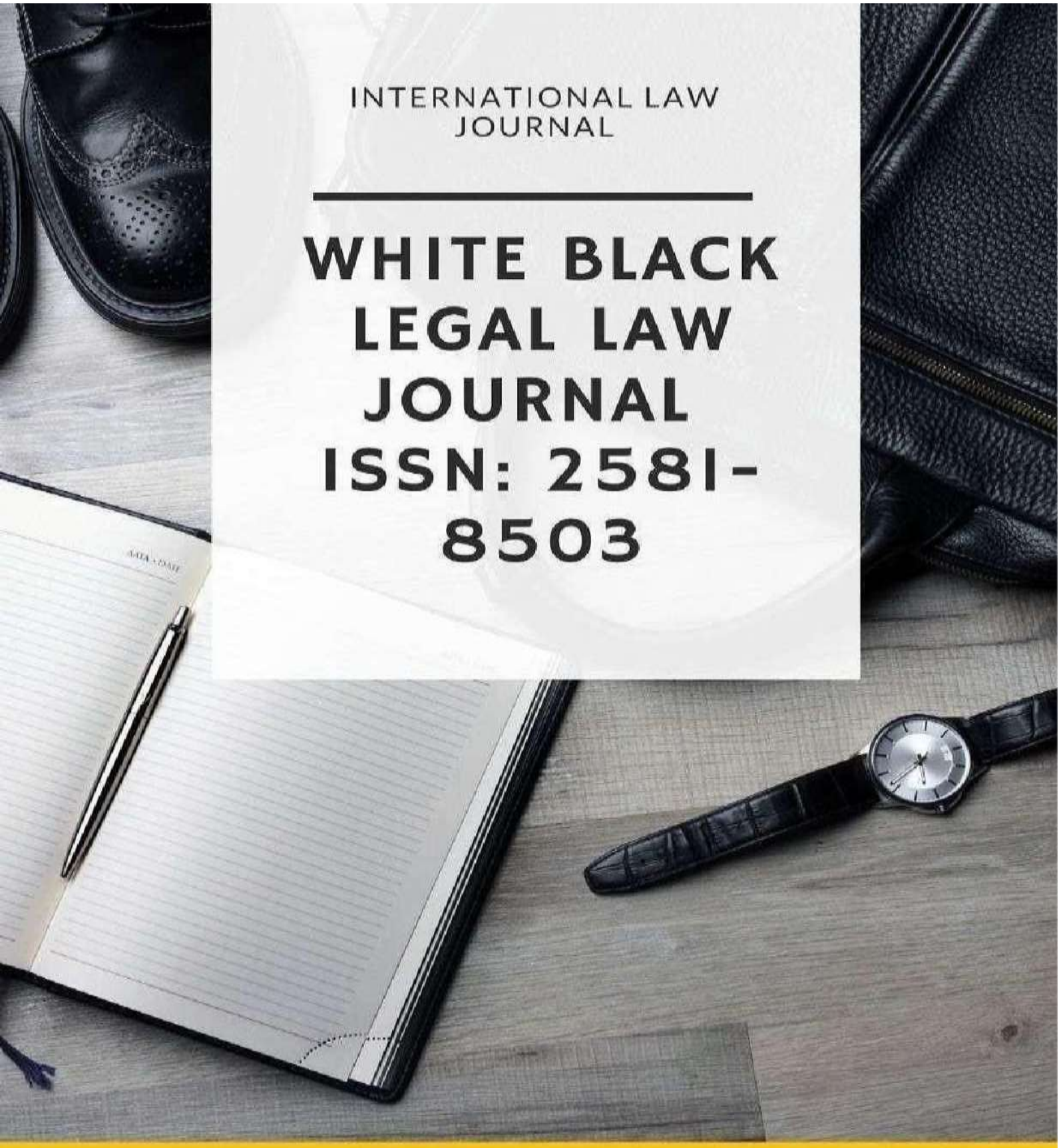

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# PUNISHMENT AS AN INSTRUMENT OF CRIMINAL JUSTICE: THEORY, PRACTICE AND THE INDIAN EXPERIENCE

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## Abstract

Punishment has been used as an effective tool of criminal justice system in order to maintain social order, curb criminal behavior and to deliver justice, across all jurisdictions. The theories of Retribution, Deterrence and Rehabilitation justify the imposition of punishment in order to protect the society from dangerous crimes. However, whether punishment is actually effective in prevention of crime is rather a controversial subject-matter. The article aims to explore the effectiveness of punishment in crime prevention by analyzing various historical theories, key judicial decisions and impact of punishment on crime. While the deterrent theory justifies punishment as a caution for others, retributive theory emphasizes on severity of punishment and rehabilitation focuses more on the reform of the offender. The article also discusses the insights provided by the judiciary on sentencing norms in some of the landmark judgments. The article further examines some of the research findings to explore the relationship between punishment and crime. Finally, the main challenges in the Indian criminal system have been discussed. The article argues that punishment should not be used as an ultimate solution to prevent crime. Punishment, even though necessary to certain extent, should be combined with certainty of enforcement, uniform sentencing standards and proper rehabilitation schemes in order to make the criminal justice system more effective and justice-centric.

**Key Words – Punishment, Crime, Criminal Behavior, Sentencing.**

# I. INTRODUCTION

The word 'crime' finds its origin in the Latin term 'cerno' meaning 'I decide, I give judgment'. To put it simply, crime implies the conduct judged by the state when the same is in violation of the well-established norms of the society[1]. Calling crime as inevitable, Durkhiem, opines that an act becomes crime not due to its inherent nature but because it wounds the social sentiments. He remarks that while the nature of crime may differ from society to society, an absolutely crime free society does not exist[2]. Historically, it was believed that the concept of state emerged for protecting the life, liberty and property of people. State took the responsibility of punishing those individuals whose behavior did not fit well into socially accepted norms. Today, punishment is deemed as an integral part of criminal justice system serving a wide array of purposes like prevention of crime, securing social justice and rehabilitation of criminals etc[3].

Punishment is viewed as an effective tool to regulate the law and order across the globe. The relationship between punishment and crime is a broad subject-matter as it varies across different jurisdictions. While it is found in the works of Bentham that punishment must be harsh and sever so as to deter the individuals from committing the crime, Kant suggests that there should be a balance between the crime committed and punishment imposed[4]. Since punishment is one of the most frequently used method to curb criminal behavior all over the world including India, how far the punishment is actually effective in curbing crime is the real question. This article aims to analyze the role of punishment in prevention of crime.

# II. THEORIES OF PUNISHMENT

Deterrence:-

Primarily propounded by Plato, this theory justifies imposition of punishment in order to prevent the wrong doer and others from committing the crime. As per the theory of utility developed by Bentham in the nineteenth century, the life of an individual is calculated by the amount of pleasure and pain and thus punishment driven by infliction of pain deters the individual from repeating the wrongful act and also prevents others from committing the same

[1] Maurice J G Bun, Richard Kelaher, Vasilis Sarafidis, Don Weatherburn, *Crime, Deterrence & Punishment Revisited*, 59. Empirical Economics 2303, 2304 (2019).
[2] Rannveig Porisdottir & Helgi Gunnlaugsson, *The Low Crime Thesis Examined in Iceland: Criminal Victimization in Comparative Perspective*, 4. University of Iceland 7,10 (2009).
[3] Dr. Gacinya John, *Criminal Punishment: A Theoretical Analysis of Crime Prevention & Control*, 5. Reviewed Journal of Social Science & Humanities 93, 94 (2024).
[4] Ibid.

wrongful act[5]. It is said that the punishment has the potential to curb the criminal behavior when the punishment is severe, swift and certain[6]. Every individual has the power to inflict injury on others and when this power itself is taken away through infliction of punishment, the said act can be referred to as incapacitation which prevents the wrongdoer from committing the act. Bentham, a staunch supporter of the theory states that this power can be taken away even by imposing harsh punishment such as death sentence[7].

Glanville Willaims opines that the ultimate aim of the punishment is to deter the crimes. He observes "Punishment is before all things deterrent, and the chief end of the law of crime is to make the evildoer an example and warning to all that are like minded with him. This is referred to as specific or individual deterrence. The individual or specific deterrence operates in the following manner. When a person is sent to prison for his wrongful act, his power to inflict harm upon others is taken away for as long as he is kept in the prison. The act of taking away the power is called as incapacitation. The incapacitation is a very painful experience which sends a message to the society as to not commit the wrongful act. This is called as general or community deterrence[8]. Even though punishment has some role in prevention of crime, it is not completely effective, if it were, then there would be no crime at all. The ineffectiveness of deterrent theory can be illustrated through a historical example, Queen Elizabeth being a supporter of this theory inflicted harsh punishment to petty offences like pick pocketing during her rule, however, this did not stop the criminals from committing the offence. One more example would be that of hardened criminals who immediately return to prison after few days or months of their release[9] We have also come across various incidents wherein rapists released on bail, get out and commit rape again[10]. This theory is no doubt useful to certain extent; absolute prevention of crime is not possible even with the harshest punishment.

**Retribution:-**

The most basic human instinct is revenge. As humans when we are attacked, harmed or

[5] Joel Meyer, *Reflections on some Theories of Punishment,* 59. Journal of Criminal Law & Criminology 595, 596 (1968).
[6] Md. Erazul Karim, *The Critical Evaluation of Different Theories of Punishment,* 29. The Jahangirnagar Review 471, 472 (2020).
[7] S.G. Gaudappanavar, *Critical Analysis of Theories of Punishment,* 1. JSSJLSR 1, 6 (2013).
[8] Ibid.
[9] Dr. N. V. Paranjape, *Studies in Jurisprudence & Legal Theory* 269-270 (Central Law Agency, Allahabad, 9th edn., 2019)
[10] 'Out of Bail in Rape Case, Accused Man Targets 70yr old Victim again in Gujrat's Bharuch', The Hindu, Dec. 24, 2024 https://www.thehindu.com/news/national/gujarat/out-on-bail-in-rape-case-accused-man-targets-70-year-old-victim-again-in-gujarats-bharuch/article69022658.ece (Last visited Jan 28, 2026 10.35 AM)

insulted, the first thing that comes to every one of us is to avenge the person who caused it. In primitive society, man by the reason of self-preservation, tried to avenge the person who inflicted harm on him or his property. He would not be satisfied until the wrongdoer was punished as punishment was an individual responsibility. But as the society started to evolve, this power of individually punishing the wrongdoer was taken away from man by the state and the state took over the responsibility of punishing the wrongdoer[11]. The aim of this theory is not exactly the prevention of crime but to establish a balance, i.e., if a person has taken away another's life by committing murder, his life should also be taken away[12]. So, the theory focuses on the equilibrium of punishment. This theory is based on the doctrine of '*Lex talionis'* which translates to '*Tooth for Tooth, Eye for Eye, Limb for Limb and Nail for Nail*[13].

When a person commits a crime, he has given up his rights, that is to say, when someone commits a murder, he has given up his right to live. However, the critics of the theory opine that, when a man commits a murder and the state inflicts death penalty on that murderer, isn't state also committing the same offence that it condemns. This criticism is answered in two ways, firstly, when the state inflicts punishment, it is not violating any legal norms, secondly, the punishment is justified as it benefits the society by eliminating a criminal. The theory has been further criticized by stating that punishment should not be driven by the feeling of vengeance, but should help the wrongdoer in transforming his character[14].

**Rehabilitation:-**

Psychology and sociology of the crime are two governing factors when it comes to rehabilitation[15]. The underlying idea of this theory is to reform the offenders through proper treatment. The emphasis is laid on reformation of the criminal rather than punishment. Under this process, the judges themselves do not decide the punishment, rather they shift the burden on administrators such as Parole Boards to evaluate the offenders and to determine what kind of treatment would be an appropriate approach in a given case and when they could be safely released back[16] so that they are no longer a threat to the society. The main objective of this theory is to return the criminal to the society embedded with values and morals so that he can

[11] Supra Note 5 at p.595.
[12] Supra Note 6 at p. 475.
[13] Divyanshi Gupta, Theories of Punishment, Manupatra Articles, https://articles.manupatra.com/article-details/Theories-of-punishment (Last visited on Jan 28, 2026 10.40AM).
[14] Supra Note 5.
[15] Supra Note 5 at p. 597.
[16] Supra Note 3 at p. 103.

contribute to the well-being of the society. The church began to use punishment as a tool to wipe off the offender of these sins, during the Middle Ages. The theory has become more relevant in today's world as the emphasis is given more on the psychological and sociological factors underlying the crime[17].

The theory believes in the worth and dignity of every individual including offenders. The society must try to reform the criminal so that he can become a productive member of the society. But it has to be remembered that this process of reformation and rehabilitation can be extremely challenging. There is no adequate formula to reform the criminal. It does require a constructive program with trained personnel and adequate facilities to handle the criminals, in the absence of which, the process of rehabilitating the criminals may not be fruitful[18].

## II. THE PRACTICE OF SENTENCING & JUDICIAL APPROACH IN INDIA

**State of Punjab v. Prem Sagar & Ors[19]**

The above case is very much relevant for our discussion as it throws light on the viewpoint of judiciary in imposing sentences. It was observed by the Court that in India, the superior courts have failed to establish legal principles on sentencing while other countries have adopted adequate principles. Certain committees such as Madhava Menon Committee and Malimath Committee have also raised serious concerns over lack of sentencing guidelines in India. The Court emphasized that while passing a decision, the responsibility lies on the judges to consider various relevant factors. Whether the Court leans towards deterrence or doctrine of proportionality or reformation, depends on facts and circumstances of the case, however, while doing so, the Court must examine closely at the nature of the crime. The judgment mentions Sections 235(2), 248(2) 360 & 361 of the Code of Criminal Procedure. These Sections lay down certain factors to be considered while imposing sentences such as sociological background of the offender, his age, his mental health, and the circumstances that lead to the commission of crime. A lot of discretionary power have been conferred upon the judiciary in this regard and they must be used judiciously. However, the legislature has failed to answer as to how the imposition of sentence would affect the society. No doubt, the amount of punishment has been clearly prescribed in the legislation ranging from minimum to maximum,

[17] Supra Note 5 at p. 597.
[18] Supra Note 5 at p. 597.
[19] (2008) 7 SCC 550

definite principles have not been laid down which have created discrepancies while imposing punishments.

The Court observed that protection of life and property is one of the essential functions of the state which could be achieved through the medium of criminal law. The protection of society mainly lies in elimination of the criminals and criminal activities, which could be achieved by awarding appropriate sentences. Thus, law being the guardian of order in society must tackle the challenges emerging in the society. Hence, the Courts while imposing a sentence must adopt an appropriate approach depending on the facts of the case. Thus, sentences must be very severe where it is required and must me merciful in certain deserving cases. The nature of crime, underlying facts, the motive for committing the offence, the type of weapons used, the mode of planning and commission of the crime, the psychology of the accused and other relevant factors are to be considered while imposing the sentence.

The Court also pointed out that the Government of India had established Committee on Reforms of the Criminal Justice System in the year 2003 to make some recommendations for bringing about change in the Indian criminal justice system. It was observed by the Committee that judges have wide discretionary powers within the statute while imposing sentences, due to which there was no uniformity in the sentences. Thus, the Committee recommended formation of a Statutory Committee to come up with sentencing guidelines so that uncertainty in imposition of sentences could be eliminated.

**Bachan Singh v. State of Punjab[20] – Death Sentences in India – Rarest of Rare Case Doctrine**

The main question in this case was whether awarding of death sentence for the offence of murder provided under Section 302 of the Indian Penal Code is unconstitutional. The Court upheld the constitutionality of death sentence in India and also laid down certain guiding principles to be followed by the Judges while awarding the death sentence, the most vital of them being the 'rarest of rare' doctrine. The "rarest of rare" doctrine established in this case mandates that Courts must carefully weigh both aggravating and mitigating factors before deciding whether the death penalty is a justified and proportionate sentence[21].

[20] AIR 1980 SC 898

[21] Chetanya Sharma, Indian Sentencing Policy in Cases related to Death Penalty, Legal Service India, https://www.legalserviceindia.com/legal/article-10440-indian-sentencing-policy-in-cases-related-to-death-penalty.html (Last visited 28 Jan 2026, 11.30 AM).

**Machi Singh v. State of Punjab**

The 'rarest of rare' doctrine was further examined in this case. The Court upheld the sentencing guidelines laid down in Bachan Singh case and stated that two important questions need to be determined by the judges before awarding the death sentence. Firstly, is the nature of the crime committed so harsh that no other alternative punishment other than death sentence would be justified? Secondly, even after considering the mitigating circumstances, does the case still justify awarding of death sentence? The judges were asked to raise these questions before imposing the death sentence.

The Court also stated that those crimes shocking the social fabric of society deserves death punishment. The Court listed few circumstances where award of death sentence would be deemed appropriate.

1. The mode of commission of crime – if the crime is committed in the most heinous, cruel, monstrous, atrocious manner, it would definitely draw extreme outrage from the society.
2. Motive of the crime – when the motive for committing the crime is very evil and wicked.
3. Nature of the crime – when crime draws social rage.
4. Status of the victim – when the crime is committed on child, helpless women, elderly persons, or of a person who is loved and trusted by the society.

Thus, the case justified the imposition of death sentence under certain appropriate circumstances[22].

## IV. IMPACT OF PUNISHMENT ON CRIME

The role of punishment in reducing the crimes is rather a controversial subject as many researchers have failed to prove the effectiveness of punishment on crime rates. For example, in 1990s several states of US passed the 'Three Strikes' legislation[23] which had no effect on crime rates[24]. The government mainly exists for the purpose of protecting the life and property of the citizens. However, the government is never completely successful in performing this

[22] Ibid.
[23] Three Strikes Legislation means that if a person has been convicted thrice, he had to undergo mandatory prison sentence.
[24] Ian David Edge, Theories and Objectives of Punishment, Britannica, https://www.britannica.com/topic/international-criminal-law/Prosecution-and-defense (Last visited Feb 02, 2026, 11.47 AM)

task of providing security to the citizens as they have to deal with dangerous crimes. The general presumption is that the punishments are very much necessary in prevention of crime. While classical theories justify the imposition of punishment, there is a very little research conducted to determine whether the longer prison sentences and punishments can actually deter the criminal behavior[25].

The National Institute of Justice of USA (NJI) conducted a study on this subject by referring to the work of Daniel S Nagin. Daniel S Nagin attempted to explore the relationship between the punishment and deterrence in his 2013 essay titled 'Deterrence in Twenty-First Century'. NJI's study titled 'Five Things About Deterrence' summarizes the relationship between punishment and deterrence in five points[26]. They have been discussed briefly below.

1. The study reveals that the possibility of getting caught is more effective than severe punishments. The chance of being caught acts as a powerful deterrence as compared to harsh punishment.
2. Sending the offenders to prison is no doubt an effective strategy to prevent them from committing further crimes, however, the research reveals that longer prison sentences have less impact on deterring the crimes. Criminals serving longer sentences learn better criminal strategies from each other. While the goal is to keep them away from criminal activities, in reality they may be planning to commit further crimes.
3. Crime can be more effectively deterred if police behavior serves to reinforce the offender's belief that he or she is likely to be caught. Policing strategies that cast the police officer in the role of a visible "sentinel," such as hot-spot policing, have been particularly successful in this regard. The offender's behavior can be more easily influenced by the presence of the police, symbolized by the presence of an officer carrying handcuffs and a radio, than by legislation that simply increases the severity of punishment.
4. Severity of punishments may not actually be helpful in preventing the crime. The offenders who commit the crime, may not actually know about the specific punishments for the offence.

[25] George Antunes & A. Lee Hunt, *Impact of Certainty and Severity of Punishment on Levels of Crime in American States: An Extended Analysis*, 64. J. Crim. L. & Criminology 486, 486 (1973).
[26] National Institute of Justice, Five Things About Deterrence, National Institute of Justice, https://nij.ojp.gov/topics/articles/five-things-about-deterrence, (Last visited Feb 02, 2026, 11.55 AM).

5. Death sentences have no impact on crime rate reduction. According to the National Academy of Sciences, "Research on the deterrent effect of capital punishment is uninformative about whether capital punishment increases, decreases, or has no effect on homicide rates."

A study conducted on the effects of punishment on recidivism involving over 442,000 offenders reveals that there was no deterrent effect by harsher punishment, instead, punishment increased recidivism by 3 percent. The research further shows that longer prison sentences that is sentences for 2 years or more increased recidivism whereas shorter sentences for about 6 months or less had no effect on recidivism[27]. Crime being a highly sensitive subject matter, it is not something that can be measured easily. Also, crime occurs due to a variety of factors, thus it is difficult to establish a causal link between crime and punishment[28].

## V. CHALLENGES IN PUNISHMENT & CRIMINAL JUSTICE IN INDIA

1. Overcrowding of Prisons in India: - Indian prisons had about 5,73,220 inmates when its capacity was only 4,36,266 as on December 2022. The study also reveals that about 75.8 % of prisoners are undertrials which reveals the vast number of pending cases across various Courts in India[29].
2. Increased Custodial Violence: - 11,656 Police and judicial custodial deaths were recorded between the years 2016-17 and 2021-22 as per the report of National Human Rights Commission[30].
3. Rehabilitation of the Prisoners Completely Ignored: -In India, more emphasis is laid on the punishment rather than the rehabilitation of the prisoners. Opportunities for skill development and psychological support is very limited[31]. It is shocking to see that only 25 psychologists are available for the total prison population of 5.7 Lakh[32].
4. Disparity in Sentencing: - This issue has already been discussed above. Disparity in sentencing due to judicial discretion still remains a crucial issue[33]. Lack of legislative

[27] Public Safety Canada, The Effects of Punishment on Recidivism, Public Safety Canada, https://canadacommons.ca/artifacts/3598046/research-summary/4400236/ (Last visited Feb 02, 2026, 12.00 PM).
[28] Benjamin Van Rooij, Malouke E Kuiper & Alex R Piquero, *How Legal Punishment Affects Crime: An Integrated Understanding of the Law's Punitive Behavioral Mechanisms,* 21. Annu. Rev. Law Soc. Sci 509, 513 (2025).
[29] IAS Gyan, Prison Reform: Significance, Challenge & Way Forward, IAS Gyan, (Last visited Feb 02, 2026 12.45 PM).
[30] Ibid.
[31] Ibid.
[32] Bindu Shajan Perapaddan, 'Indian Jails Plagued by Overcrowding, Lack of Medical, Mental Health Professionals: Report', *The Hindu,* Apr. 8, 2025.
[33] A. S. Kowshika, *Sentencing Disparity in the Indian Criminal Justice System,* 1. JLLRD 18,18 (2022).

standards in imposition of sentences causes disparity and allows too much of judicial discretion. The research reveals that the social background, court culture etc. can influence the sentencing process which is huge drawback on the principle of equal treatment[34].

5. Inadequate Pre-Sentencing Resources: - Many countries have robust pre-sentencing mechanisms which will help in investigating the background of the criminals and also the potential for reform and rehabilitation which is lacking in India. In India, the probation officers are always overburdened with work and are unable to conduct investigation on the offenders[35].
6. Challenges in the Implementation of Alternative Sentences: - Even though there are several provisions for alternative sentences in Indian criminal justice system, the implementation of these alternatives are very difficult due to shortage of staff, insufficient rehabilitation mechanisms[36].

## VI. CONCLUSION

Punishment, often described as necessary evil, is cardinal to the criminal justice system. It is true that punishment is very much essential in order to protect the society. While the theories suggest the use of punishment on various grounds, how far the punishment is really effective in curbing the crime rate is a matter of intense debate. If punishment was completely effective, there would be no crime at all in the society. The various judicial pronouncements point out the lack of uniform sentencing norms in India which gives room for too much judicial discretion and disparity in the sentencing. There is very little empirical evidence to examine the relationship between punishment and crime as it is very difficult to measure crime. Existing research on the subject-matter reveals that, punishment especially longer sentences and death sentences are not really effective in curbing the criminal behavior and recidivism. There are various gaps in the Indian criminal system which needs to be addressed in order to make the criminal justice system effective.

No doubt, punishment is essential to certain extent, but arguing that punishment is the only solution to crime prevention would be incorrect. Crime can occur due to various factors and it

[34] The Law. Institute, Principles & Practices in Criminal Sentencing in India, The Law. Institute, https://thelaw.institute/introduction-to-law/criminal-sentencing-principles-practices-india/?utm_ (Last visited Feb 02, 2026, 12.56 AM)
[35] Ibid at Supra Note 34.
[36] Ibid.

is important to examine those factors and come up with appropriate solution. The studies suggest the Iceland has the lowest crime rates and it is the most peaceful country in the world. When the matter is dug deeper, the research[37] on the subject reveals that lower crime rates can be attributed not to the severity of punishment but to other factors such as existence of egalitarian society, culture of the community, society's willingness to help the criminals, providing effective psychological treatment to the criminals etc.

Thus, while punishment cannot be completely ruled out and it is in fact necessary, other factors also need to be considered. Eradication of inequality, uniform sentencing policies, psychological support, rehabilitation mechanisms for the prisoners, certainty of enforcement are some of the factors to be considered for reduction of crime rate in the society.



[37] Brandon Wilson, There's Something About Iceland, Embry-Riddle Aeronautical University, https://commons.erau.edu/cgi/viewcontent.cgi?article=1302&context=discovery-day (Last visited Feb 03, 2026 10.17 AM).