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# PUNISHMENT, DETERRENCE, AND REFORM: A CRIMINOLOGICAL EVALUATION OF SENTENCING POLICIES

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Gunjan Basrani<sup>1</sup>

## I. ABSTRACT

*The question of whether punishments effectively achieve their intended purpose is the central premise of the criminal justice system and is deceptively straightforward. This study analyzes the three major justifications for punishing offenders: deterrence, incapacitation and rehabilitation, against empirical evidence found in both common law and civil law system sentencing practices. Significant criminological research indicates that the credibility of deterrent sentencing has been exaggerated. The rate of return benefits from incapacitation decreases rapidly as the imprisonment population grows larger (i.e., after a certain point, the rest of the population is not at risk from imprisonment). Finally, empirical rehabilitation programmes have been successfully shown to provide the best option for reducing recidivism and below is an analysis of three commonly discussed sentencing policy models - mandatory minimums, truth-in-sentencing, and restorative justice; and this paper concludes by proposing a graduated framework, which supersedes the socio-political influences of penalty populism by focusing on proportionality and empirical outcomes.*

## II. KEYWORDS

Deterrence, rehabilitation, sentencing policy, recidivism, restorative justice.

## III. INTRODUCTION

Beccaria's "On Crimes and Punishments," is a work by Cesare Beccaria, (1764) written at a time when laws were predominately punitive rather than rehabilitative.<sup>2</sup> The text contains a series of propositions advocating for a rational and humane system of punishment, grounded in the principles of proportionality, certainty, and celerity. His

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<sup>2</sup> Cesare Beccaria, On Crimes and Punishments (1764), trans. Henry Paolucci (Bobbs-Merrill, 1963), ch. 1.

principal focus was to demonstrate how punishment, when structured effectively, could deter criminal behaviour and replace the arbitrary and excessively harsh practices prevalent at the time. In doing so, he offered a completely different conception of the criminal justice system than had previous conventions.

Beccaria's key argument – that an individual's likelihood of being caught is the primary reason for an individual's decision to commit a crime, with the severity of the punishment playing a secondary role – has withstood over 250 years of academic inquiry without being disproved. However, our understanding of how this principle applies to the design of criminal justice institutions has changed. Modern sentencing is described as being bogged down by multiple purposes that do not always work well together. The court is asked to do the following: to hold accountable those who have acted wrongly, to deter future wrongdoers from acting (to prevent an individual from continuing to act in a way that would harm others) and to rehabilitate people who have committed crimes into law-abiding citizens.

The goals of these various types of sentences often conflict with each other. For instance, a sentence that is intended to have the greatest deterrent value may not accurately reflect how much punishment an offender deserves. Alternatively, a sentence based on rehabilitation may seem to the victim and the victim's community to be too lenient. There are real conflicts between the different types of sentencing, and these conflicts have been the driving force behind every major sentencing reform movement in at least the last 50 years.

#### **A. Research Objectives**

1. To study the theories and concepts of punishment including deterrent, retributive, preventive or reformative models.
2. To evaluate how sentencing policies affect the deterrent, retributive or reformative aspects of offenders.
3. To assess the extent of judicial discretion in sentencing and its relevance in the Indian legal system.
4. To determine if deterrence works effectively as a measure of crime prevention.

5. To investigate how effective reformatory tools (e.g. probation/parole/rehabilitative programs) are at reforming offenders.
6. To compare Indian sentencing practices with those of other countries and recommend reforms for a more just (and humane) approach to sentencing.

### **B. Research Questions**

1. What are the theoretical & policy rationale of punishment in criminal justice system?
2. What is effective Sentencing in Deterrence & Retribution & Reform?
3. How does judicial discretion affect consistency of sentences in India?
4. Is Deterrence Effective in Preventing Crime or Are Other Factors More Effective?
5. How effective are Reformatory Measures like Probation, Parole & Rehabilitation to Reduce Recidivism?
6. What Lessons can be Learned from Sentencing in Other Countries to Improve Indian Sentence System?

### **C. Research Hypothesis**

This research is based on the hypothesis that disproportionately placing more weight on deterrence/retribution than reformatory/rehabilitative sentences, means that punishment-based sentences will not reduce crime over time. The emphasis on punishment has created a situation where many of the socio-economic and psychological factors that contribute to criminal behaviour may not be addressed, which ultimately leads to increased rates of re-offending.

A secondary hypothesis is that the lack of structured guidelines for sentencing will create inconsistencies and random judicial outcomes based on the principles of fairness, proportionality and equality before the law. Judicial discretion is a necessary function of every sentencing system. However, without sufficient structural guidance, judges can issue very different sentences in cases that share many material similarities.

This research also hypothesises that reformatory sentencing options, including probation, parole and targeted rehabilitation programmes, will lead to a reduction in repeat offences, but these options are generally under-utilised in the Indian setting.

#### **D. Research Methodology**

The methodology used in this research is primarily doctrinal and analytical in nature, with the additional inclusion of comparative and interdisciplinary sources. The doctrinal component consists of an organized examination of legislative provisions, constitutional principles, and significant judicial opinions that impact sentencing in India, including the application of punishment theories in practice as demonstrated through Supreme Court rulings.

The analytical component is a critical examination of the effectiveness of the current sentencing policies in meeting their stated objectives of deterrence, retribution and rehabilitation, while also identifying inconsistencies and gaps in their application. A comparative analysis of sentencing frameworks from the UK and USA will also be performed to identify viable reforms for implementation in India.

Interdisciplinary studies of criminology (study of crime), sociology (study of society), and penology (study of punishment for crime) provide context for understanding criminal behaviour; about the larger implications for society of punishing crime, and how. The research is qualitative, meaning that it relies solely on secondary data sources; such as statutes (law), trial history, and scholarly writings as well as institutional reports. Also, due to the selection of landmark court decisions for the case studies, the lack of insight gained through objective empirical data is a methodological limitation; however, because of this methodological approach and given the focus of the study is on normative and practical aspects of sentencing policy, it is possible to engage critically and thoroughly with the nature of the normative/practice relationship between the two.

#### **E. Literature Review**

Much of the literature on punishment serves as a fountain of differing perspectives regarding what sentencing actually does and how effective it is. Classical theorist,

such as Beccaria and Bentham provided rationales), with punishment being justified by the fact that there was an expectation of future consequences for future crimes; in order for a heightened expectation of consequence to provide enough incentive for rational actors to not commit crimes. However, more recent criminological scholarship has been much more cynical with regard to the relationship between punishment and deterrence, suggesting that the imposition of excessive or harsher forms of punishment alone would produce at best, minimal reductions in crime.

The systems of punishment based off retributive and reformative approaches have emerged concurrently. Retributive scholars have an understanding that punishment is justified on the grounds that said punishment/penalty is deserved, and the severity of the punishment/penalty must coordinate with the severity of the crime/offence. Alternatively, reformative approaches will focus primarily on the rehabilitation of the offender and allowing for the reintegration of the offender back into society. Research shows that reformative approaches (such as probation, structure supervision, targeted treatment) have produced lower rates of re-offending than traditional punitive methods; however, reformative measures have not been widely implemented around the world, specifically India.

The Indian Supreme Court's decision in *Bachan Singh v. State of Punjab* (1980) upheld the constitutional validity of the death penalty while introducing the "rarest of rare" doctrine to guide sentencing discretion in capital cases. Indian sentencing law more broadly continues to reflect significant judicial discretion in the absence of structured sentencing guidelines, leading to concerns regarding inconsistency. This issue has been addressed in cases such as *Santa Singh v. State of Punjab* (1976), which emphasised the importance of a separate sentencing hearing under the Code of Criminal Procedure, and *Machhi Singh v. State of Punjab* (1983), which further elaborated the application of the "rarest of rare" principle. Statutory frameworks such as the Probation of Offenders Act, 1958 and relevant provisions of the Code of Criminal Procedure also reflect a reformative approach, though their application remains uneven in practice.

Comparative analysis of sentencing practices in the United Kingdom and the United States demonstrates that structured sentencing guidelines can reduce disparity and improve consistency. In contrast, India continues to rely heavily on judicial discretion without a comprehensive guideline framework, resulting in variability in sentencing outcomes. This comparison highlights the potential value of developing structured sentencing principles within the Indian legal system, while adapting them to local legal and institutional contexts.

Scholarly works have reached a consensus that no one theory of punishment can be effective on its own in designing a sentencing system that is both effective and humane. Therefore, the effective and humane punishment system must be carefully constructed by combining the deterrent, retribution and rehabilitative goals of punishment.

#### **IV. THEORETICAL FOUNDATIONS OF PUNISHMENT**

##### **A. Classical Deterrence Theory**

Classical deterrence theory as set forth by Beccaria and then further developed by Bentham, states that an offender is a rational decision maker.<sup>3</sup> Therefore, when a person is considering committing a crime, he weighs the benefit he will gain from committing the crime versus the punishment or cost that would result from committing the crime; the cost is determined by how severe the punishment will be and how likely it is that he will actually be punished for the crime. A rational offender will not commit a crime if he thinks that the potential punishment will exceed the potential benefit of committing the crime.

Classical deterrence theory draws a significant distinction between the concepts of general deterrence and specific deterrence. General deterrence addresses all members of society; public knowledge of punishment raises the cost of crime to any person considering committing a crime. Specific deterrence targets offenders who have already been punished, thereby changing their perception of the risk of being

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<sup>3</sup>Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (1789; Oxford: Clarendon Press, 1996), ch. 13.

punished for committing a crime. Both general and specific deterrence operate not on the actual level of punishment but instead rely on how the presumed punished persons perceive and process the level of punishment they would receive; consequently, these two forms of deterrence have significant policy implications.

Findings from Daniel Nagin's complete examination of research about deterrence find it was slow to absorb by policymakers. The Major finding was that the certainty of punishment delivers stronger deterrent effect than severity<sup>4</sup>. This is critically important for how most efforts in reorienting and changing or impacting sentencing/disparity to date have focused on providing more severe punishments through longer mandatory minimums and longer sentences, and reduced availability of parole--rather than improving the likelihood that someone will be detected, which has more effect on deterring people from committing crimes than that of how severe the penalty will be.

### **B. Retributivism**

Retributivist philosophy provides a rationale for punishment that is morally based on the principle of moral desert, as opposed to consequences. As a result of the punishment, the philosophies provide that the punishment is warranted by the moral liability that the offenders have incurred and must pay for. This way of thinking is deeply engrained in how all people reason morally and reflects multiple locations of traditional legal systems worldwide.<sup>5</sup>

Finally, the principal strength of retributivist philosophy, when compared to consequentialist systems of thought, is that it incorporates an "inherent proportionality" to retribution: punishment's severity must correspond to the seriousness of the crime, and all forms of social control must remain proportional, implicitly.

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<sup>4</sup> Daniel S. Nagin, 'Deterrence in the Twenty-First Century,' *Crime and Justice* 42, no. 1 (2013): 199–263.

<sup>5</sup> Robert Martinson, 'What Works? Questions and Answers About Prison Reform,' *The Public Interest* 35 (1974): 22–54.

Retributivism has a fundamental issue because the degree to which the punishment will fit the crime cannot be gauged by anything other than the individual's work or moral compass, which can vary greatly from one person/group to another, and therefore, not everyone will agree what would be appropriate/retributive for the specific individual who will be given the punishment.

### **C. The Idealistic Views of Rehabilitation and Reform**

The objective of rehabilitation, as it applies to the criminal justice system, is to transform offenders into individuals who can participate in society without engaging in criminal behaviour, reflecting the mid-twentieth-century rehabilitative ideal associated with indeterminate sentencing practices.<sup>6</sup> At the height of its popularity within mid-twentieth-century United States-based penal codes, rehabilitate was used to support the use of indeterminate (no fixed sentences) sentenced offenders, as the offender's release from prison depends on the offender being approved by a clinical examiner to determine if the offender is ready for re-entry into society or can adjust.

When Robert Martinson published a research paper in 1974, widely interpreted as concluding that correctional rehabilitation programmes were largely ineffective, this significantly influenced the perception and use of rehabilitation in criminal justice policy.<sup>7</sup>

The political ramifications were immediate and enduring; states began passing laws requiring indeterminate sentences to guarantee minimum periods, requirement that the offender serve the whole term of the sentence. Following Cullen and Gilbert's reply to their rebuttal, the creation of the "what works" criminology tradition illustrated that some structured programs consistently reduce crime recidivism.<sup>8</sup> However, by that time the term had already changed criminal justice policy for a generation making it very difficult to change back.

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<sup>6</sup> Francis T. Cullen and Karen E. Gilbert, *Reaffirming Rehabilitation* (Cincinnati: Anderson, 1982).

<sup>7</sup> Gary Becker, 'Crime and Punishment: An Economic Approach,' *Journal of Political Economy* 76, no. 2 (1968): 169-217.

<sup>8</sup> Paul H. Robinson and John M. Darley, 'Does Criminal Law Deter? A Behavioural Science Investigation,' *Oxford Journal of Legal Studies* 24, no. 2 (2004): 173-205.

#### **D. Functions of Punishment: Expressive/Sociological**

In addition to the individual focus of search for answers, Durkheim found a sociological component of punishment on a collective level.<sup>9</sup> In Émile Durkheim's analysis, punishment not only affects the offender or deters potential offenders but also serves to reaffirm the collective values violated by the offence. The expressive function of punishment that Durkheim describes can help explain one of the difficulties that crime control models encounter when trying to explain why the public does not think more harshly about punishments than what statistics say about crime. Sentencing is also a collective affirmation of belief in certain values (a ritualistic reaffirmation), and proposals for reform that ignore this symbolic component will therefore often be met with resistance that is not simply based on erroneous empirical assumptions.

### **V. DOES PUNISHMENT DETER? THE EMPIRICAL RECORD**

#### **A. The Certainty-Severity Distinction in Practice**

Gary Becker translated the classical deterrence model into formal economic terms, proposing that rational offenders calculate expected utility and that the expected disutility of punishment determines the level of deterrence.<sup>10</sup> This framing has been enormously influential, but the empirical literature has consistently told a more complicated story. Studies examining police presence, arrest clearance rates, and prosecution rates generally find stronger deterrent signals than those that examine sentence length, confirming Nagin's synthesis.

Robinson and Darley's behavioural review posed a still more fundamental challenge.<sup>11</sup> Their analysis suggested that the majority of offenders, in the moment of committing a crime, are not engaged in anything resembling formal expected-utility calculation. Crimes driven by passion, substance intoxication, peer pressure, or opportunism involve cognitive states that the rational-actor model simply does not

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<sup>9</sup> Bureau of Justice Statistics, *Recidivism of Prisoners Released in 24 States in 2008: A 10-Year Follow-Up Period* (2021).

<sup>10</sup> The Pew Charitable Trusts, *Prison Time Served and Recidivism* (2012).

<sup>11</sup> Michael Tonry, 'Purposes and Functions of Sentencing,' *Crime and Justice* 34, no. 1 (2006): 1-53.

capture. Where the calculation is not being run, there is limited deterrent traction in adjusting its parameters.

### **B. Specific Deterrence: Does Punishment Experience Change Behaviour?**

The Bureau of Justice Statistics ten-year follow-up study of prisoners released across twenty-four states in 2008 produced figures that are difficult to reconcile with a strong account of specific deterrence - the relevant comparison would require knowing what recidivism would have looked like in the absence of incarceration but they are not consistent with a strong causal story in which experiencing punishment substantially revises criminal conduct.

Weisburd and colleagues' study of white-collar offenders provided a more nuanced picture.<sup>12</sup> Their analysis identified modest specific deterrence effects among a population that is, by definition, more likely to engage in deliberate risk assessment before committing an offence. This suggests that specific deterrence may operate selectively functioning reasonably well for calculating, instrumentally rational offenders, but poorly for those whose behaviour is driven by addiction, impulse, or desperate circumstances. Sentencing policy premised on specific deterrence therefore needs to specify which segment of the offending population it realistically expects to reach.

### **C. Marginal Deterrence and Sentence Length**

An analysis by the Pew Charitable Trusts of truth-in-sentencing policies found no consistent association between time served and subsequent recidivism across states.<sup>13</sup> States that extended sentence lengths did not experience corresponding reductions in crime rates, undermining the premise on which those extensions were sold politically. The evidence concerning marginal deterrence whether adding years to an existing sentence at the margin suppresses further offending is particularly thin.

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<sup>12</sup> Lawrence Sherman et al., *Preventing Crime: What Works, What Doesn't, What's Promising* (Washington, DC: National Institute of Justice, 1998).

<sup>13</sup> Travis Hirschi and Michael Gottfredson, *A General Theory of Crime* (Stanford: Stanford University Press, 1990).

The implication for mandatory minimum sentencing is uncomfortable: the deterrent rationale for extended mandatory terms lacks reliable empirical support. A policy framework that concentrates on improving the certainty of apprehension and prosecution appears far more defensible, both empirically and in terms of proportionality, than one that escalates severity while leaving the probability of detection largely unaddressed.

## **VI. INCAPACITATION: LOGIC, LIMITS, AND SOCIAL COSTS**

### **A. The Incapacitation Argument**

Incapacitation does not require the same theoretical apparatus as deterrence or rehabilitation. Its logic is direct: a person who is incarcerated cannot commit offences against members of the public outside the institution during the period of confinement. On this basis alone, imprisonment has a guaranteed crime-reduction effect the question is only whether that effect is large enough to justify the associated costs.

Alfred Blumstein and Jacqueline Cohen's research on criminal career trajectories provided empirical grounding for the concept of selective incapacitation.<sup>14</sup> If it were possible to reliably identify the small proportion of offenders responsible for a disproportionate share of serious crime and to incarcerate them during their most active years the crime-prevention gains per prisoner-year would be substantially higher than those achieved by incarcerating an average cross-section of convicted persons.

### **B. Diminishing Returns**

The incapacitation effect is real, but it is subject to progressively diminishing returns as the scale of incarceration increases. A revisited analysis by Piehl and DiIulio found that the marginal crime-reduction gains per additional prisoner declined sharply once a correctional system had passed a certain threshold of scale.<sup>15</sup> At the margin, the

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<sup>14</sup> Charles Murray and Louis Cox, *Beyond Probation: Juvenile Corrections and the Chronic Delinquent* (Beverly Hills: Sage, 1979).

<sup>15</sup> David Weisburd et al., 'Specific Deterrence in a Sample of Offenders Convicted of White-Collar Crimes,' *Criminology* 33, no. 4 (1995): 587-607.

incremental prisoner is less likely to be a high-rate violent offender and more likely to be a drug offender, a low-level property offender, or someone whose criminal activity was already in decline.

Hirschi and Gottfredson's work on the life course of criminal behaviour established that offending typically peaks during the late teenage years and early twenties before declining with age.<sup>16</sup> Long custodial sentences applied to older offenders thus consume considerable resources to incapacitate people during periods of already-reduced criminal propensity yielding a poor return on the investment in incarceration.

### **C. Replacement Effects and Community Harm**

Standard incapacitation calculations tend to treat imprisonment as though its effects were confined to the individual incarcerated. Todd Clear's research on concentrated incarceration challenged this framing, showing that the removal of substantial proportions of young men from high-poverty communities disrupts family structures, informal economic networks, and the social control mechanisms on which neighbourhood stability depends potentially generating conditions that sustain or increase crime over time.<sup>17</sup>

Bruce Western's work on punishment and inequality traced how the consequences of mass incarceration ripple across generations, reproducing and deepening socioeconomic disadvantage in communities already structurally marginalised. A sentencing policy evaluated exclusively on the basis of its direct incapacitation effect, without accounting for these diffuse community-level costs, is operating from a partial and misleading ledger.<sup>18</sup>

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<sup>16</sup> Anne M. Piehl and John J. DiIulio Jr., 'Does Prison Pay? Revisited,' *Brookings Review* 13, no. 1 (1995): 21–25.

<sup>17</sup> Todd R. Clear, *Imprisoning Communities: How Mass Incarceration Makes Disadvantaged Neighborhoods Worse* (Oxford University Press, 2007).

<sup>18</sup> Bruce Western, *Punishment and Inequality in America* (New York: Russell Sage Foundation, 2006).

## VII. REHABILITATION: WHAT WORKS AND WHY

### A. Beyond Martinson

The 'nothing works' verdict that became attached to Martinson's name was always an oversimplification of a more careful analysis, and subsequent scholarship has firmly qualified it. Martinson himself revisited his conclusions in later work, and the meta-analyses produced from the 1980s onward found consistent positive effects for a range of structured interventions: cognitive-behavioural programmes, educational and vocational training within custodial settings, substance misuse treatment, and therapeutic community models all produced measurable reductions in reoffending.<sup>19</sup> The question is not whether rehabilitation can work but which approaches work, for whom, and under what conditions.

### B. The Risk-Need-Responsivity Model

The framework that has come to dominate correctional programme design is the Risk-Need-Responsivity model developed by Donald Andrews and James Bonta.<sup>20</sup> The model rests on three interlocking principles: programme intensity should be calibrated to the individual's level of reoffending risk (the Risk principle); interventions should target the specific factors termed criminogenic needs most closely associated with continued criminal behaviour (the Need principle); and the delivery of treatment should be adapted to the individual's cognitive style, motivation, and circumstances (the Responsivity principle). Programmes that adhere to all three principles consistently outperform those that do not in reducing recidivism.

The practical implications of RNR run against the grain of much prevailing sentencing policy. Intensive interventions directed at low-risk individuals are not merely wasteful research suggests they can be actively counterproductive, exposing low-risk offenders to high-risk peers and disrupting the social ties that are, in fact, protective.

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<sup>19</sup> Donald Andrews and James Bonta, *The Psychology of Criminal Conduct*, 5th ed. (New Providence: LexisNexis, 2010).

<sup>20</sup> Mark W. Lipsey and Francis T. Cullen, 'The Effectiveness of Correctional Rehabilitation: A Review of Systematic Reviews,' *Annual Review of Law and Social Science* 3 (2007): 297-320.

The logic of the model supports a graduated approach to sentencing: proportionate and relatively light-touch community supervision for low-risk cases, with structured intensive programming reserved for medium-to-high-risk offenders whose criminogenic needs are most pronounced.

### **C. Restorative Justice**

Restorative justice processes victim-offender mediation, community conferencing, circle sentencing offers an alternative to the adversarial architecture of conventional criminal prosecution. Sherman and Strang's synthesis of the available evidence found that restorative processes reduced reoffending in several contexts, increased victim satisfaction with the justice process, and cost less per case than standard prosecution.<sup>21</sup>

Braithwaite's theory of reintegrative shaming provides a coherent account of the mechanism at work: restorative processes shame the offending act while actively facilitating the offender's reintegration into conventional social bonds.<sup>22</sup> This stands in deliberate contrast to the stigmatising logic of incarceration, which tends to consolidate rather than disrupt criminal identity. The theoretical coherence of this contrast is matched by empirical support for certain offence categories and offender profiles, making restorative processes a credible complement to, or alternative for, conventional sentencing in appropriate cases.

## **VIII. EVALUATING MAJOR SENTENCING POLICY FRAMEWORKS**

### **A. Mandatory Minimum Sentencing**

Mandatory minimum sentencing laws withdraw judicial discretion at the lower end of the sentencing range: conviction for a qualifying offence triggers a floor below which the sentencing court may not go, regardless of the particularities of the individual case. The political appeal lies in the appearance of transparency and uniformity; the policy rationales typically invoked have been general deterrence,

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<sup>21</sup> Lawrence W. Sherman and Heather Strang, *Restorative Justice: The Evidence* (London: Smith Institute, 2007).

<sup>22</sup> John Braithwaite, *Crime, Shame and Reintegration* (Cambridge: Cambridge University Press, 1989).

incapacitation of high-rate offenders, and the elimination of racial and jurisdictional disparities in sentencing outcomes.

The evidence on deterrence is not supportive of these claims. The National Research Council comprehensive review of incarceration in the United States found no consistent crime-reduction effects attributable to mandatory minimum laws and a number of carefully designed studies found no effect whatsoever on the offences the legislation was intended to address.<sup>23</sup>

The racial consequences have been severe and extensively documented. Michelle Alexander's scholarship traced how mandatory minimums for drug offences produced disproportionately severe impacts on Black and Latino men, producing incarceration rates that are not explained by differential rates of offending.<sup>24</sup> The racial disparity is not an incidental feature of implementation it is embedded in the structure of the laws themselves.

A less frequently acknowledged consequence of mandatory minimums is that they do not eliminate discretion from sentencing they relocate it. The discretion that once resided with judges migrates to prosecutors, who can effectively determine outcomes through charging decisions made in the course of plea negotiations. The uniformity that mandatory minimums promised is largely illusory: it has simply moved from the courtroom to the bargaining room, where it is less visible and less subject to review.

### **B. Truth-in-Sentencing**

Truth-in-sentencing requirements typically requiring offenders to serve a specified proportion, often 85 percent, of their nominal sentence before becoming eligible for release were adopted across most American states during the 1990s, incentivised by federal funding provisions.<sup>25</sup> The transparency rationale for these reforms has

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<sup>23</sup> Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2010).

<sup>24</sup> Alfred Blumstein and Jacqueline Cohen, 'Characterizing Criminal Careers,' *Science* 237, no. 4818 (1987): 985-991.

<sup>25</sup> Justice Policy Institute, *Finding Direction: Expanding Criminal Justice Options by Considering Policies of Other Nations* (2011).

genuine merit: a sentencing system in which a twenty-year sentence routinely results in eight years served is one that systematically misleads victims, the public, and arguably the offenders themselves about the actual consequences of conviction.

However, transparency and crime reduction are distinct objectives, and truth-in-sentencing achieved the former at a cost to the latter. Where parole operated as an individualised assessment of rehabilitation and release risk, replacing it with automatic time-served rules eliminated the most flexible instrument available for incorporating post-sentence information about an individual's trajectory. The recidivism data following the widespread adoption of truth-in-sentencing do not bear out the predictions of its proponents.

### **C. International Comparisons**

Comparative analysis offers a valuable corrective to debates that become hermetically domestic. Finland reduced its prison population by approximately two-thirds over the four decades from the 1950s to the 1990s through deliberate legislative and policy choices, without a corresponding deterioration in public safety.<sup>26</sup>

Nordic countries more broadly investing substantially in welfare services, employment support, and treatment for addiction, and sentencing proportionately and conservatively consistently achieve lower recidivism rates than common law jurisdictions that rely heavily on incarceration. This is not a straightforward argument for direct policy transfer: institutional history, social infrastructure, and cultural context all condition what is possible in a given setting. It does, however, definitively establish that high rates of imprisonment are not a precondition for public safety which is itself a significant finding for policymakers who have treated mass incarceration as though it were inevitable.

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<sup>26</sup> Tapio Lappi-Seppälä, 'Imprisonment and Penal Policy in Finland,' *Scandinavian Studies in Law* 54 (2009): 333–380.

## IX. SUGGESTIONS AND RECOMMENDATIONS

1. **Graduated proportionality:** Sentences should be anchored in offence gravity and individual culpability, avoiding rigid mandatory minimums so that courts can respond to the specific circumstances of each case.
2. **Evidence-based programming:** Structured rehabilitative interventions, aligned with assessed risk and criminogenic needs, should be integrated into both custodial and non-custodial sentences as a core component rather than an optional measure.
3. **Certainty over severity:** Policy efforts should prioritise improving the certainty of detection and prosecution, as empirical evidence indicates that certainty has a stronger deterrent effect than increased severity of punishment.
4. **Restorative options:** Victim-offender mediation and similar restorative processes should be incorporated as viable alternatives or supplements to traditional prosecution in appropriate cases.
5. **Ongoing empirical review:** Sentencing policies should be regularly evaluated on the basis of measurable outcomes, with institutional mechanisms to revise approaches where evidence indicates limited effectiveness.

With approximately 1.83 million individuals incarcerated in the United States as of 2022, according to Bureau of Justice Statistics data, the practical stakes of getting sentencing policy right are not abstract. A principled and empirically grounded framework is essential for ensuring that sentencing policy remains both effective and just.

## X. CONCLUSION

Sampson and Laub's life-course research identified the mechanisms through which criminal careers most reliably come to an end: stable employment, sustained intimate relationships, and meaningful integration into community life what they termed social bonds. Sentencing policies that sever these bonds through disproportionate or poorly targeted incarceration are not merely failing to deter; they are actively dismantling the very conditions that make desistance possible.

Cullen, Jonson, and Nagin's synthesis is direct on this point: prison, as currently administered in most Western jurisdictions, does not reduce recidivism. This is not a case against incarceration as such incapacitation serves a genuine crime-prevention function for serious violent offenders who pose a continuing danger. But it is a compelling case against treating imprisonment as the default response to mid-level and non-violent offending, where the evidence suggests it produces net harm rather than net benefit.

None of this represents a novel agenda. Criminologists have been advancing some version of these arguments since the 1970s. What has changed is the weight and breadth of the evidence behind them. The case against deterrence-maximising sentencing is no longer a theoretical preference it is what the accumulated empirical literature shows. The case for structured rehabilitation is not an ideological commitment it is the finding that emerges, consistently, from the outcome data.

The distance between what the research shows and what sentencing policy actually does remains considerable. Closing that gap requires political will that knowledge alone cannot supply. But the knowledge is there, and the costs of continuing to ignore it are borne, with a brutal and predictable regularity, by the people least positioned to absorb them.

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