the use of preventive measures would deter future criminal activity. According to this theory, one of the most important components of an effective punishment is a timely investigation. This punishment theory is based on the idea of making the offender fearful of punishment, which will prevent him from committing the same offence. In essence, it dissuades the criminal from committing the crime. According to this theory, punishments include the death penalty and imprisonment for life. There are three ways that one can practise prevention[12]:

i) By creating in a potential offender, the fear of punishment.

ii) By incapacitating a real perpetrator, either indefinitely or momentarily.

iii) By making the general public aware of the potential penalties.

Preventive theory suggests that offences should be prevented by disabling the offender. For the purpose of disabling the offender punishment is exerted. The aim of this theory is to prevent crimes in the society[13]. the criminal acts can be prevented when the notorious activities are checked. Thus, the checks can be imposed by disablement which can be of various forms. Imprisonment is of the best form of disablement which can be limited or unlimited based on the sentence.[14] Imprisonment eliminates the offender from the society for a time being or for his entire life enabling prevention of crime in the society. death

[12] Ahmed, Z.S. (2023) *Preventive theory of punishment*, *Law Corner*. Available at: https://lawcorner.in/preventive-theory-of-punishment/ (Last visited on: 09 March 2024).
[13]Mishra, Shikha, *Theories of Punishment; A Philosophical aspect*, Imperial Journal of Interdisciplinary Research, Vol 2, no. 8 pp. 74-78(2016).
[14]Indian Institute of Legal Studies, available at: https://www.iilsindia.com/study-material/328166_1635102183.pdf , (Last visited on: 09 March 2024)

penalty is also a form of disablement under this theory. This theory is a kind of deterrent theory. However, the deterrent theory focuses on deterring the society while the prevention theory focuses on preventing the perpetrator to commit future crimes.

Many scholars and jurists have criticised this theory. Penologists and jurists who oppose preventive punishment argue that because it doesn't deal with the underlying causes of criminal behaviour, tactics like instilling fear in the minds of offenders or preventing them from committing crimes may not be successful in reducing crime rates. Particularly when it comes to young people and first-time offenders, as it could harden them even further and eliminate any chance of full rehabilitation. The offender is punished for the welfare of the society and not for the welfare of the offender himself[15]. Such a non-humanistic view of the theory is criticised.

D. Reformative Theory of Punishment:

According to this theory, the objective of punishment is to reform the criminal. The reformative or rehabilitative theory provides a perspective of criminal justice that focuses on reforming or rehabilitating the offender. Rather than focusing only on retribution or deterrence, this theory seeks to address the causes of criminal behaviour and facilitate the offender's reintegration of the society[16]. India follows the theory of reformation in its criminal justice system. The objective of this theory is to make the offender aware of the unlawful activities done by him and reform to reintegrate him with the society. The reformative theory focuses on the criminal rather than the crime like other theories of punishment[17]. According to this theory, a crime is a result of the psychological

[15] Mondal, Dr.M. (2021) *Preventive or deterrence theory: A doctrine concerning punishment*, International Journal of Humanities & Social Science Studies (IJHSSS) . Available at: https://www.ijhsss.com/files/11.-Dr.-Mukul-Mondal.pdf (Last visited on: 09 March 2024).

[16] Meyer, Joel, *Reflections on Some Theories of Punishment*, The Journal of Criminal Law, Criminology, and Police Science, vol. 59, no. 4, 1968, pp. 595–99. *JSTOR*, https://doi.org/10.2307/1141839. (1968).

[17] Daschaudhuri, P. (2023) *Reformative theory of punishment in India - aishwarya sandeep- parenting and law*, *Aishwarya Sandeep- Parenting and Law* . Available at: https://aishwaryasandeep.in/reformative-theory-of-punishment-in-india-3/#:~:text=Reformative%20theory%20of%20punishment%20is%20a%20contemporary%20appr

or physical characteristics of the perpetrator. It also relates the crime committed to the surrounding environment and the circumstance in the society. Motive is considered vital to understand the criminal.

Mahatma Gandhi once stated that, " Hate the sin, but not the offender", which reiterates this theory that the criminal should not be punished without understanding his motives, circumstance and other factors[18]. This theory tries to understand the criminal behaviour by analysing the factors which caused the offender to commit such a crime. That is why in the criminal law of India the extent of punishment is determined on the basis of motives, economic factors, physical factors, social factors, etc. It is the discretion of the court to grant the punishment and while sentencing a perpetrator, the court considers various aggregating and mitigating factors.

This theory developed as a reaction to the deterrent or preventive and retribution theories which had no humanistic views. However, with the changing times, the nation's understood the need for a humanistic view which addresses the reasons for which the offender commits crime. It is a part of criminology and understanding criminal behaviour. Thus, this theory proposes for a curative effect of the punishment while also addressing the need to protect the interest of the prisoners. Steps are taken to reform the offenders and reintroduce them into the society as prudent citizens.

Critics of the reformative theory argue that it takes an offender-centric approach[19] and that, in many cases, concentrating only on this type of punishment is unjust to the victim, especially in cases involving heinous offenses such as rape or murder. While reformative punishments have shown efficacy when applied to juveniles and first-time offenders, they become ineffective and

oach%20to%20criminal,the%20criminal's%20character%20and%20intent. (Last visited on: 09 March 2024).

[18] Singh Takur, R. (2011) *An eye for an eye will turn the whole world blind- in special context to reformative theory of punishment*, Manupatra . Available at: https://www.manupatra.com/roundup/334/articles.html (Last visited on: 09 March 2024).

[19] Elena M., Alicia Gil, *The Rationale and Purposes of Criminal Law and Punishment in Transitional Contexts*, Oxford Journal of Legal Studies, Vol. 40, Issue 1, March 2020, Pages 132–157.

unworkable when applied to habitual offenders or when death sentences are involved. It is also contended that this theory would result in lack of deterrence. Concerns are raised over the abuse offender may face in the process of rehabilitation whether from the family, friends, or the society.

E. Expiatory Theory

The expiatory theory of punishment, which is based on moral and ethical principles, holds that an offender's own repentance or expiration constitutes a form of punishment. This philosophy emphasizes atonement, reparation, repentance, and compunction as conscience-driven methods of purifying one's heart.

The expiatory theory is one of the earliest concepts of punishment still in use in Indian criminal law. The Manusmriti, an ancient Hindu literature considered it as a manner of punishment that prioritized the rehabilitation of offenders into members of society. The theory's application has proven inadequate as society has advanced, and relying only on it for experimentation would be too expensive in terms of social safety and security.

Expiatory Theory is founded on the premise that "to pay for the sin committed" and is opposed to the idea that a wrongdoer deserves to be pardoned and forgiven if he repents entirely of his transgression. It is in favour of punishing wrongdoers who harm or cause any kind of loss to other people. Economical and compensatory forms of punishment are preferred over expiatory ones. It talks about the accused giving the victim compensation rather than subjecting the victim to physical harm as a form of punishment. Criticism is that the Expiratory punishments are unlikely to be effective in changing the criminal mindset of offenders in the current era of materialism when everyone is preoccupied with finding some excuse for their actions. As a result, the punishments recommended by this theory may be sufficient to deal with minor and trivial

offences, but they are deemed unrealistic when it comes to the most serious ones[20].

V. ANALYSIS OF ADMINISTRATION OF JUSTICE IN INDIAN CONTEXT

A. Historical Perspective of Punishment in India:

Punishment has been discussed in the ancient legal literature of Dharma shastra, where the technical term for punishment is Danda. The term Danda has been used in relation to criminology and crime suppression. The ancient Indian criminology discusses two concepts: Danda and prayashchita. The difference between the two is that in the latter, the sinner acknowledges that he has committed a wrong or performed an act that contradicts morality and the existing rules, whereas in Danda, the wrongdoer does not need to confess or voluntarily acknowledge his guilt[21]. As a result, the judgement based on prayashchita was referred to as a dharma judgement, while the judgement reached through evidence was referred to as a vyavahara judgement. In ancient times, it was the king's responsibility to punish lawbreakers; he was the one empowered to do so. The king was responsible for maintaining law and order in his kingdom, and punishment was the only form of social control. According to Manu's ancient literature, the king was the protector and holder of punishment, which was referred to as Danda Chhatra Dhari.[22]

Further, the Arthashastra outlines several punishment philosophies that were prevalent in ancient India, Danda referring to the use of physical punishment, for dealing with petty crimes and misdemeanours; Fine as imposition of a monetary penalty for a crime determined based on the severity of the offense;

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[20] Anand Bhusan (2022) *The expiatory theory of punishment.* , Gyansanchay. Available at: https://gyansanchay.csjmu.ac.in/wp-content/uploads/2022/08/The-Expiatory-Theory-of-Punishment.pdf (Accessed: 18 March 2024).

[21] Patrick Olivelle (2011) , *Penance and Punishment: Marking the Body in Criminal Law and Social Ideology of Ancient India*, *The Journal of Hindu Studies*, Volume 4, Issue 1, Pages 23–41, https://academic.oup.com/jhs/article/4/1/23/2188606, (Last visited on: 09 March 2024)

[22] Ranjan, A. (2021) *Evolution of the process of punishment in India*, International Journal of Law Management & Humanities. Available at: https://ijlmh.com/paper/evolution-of-the-process-of-punishment-in-india/ (Last visited on: 09 March 2024).

Banishment or exile as a punishment for more serious offenses, such as treason or rebellion; Execution for the most heinous crimes, such as murder, rape, or high treason with several methods of execution, including hanging, impaling, and beheading; Confiscation of property used to deter individuals from committing crimes.[23] So, the major kinds of punishment in the ancient period were capital punishment (severe form of punishment, carried out through stoning, pillory, construction into a wall or throwing under an elephant's leg), corporeal punishment (inflicting physical pain, including mutilation, branding, flogging, bilboes, and imprisonment), social punishment (prohibiting a person from social contact) and financial punishment (imposition of fine, compensation to the victim or prosecution costs)[24]. In this period, the reformative aspect of punishment was absent, while retributive and deterrent aspects were prominent.[25]

B. Legal system and punishment in medieval period:

During the medieval period in India, maintaining order was believed to be achieved through instilling fear of punishment for crimes. Common crimes such as stealing and murder were met with harsh penalties including fines, shaming (such as being placed in stocks), injury (involving cutting off body parts), or death. The absence of a legal system meant that law enforcement was primarily in the hands of the community rather than a centralized authority.

The administration of justice during the Mughal period involved the emperor being considered the "Fountain of Justice" and establishing separate courts at different administrative levels to handle civil, criminal, and revenue cases[26]. In

[23] Parouha, D. (2023) *Growth of punishment philosophies in India: A critical analysis*, *SSRN*. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4386130 (Last visited on: 15 March 2024).

[24] Muniyappa T and Prasannan, A. (2023) *Kinds Of Punishment In India: A Historical Perspective*, International Journal for Creative Research Thoughts. Available at: https://ijcrt.org/papers/IJCRT2312825.pdf (Last visited on: 15 March 2024).

[25] Bakshi P. M. , *Punishment in Ancient Hindu Law*, The Journal of Criminal Law, Criminology, and Police Science, vol. 47, no. 1, 1956, pp. 81–83. *JSTOR*, http://www.jstor.org/stable/1140200. (Last visited on: 15 March 2024).

[26] Tripathi, R. (2018) *An Analysis of Judicial System In Medieval India (With Reference To Criminal Justice System)*, Zenodo. Available at: https://zenodo.org/record/1154900/files/275.pdf (Last visited on: 18 March 2024).

the Imperial Capital at Delhi, there were three important courts, including the Emperor's Court, the Chief Court, and the Chief Revenue Court[27]. Similar courts were established at provincial, district, parganah, and village levels, each with specific jurisdictions and powers. At the village level, Panchayats were responsible for administering justice in petty civil and criminal matters.

The administration of justice was based on Islamic law (Shara) principles, which provided specific penalties for crimes such as stealing, robbery, fornication, apostasy, defamation, and drunkenness. The punishments included Hadd (a set penalty for specific crimes), Tazir (prohibition for crimes not classified under Hadd), and Qisas (blood-fine for cases related to murder)[28]. Treason was considered a crime against God and religion and was punished with death.

C. Development of the Current Legal Framework in India:

The current legal framework is governed by the Codes made during the colonial period. The effect of the colonial rules can be still observed in legal system in India. The process of punishment evolved with the civilization and a gradual change is observed in the way it is administered. During the ancient and the medieval periods, the criminal jurisprudence in India provided with harsh and cruel punishments with no priority to individual interest. The main aim of punishment is to deter others in the society, sometimes also observed as form of revenge on the criminal. During the colonial rule, the purpose of the punishment changed. Though the laws made during the period did not do away with punishments in the earlier periods, they induced a better scope for securing individual interests in the administration of criminal justice.

Punishment now focuses on correcting rather than punishing. The Indian Penal Code, codified in 1860 during British rule, established the punishments used in modern India. Section 53 of the Indian Penal Code 1860 provides for the different kinds of punishments that can be imposed on a criminal.

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[27] Varshaa K. (2017) *Crimes and punishment in medieval India - IJLRS*, International Journal of Legal Research and Studies. Available at: http://ijlrs.com/papers/vol-2-issue-4/22.pdf (Last visited on: 16 March 2024).

[28] *Id.*

Under section 53 of Indian Penal Code[29], punishments given are:

- Death
- Imprisonment for life
- Imprisonment, of two descriptions,
    - Rigorous
    - Simple
- Forfeiture of Property
- Fine

Initially, 'transportation for life' was also a part of the punishment during the colonial era. However, the Code of Criminal Procedure (Amendment) Act, 1955, was passed, formally abolishing the punishment of transportation mentioned in section 53 of the Indian Penal Code. Along with the Indian Penal Code and the Indian Evidence Act , the administration of criminal justice is also made through the post-independence law namely, the Code of Criminal Procedure 1973. The current legal system is reformative rather than being retributive. The system is regulated by the constitutional provisions, criminal laws, police, judiciary and prisons. Each of these help in the administration of justice in the criminal jurisprudence.

D. Role of Constitution in criminal justice and governance:

The constitution of India is apex law which governs the rights of individual in the society. Subsequently, it also provides protection to the rights of victims as well as the offenders. The rights of the victims of crime are provided by the fundamental rights. Mostly, article 21[30] is used to understand the effect of the crime on individual's rights. Article 14[31] ensures equality before the law and equal protection of law without the victim being subjected to any discrimination. Whereas, to the accused or the suspect, article 20, 21,& 22 are important in

[29] The Indian Penal Code, 1860, § 53, No. 45, 1860 (India).
[30] INDIA CONST. art. 21.
[31] INDIA CONST. art. 14.

administration of justice. Article 20[32] provides protection against double jeopardy, self-incrimination, and retrospective punishment; Article 21[33] ensures the right to life and personal liberty, including right to a fair trial and due process; Article 22[34] safeguards rights regarding arrest and detention. Thus, the provisions of the constitution work together to ensure that every individual whether it be a victim or an offender gets to exercise his rights and get justice.

The Directive Principles of State policy suggest that the state should regulate the social order and laws are to be made in concurrence with these principles. Article 38[35] directs the State to secure a social order for the promotion of the welfare of the people and to ensure justice, social, economic, and political. Further, Article 39A[36] mandates that the State shall provide free legal aid and ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Other provisions such as Separation of powers, federal structure, amendment procedure and judicial review also regulate the criminal justice system. Article 368[37] outlines the procedure for amending the Constitution, which includes approval by both houses of Parliament and ratification by at least half of the states. Seventh Schedule of the Constitution provides the distribution of powers between the Union and the States, including matters related to criminal law and justice. However, Articles 32[38] and 226[39] empower the Supreme Court and High Courts, respectively, to issue writs for the enforcement of fundamental rights for the justice to be prevailed . In essence, all the above provisions under the constitution ensure that individuals get access to justice.

E. Role of judiciary in sentencing:

[32] INDIA CONST. art. 20.
[33] INDIA CONST. art. 21.
[34] INDIA CONST. art. 22.
[35] INDIA CONST. art. 38.
[36] INDIA CONST. art. 39A.
[37] INDIA CONST. art. 368.
[38] INDIA CONST. art. 32.
[39] INDIA CONST. art. 226.

In India, the criminal justice system's sentencing procedure is heavily influenced by the judiciary. A fundamental component that enables judges to carefully consider all the circumstances affecting sentence decisions is judicial discretion. These variables include the seriousness of the crime, the offender's circumstances, the impact on the victim, and any aggravating or mitigating evidence that is shown at trial[40]. Although judges have discretion, the framework for sentencing parameters is established by statutes and precedents. The minimum and maximum sentences for certain offences are outlined in the Indian Penal Code (IPC) and other relevant laws[41]. Furthermore, courts carefully take into account the unique circumstances of every case as well as the backgrounds of the offenders. Sentencing judgments are influenced by a number of factors, including age, criminal history, socioeconomic level, regret, and opportunity for rehabilitation[42]. They allow victims or their families to explain the serious consequences of the crime and help judges make sentence decisions.

Sentencing is guided by the principles of proportionality, deterrence, rehabilitation, and retribution[43]. These principles ensure that the sentence is appropriate for the seriousness of the conduct while also attempting to rehabilitate criminals, prevent future offenses, and provide victims with justice. In addition, the judiciary occasionally proposes sentencing reforms to improve the sentencing process's efficacy, consistency, and fairness. These changes could take the shape of customized rules, different sentencing schemes, or special attention to vulnerable populations like minors or first-time offenders. In essence, the judiciary's role in sentencing exemplifies a delicate balance between

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[40] Indulia, B. and Ridhi (2023) *Sentencing in Indian penal system: Aggravating and mitigating factors, SCC Times*. Available at: https://www.scconline.com/blog/post/2023/04/07/sentencing-in-indian-penal-system-aggravating-and-mitigating-factors/ (Last visited on: 18 March 2024). And Bachi Singh v. State of Punjab (1980) 2 SCC 684.

[41] The Indian Penal Code, 1860, No. 45, 1860 (India).

[42] Kavitha ,*Impact of aggravating and mitigating factors in sentencing process*, Legal Service India - Law, Lawyers and Legal Resources. Available at: https://www.legalserviceindia.com/legal/article-15591-impact-of-aggravating-and-mitigating-factors-in-sentencing-process.html#google_vignette (Last visited on: 18 March 2024).

[43] Ramarao K., *Law criminal justice administration sentencing: Theory and Practice*, *Pathshala*. Available at: https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/law/05._criminal_justice_administration/17._sentencing__theory_and_practice/et/8182_et_et.pdf (Last visited on: 18 March 2024).

discretion, legislative parameters, and justice principles, with the goal of upholding the rule of law while dealing with the intricacies of criminal situations.

F. Reformative theory measures within the Indian legal system:

The Indian legal system's approach to criminal justice is based on reformative theory, which emphasizes rehabilitation and reintegration over punishment. The Probation of Offenders Act of 1958[44] is one significant provision that reflects this approach, allowing certain offenders to be released on probation subject to particular requirements targeted at their reform and social reintegration. Under this statute, probation officers evaluate offenders' backgrounds and situations in order to develop tailored rehabilitation plans that may include counselling, vocational training, or community service. By redirecting offenders away from traditional jail and providing opportunities for rehabilitation, the legal system hopes to address the underlying causes of criminal behaviour, ultimately contribute to the offender's positive transformation.

Furthermore, the Juvenile Justice (Care and Protection of Children) Act of 2015[45] exemplifies reformative concepts by emphasizing the rehabilitation and reintegration of juvenile offenders. The statute focuses on the formation of juvenile justice boards and observation houses, which provide a safe place for young offenders to obtain education, counseling, and skill development. Importantly, it takes a child-centered approach, acknowledging juvenile offenders' vulnerabilities and developmental needs while highlighting their potential for reform and reintegration into society. Through such measures, the Indian legal system demonstrates its commitment to fostering a more humanitarian and rehabilitative approach to criminal justice, prioritizing offenders' welfare and rehabilitation over society safety and security. Further, Section 27 of the Prisons Act of 1894[46] provides for the separate confinement of

[44] The Probation of Offenders Act, 1958, § 3, 4 & 5, NO. 20, Acts of Parliament, 1958 (India).
[45] The Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2016 (India).
[46] THE PRISONS ACT, 1894, § 27, No. 9, 1894 (India).

adult criminals, young offenders, and female convicts. It tries to protect adolescents against contamination and exploitation by other offenders.

VI. ANALYSIS OF PUNISHMENT PRACTICES IN INDIA

Punishment methods in India are shaped by a complex interaction of historical, cultural, and legal influences. Punishment systems differ by area and community, ranging from archaic tactics such as social exclusion to modern court sentencing. India's attitude to punishment is influenced by religious beliefs, colonial legacies, and evolving legal systems. It includes a variety of procedures such as imprisonment, fines, and corporal punishment. Debates about the efficacy, fairness, and human rights implications of these practices continue in the context of India's sociopolitical landscape, motivating continuing dialogue and reform attempts in the quest of justice and rehabilitation.

The present system of administration of justice in India has various challenges and critics. Whether it is punishment or the prison systems or the juvenile justice systems or the access to justice. the present system has its own difficulties to address, some are discussed below.

A. Capital punishment: Retributive or deterrent?

A huge debate is surrounded around the sentencing of an individual to capital punishment or death punishment. Whether capital punishment is based on the theory of retribution or deterrence is still debated. Various scholars have debated for and against capital punishment.

Proponents of capital punishment frequently argue that it is necessary as a deterrence to crime, especially for terrible offenses such as planned murder or terrorism. They argue that the dread of death serves as an effective deterrent, potentially saving lives by preventing violent crimes. Furthermore, proponents believe in bringing justice for victims and their families, claiming that certain acts demand the most severe punishment in order to provide closure and vengeance to those impacted. These advocates also underline its apparent cost-effectiveness

as comparison to life in prison, as well as its role in maintaining societal moral order through proportional retribution.

Opponents of the death penalty raise worries about the risk of murdering innocent people and the violation of fundamental human rights. They claim that due to weaknesses in the legal system and the irreversible nature of death penalty decisions, the potential of wrongful executions is unacceptable. Furthermore, critics question its effectiveness as a deterrence, citing systematic flaws in its administration that disproportionately affect disenfranchised populations. Furthermore, opponents argue against state-sanctioned death on moral and ethical grounds, urging for alternative forms of punishment that prioritize rehabilitation and human dignity.

However, due to the judicial precedents the capital punishment in only given in rarest of rare cases[47]. Capital punishment is an exception and not a rule. So, capital punishment should be given only if the case falls under the category of rarest of the rare case while also considering other aggravating and mitigating factors. Nevertheless, capital punishment is not removed from practice even though there are potential risk factors involved when sentencing someone to death penalty. However, the courts should take reasonable care while giving death penalty.

B. Prison systems: Rehabilitation or retribution?

Prison systems have long been disputed due to their major emphasis on either rehabilitation or retribution. While some think that prisons should be primarily used for punishment and vengeance, others urge for a more rehabilitative strategy that aims to reform prisoners and reintegrate them into society. The success of each technique differs depending on the nature of the crime, the individual's background, and social attitudes on crime and punishment.

[47] Rajkumari and Pratap Singh, R.D. (2022) *The doctrine of rarest of rare: a critical analysis*, *Indian Journal of Integrated Research in Law* . Available at: https://ijirl.com/wp-content/uploads/2022/08/THE-DOCTRINE-OF-RAREST-OF-RARE-A-CRITICAL-ANALYSIS.pdf (Last visited on: 20 March 2024).

In recent years, there has been an increasing appreciation for the value of rehabilitation in lowering recidivism rates and fostering long-term community well-being. Education, vocational training, mental health assistance, and substance addiction treatment programs have all showed promise in helping criminals lead productive lives once they are released. Balancing the goals of rehabilitation and retribution within the prison system is critical for developing a system that not only holds people accountable for their acts, but also gives them the tools and assistance they need to avoid future criminal activity.

However, overcrowding in Indian prisons is a serious problem that has long afflicted the country's criminal justice system. The problem is caused by a variety of circumstances, including judicial delays, increased criminal sanctions, an increasing number of pre-trial inmates, and short-term convictions, all of which contribute to chronic overcrowding[48]. To address this challenge, measures include restricting police, prosecution, and courts to expedite investigations and trials, separating inmates awaiting trial, increasing pre-trial release, utilizing sentence-shortening rules, enhancing probation, and suspending prosecution.[49]

Efforts to combat overcrowding also include the establishment of Fast Track Courts for expedited case resolution, the implementation of plea bargaining to reduce trial delays, infrastructure enhancement through modernization schemes, the use of the Probation of Offenders Act to release less serious offenders, and the formation of Undertrial Review Committees to review cases on a regular basis. To address prison overcrowding in India, measures such as

[48]Business Standard, *Overcrowding in jails, delayed justice are a pressing concern: Par Panel* (2023) Available at: https://www.business-standard.com/india-news/overcrowding-in-jails-delayed-justice-are-a-pressing-concern-par-panel-123092100863_1.html (Last visited on: 20 March 2024) and Wani, S. (2023) *Packed beyond capacity, prisons in India have got more crowded in 5 years*, *Business Standard*. Available at: https://www.business-standard.com/india-news/packed-beyond-capacity-prisons-in-india-have-got-more-crowded-in-5-years-123120801245_1.html (Last visited on: 20 March 2024).

[49] Saxena, R. (1976), *OVERCROWDING IN INDIAN PRISONS - FINDING ALTERNATIVES TO IMPRISONMENT,* NCJRS Virtual Library. Available at: https://www.ojp.gov/ncjrs/virtual-library/abstracts/overcrowding-indian-prisons-finding-alternatives-imprisonment (Last visited on: 20 March 2024).

Lok Adalats, regular visits by High Court judges, legal aid through NGOs and cells, and use of audio-video technology for trials are being implemented[50].

VII. ADMINISTRATION OF JUSTICE UNDER THE NEW CRIMINAL LAWS:

As an effort to 'decolonise' the laws governing criminal jurisprudence in India, the new criminal law is introduced, which are to be effected from july1st 2024. The administration of justice in India is highly influenced by the ideals of the colonial rulers and often the needs of the Indian citizens are unnoticed. The laws made are not effective enough for the modern India and therefore, to overcome the colonial shadows and to meet the requirements of the present society the new laws are introduced. The Committee for Reforms in Criminal Laws (CRCL), chaired by Prof. Dr. Ranbir Singh, launched an initiative in 2020 to replace outdated statutes with new legal frameworks, with the goal of bringing about a rebirth in twenty-first-century India[51] by the new bills namely Bharatiya Nyaya Sanhita (BNS), Bharatiya Sakshya Adhiniyam (BSA) and Bharatiya Nagarik Suraksha Sanhita (BNSS).

Significant changes have been brought in the new laws. The new laws introduced significant changes in the punishment provisions. These revisions aim to modernize and match the legal system with current demands. The BNS has implemented community service as a penalty for minor violations, prioritizing rehabilitation over jail[52]. The language has been made more inclusive by extending male pronouns to accommodate all genders. Furthermore, the rules

[50] *The Indian Express* (2023), *Speedy trial can become effective tool to address overcrowding in jails, says SC Panel on prison reforms*. Available at: https://indianexpress.com/article/india/speedy-trial-effective-tool-overcrowding-jails-sc-panel-prison-reforms-8918070/ (Last visited on: 22 March 2024).

[51] LexisNexis Blogs (2024), *New criminal laws in India*. Available at: https://www.lexisnexis.in/blogs/new-criminal-laws-in-india/ (Last visited on: 22 March 2024).

[52] Berry, A., Pasricha, G. and Chakrabarti, A. (2024) *A comparative analysis of the new criminal codes and the existing codes*, *Lexology*. Available at: https://www.lexology.com/library/detail.aspx?g=5a4c16b0-4d5b-449d-985b-85dbf6fe3617 (Last visited on: 22 March 2024).

redefine terrorism and sedition[53], providing explicit definitions and harsh consequences for such activities. Victim rights have been strengthened, with mandatory audio-video recording of victims' statements in sexual violence cases. The BNSS focuses on procedural improvements, emphasizing victim-centred justice, police accountability and transparency, and updating legal procedures. It also establishes specific timetables for legal proceedings to improve efficiency. The BSA improves evidence law by incorporating technology improvements, widening the scope of electronic evidence, and requiring the collecting of forensic evidence at crime sites. These reforms are a key step towards creating a more equal and efficient criminal justice system in India.[54]

However, the new laws have been criticised by various scholars suggesting that they are more draconian. Additionally, experts have flagged issues such as extensive overcriminalization, the potential misuse of expanded police powers, and concerns about the duration of police custody under the BNSS, which could endanger civil liberties and increase the risk of police excesses. Some experts also criticised community service as punishment in the new code, saying it to be arbitrary, unregulated, and unspecific, apart from being impracticable, it is against human dignity[55]. As states by Chief Justice of India, the implementation of the new criminal laws is a step towards modernising the justice system. However, modernisation effort may be hindered by the lack of technology and marginalisation in the society which may affect the justice system.

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[53] The Times of India (2024), *Three newly-enacted criminal laws to come into effect from July 1: All you need to know: India news - times of india* Available at: https://timesofindia.indiatimes.com/india/three-newly-enacted-criminal-laws-to-come-into-effect-from-july-1-all-you-need-to-know/articleshow/107970056.cms (Last visited on: 22 March 2024).

[54] Sharma, N. and Srivastava, R. (2023) *Salient features and significant changes in new criminal laws – an explainer - crime - India*, *Salient Features And Significant Changes In New Criminal Laws – An Explainer - Crime - India*. Available at: https://www.mondaq.com/india/crime/1395364/salient-features-and-significant-changes-in-new-criminal-laws--an-explainer- (Last visited on: 23 March 2024).

[55] Mishra, I. (2024) *Bar Council of Delhi Office-bearers cite issues, Urge Home minister to not implement the New Criminal Laws*, *The Hindu*. Available at: https://www.thehindu.com/news/national/bar-council-of-delhi-office-bearers-cite-issues-urge-home-minister-to-not-implement-the-new-criminal-laws/article68010251.ece (Last visited on: 23 March 2024).

VIII. CONCLUSION:

By the analysis of punishment theories and their relevance to the administration of justice in India leads to the conclusion that the Indian criminal justice system is multifaceted, incorporating various punishment theories such as deterrence, retribution, prevention, reformation, and expiation. Each theory provides a unique viewpoint on the aim of punishment, whether it be to deter future crimes, seek vengeance for harm done, keep criminals from committing other crimes, rehabilitate persons, or foster remorse and atonement. The Indian legal system, inspired by historical perspectives and constitutional provisions, seeks to balance the rights of victims, offenders, and society at large. While each theory has its virtues and faults, the overriding purpose is to maintain social order, safeguard individual rights, and assure justice through a comprehensive knowledge of criminal behaviour and the application of appropriate punitive measures. Though the new criminal laws strive to modernize the justice system, such an effort must be made with care and caution, keeping all individuals in mind. The justice system should ensure that every citizen gets the justice. Individual liberties and community interest must be in concurrence without affecting each other. The administration of justice is key to maintain peace, order and stability in a diverse country like India.