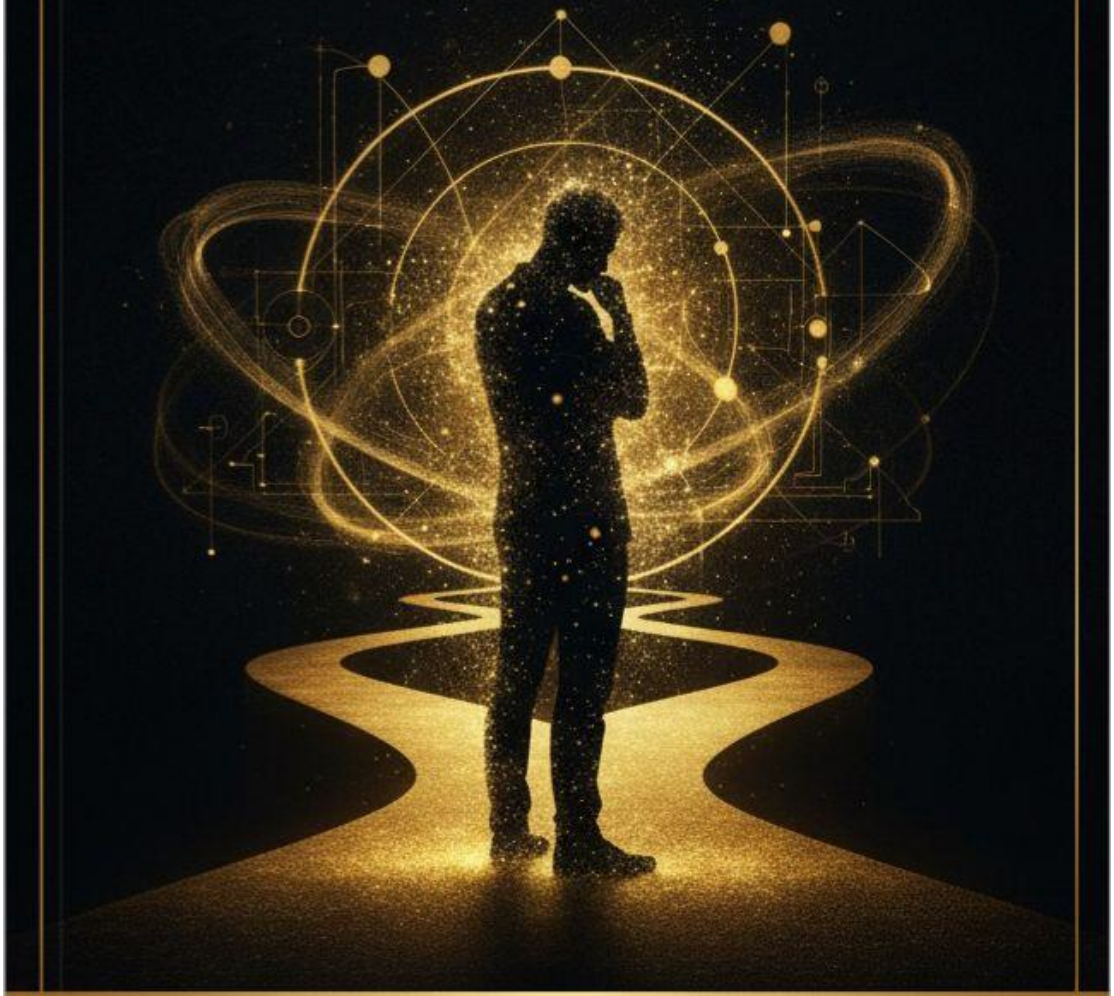
THE LAWAWAY
WITH LAWYERS JOURNAL

BEYOND THE CELL

Perspectives on Justice Reforms



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BEYOND THE CELL: PERSPECTIVES ON JUSTICE REFORMS

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PREFACE

The concept of justice has always been at the core of every civilized society. Yet, the pursuit of true justice often demands that we look beyond the conventional structures—beyond the cell—to understand the deeper need for reform, rehabilitation, and restoration. *Beyond the Cell: Perspectives on Justice Reforms* is a sincere attempt to explore these evolving dimensions of justice from the eyes of young and aspiring legal minds.

This book, published under *The Lawway with Lawyers Journal*, is a collective work of law students from various institutions across the country who have contributed their unique insights and research on justice reforms. Each chapter sheds light on significant aspects of the criminal justice system, human rights, prison reforms, and the need for a more empathetic approach to law enforcement and rehabilitation.

Edited by **Mr. Jafrin Shaji A**, this compilation reflects the journal's continuing commitment to promoting academic excellence, critical thinking, and meaningful discourse in the field of law. The diversity of perspectives and depth of analysis in this volume reaffirm the role of young legal scholars in shaping the future of our justice system.

Through this publication, we aim to inspire a dialogue that transcends traditional boundaries and encourages society to reimagine justice—not merely as a system of punishment, but as a process of restoration and reform. I extend my heartfelt appreciation to all the contributors, editors, and the entire *Lawway with Lawyers* team for their dedication and effort in bringing this book to life.

May this work serve as a beacon for those who believe that justice must evolve continuously to meet the needs of humanity.

Abhishek Ray
Founder, The Lawway with Lawyers Journal

ACKNOWLEDGEMENT

With immense gratitude and appreciation, I extend my heartfelt thanks to everyone who contributed to the making of *Beyond the Cell: Perspectives on Justice Reforms*. This book stands as a reflection of collective effort, dedication, and a shared vision of reimagining justice in a more humane and reformative light.

First and foremost, I express my sincere appreciation to **Mr. Jafrin Shaji A**, the Editor of this volume, for his guidance, patience, and meticulous editorial work that ensured the academic integrity and coherence of this publication. His unwavering commitment and insightful contributions have been instrumental in shaping the final manuscript.

I am deeply thankful to all the **student authors** from various law colleges whose research, writing, and critical perspectives have enriched this book. Their thoughtful contributions truly represent the intellectual spirit and passion of the next generation of legal scholars.

A special note of gratitude to the **Lawway with Lawyers Journal team**—our editorial members, reviewers, and coordinators—whose consistent efforts, teamwork, and enthusiasm made this project possible. Your dedication to maintaining high standards of publication and promoting legal scholarship continues to inspire many.

Lastly, I would like to thank everyone who has supported *The Lawway with Lawyers Journal* in its mission to create a platform for young legal minds. This book is a testament to our shared belief that meaningful change in the justice system begins with knowledge, awareness, and the courage to think beyond boundaries.

Abhishek Rai
Founder, The Lawway with Lawyers Journal

EDITOR

Mr. Jafrin Shaji A, Assistant Professor and Head, Department of Criminology and Police Administration with Forensic Science, Sri Krishnasamy Arts and Science College, Sattur, is an academician deeply committed to advancing the discipline of Criminology. Holding both Bachelor's and Master's degrees in Criminology, his expertise encompasses Contemporary Crimes, Penology, Criminal Law, Human Rights, Gender Studies, and Cybercrime. He has enriched his academic portfolio by completing five specialized certificate courses and has significantly contributed to scholarly discourse by presenting 55 research papers at national and international conferences, along with publishing 22 papers in reputed UGC Care-listed journals and edited volumes. As Head of the Department of Criminology and Forensic Science, he has played a transformative role in curriculum design, academic coordination, and student mentoring, while also spearheading seminars, workshops, forensic training sessions, and criminology skill development programs. His teaching philosophy centers on experiential learning, integrating case-based discussions, field visits, guest lectures, and hands-on research projects on pressing issues such as cybercrime, victim rights, and transgender studies. An active member of leading academic forums and criminology associations, he consistently engages in capacity-building and knowledge-sharing initiatives. His vision is to bridge theory and practice in criminology education, nurturing critical thinking, research competence, and ethical values among students, and thereby shaping them into professionals capable of driving reforms in justice, policy-making, and social development.

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CHAPTER- 1

FROM STATUTORY REFORM TO SURVIVOR-CENTRED JUSTICE: INDIA'S RESPONSE TO SEXUAL VIOLENCE IN GLOBAL PERSPECTIVE

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Abstract

Sexual violence is a persistent public-health and human-rights crisis: nearly one in three women worldwide experiences physical or sexual violence in their lifetime. Help-seeking remains limited, and access to justice is constrained. India illustrates the paradox of progressive statutory reform alongside persistent implementation gaps. Following the 2012 Delhi gang rape, Parliament enacted POCSO (2012), the Criminal Law (Amendment) Act (2013), and the 2018 amendments expanding offence definitions, penalties, and timelines. However, conviction rates remain under 30%, and attrition across police, forensic, prosecutorial, and judicial stages undermines the justice system.

This article pursues three objectives: (1) trace the evolution of India's sexual-violence laws, (2) examine key implementation challenges, and (3) propose survivor-centred reforms. Using doctrinal analysis, policy review, institutional data, and comparative study, the article situates India within international frameworks (CEDAW, CRC, Istanbul Convention) and models such as South Africa's Thuthuzela Care Centres, EU victims' rights directives, and U.S. Title IX. Findings reveal a persistent gap between statutory ambition and practice, shaped by inequities and weak institutional capacity. India must rebalance its response toward trauma-informed policing, survivor-friendly trials, and integrated medico-legal support.

Keywords: sexual violence, India, criminal justice reform, doctrinal analysis, survivor-centred justice

Introduction

Sexual violence remains a pervasive public-health and human-rights crisis worldwide. The World Health Organisation (WHO) estimates that nearly one in three women (about 30%) have experienced physical and/or sexual violence by an intimate partner or non-partner sexual violence in their lifetime, a prevalence that has not declined meaningfully in the past decade (based on

population-based surveys across 161 countries and areas) (World Health Organisation, 2024). In addition, non-partner sexual violence alone is reported by about 6% of women globally - an estimate that understates true prevalence because of under-reporting and stigma (Sardinha et al., 2024; WHO, 2024). The justice gap is stark: fewer than 40% of women who experience violence seek any form of help, and as few as 1 in 10 seek help from the police, revealing structural barriers between law on the books and justice in practice (UN Women, 2024). Compounding these challenges, UN-verified cases of conflict-related sexual violence surged by roughly 50% in 2023 compared with 2022, underscoring how crises intensify risks and overwhelm redress mechanisms (United Nations, 2024; UK House of Commons Library, 2025; UN Women, 2024).

Against this global backdrop, India offers a critical case study of ambitious statutory reform followed by uneven implementation. Following the 2012 Delhi gang rape ("Nirbhaya"), the Government set up the Justice J. S. Verma Committee, whose recommendations catalysed sweeping changes to the Indian Penal Code, the Code of Criminal Procedure, and the Indian Evidence Act through the Criminal Law (Amendment) Act, 2013 (Justice J. S. Verma Committee, 2013; Government of India, 2013). The 2013 amendment expanded definitions of sexual offences, strengthened procedural safeguards, and enhanced penalties. For children, the Protection of Children from Sexual Offences (POCSO) Act, 2012, created a specialised, child-friendly legal architecture (Government of India, 2012). In 2018, further amendments were introduced, including harsher minimum sentences and, in specific aggravated cases involving very young victims, the possibility of capital punishment, along with time-bound mandates for investigation and trial (two months each) (Government of India, 2018; PRS Legislative Research, 2018).

However, implementation gaps persist. According to official statistics tabled in Parliament and compiled by the National Crime Records Bureau (NCRB), 31,516 rapes were registered in 2022- a level that has remained stubbornly high over recent years (2020: 28,046; 2021: 31,677) (Ministry of Home Affairs, 2024; NCRB, 2023). Independent analyses and media syntheses of NCRB data further suggest that conviction rates for reported rape cases remain in the high-20s nationally, despite post-2013 reforms and the expansion of fast-track mechanisms (Reuters, 2024). In parallel, international agencies document system-wide attrition, ranging from limited reporting to investigative bottlenecks, medico-legal shortfalls, and the re-traumatisation of survivors during adversarial proceedings, patterns that mirror global trends where many survivors never reach the courts at all (UN Women, 2024). The upshot is sobering but clarifying: legal innovation must be matched by organisational change across the justice chain if survivor-centred justice is to be delivered at scale.

Why implementation matters as much as law-making becomes clear in this context, statutory advances can widen the formal definition of offences, raise penalties, and prescribe timelines; however, survivor-centred justice depends on early, trauma-informed police responses; reliable, timely forensic and medical services; sensitive prosecutorial practice; and court processes that minimise delay and secondary victimisation. Global evidence on help-seeking patterns and police-contact rates indicates that unless these institutional interfaces are changed, legal reforms alone cannot close the justice gap (UN Women, 2024; WHO, 2013).

This article situates India's post-2013 legal reforms within the global discourse on criminal justice reform and sexual violence. It pursues three objectives: to map the evolution of India's legal framework on sexual violence (with attention to the 2013 and 2018 amendments and the POCSO regime) and the global norms that inform it (PRS Legislative Research, 2018; Government of India, 2018); to analyse key implementation gaps across the justice chain -reporting, investigation, medico-legal practices, prosecution, adjudication, and survivor support using recent official data and international benchmarks (Ministry of Home Affairs, 2024); and to propose evidence-based policy and practice measures to move from punitive symbolism to survivor-centered, accountable enforcement, drawing on comparative international models and UN guidance (UN Women, 2024). Throughout, the analysis keeps sight of a central normative claim: that the purpose of criminal law in this domain is not only to punish but to secure conditions under which survivors can disclose harm safely, access care and protection, and obtain fair adjudication without being retraumatised.

Evolution of the Legal Framework

The legal architecture that India has today is the product of iterative reform layered over colonial foundations. The colonial Indian Penal Code’s framing of sexual-offence law, particularly the pre-2013 definition of rape in IPC section 375, was narrow and centred on penile-vaginal "sexual intercourse." In contrast, an exception for marital intercourse effectively removed most marital rape from the purview of criminal law; "sexual intercourse by a man with his own wife, the wife not being under fifteen years of age". Judicial development refined the contours of this exception but did not eliminate it for adult wives. In *Independent Thought v/s Union of India* (2017), the Supreme Court expanded the child-marriage exception to 18 years, aligning it with child-protection norms, while the broader exception for adult married women remained in place (Supreme Court of India, 2017; Government of India, n.d.-a). These line edits reflect a broader pattern: reform commissions and committees repeatedly argued for consent-centred definitions and cautioned against legal doctrines that entrenched gender hierarchy (Law Commission of India, 2000). The law moved

slowly, then, because definitions were entangled with social expectations about marriage, sexuality, and status.

The first decisive legislative shift came with the post-Mathura moment. Public outrage at the Supreme Court's decision in *Tukaram v/s State of Maharashtra* (1979) galvanised the Criminal Law (Amendment) Act, 1983, which installed two cornerstones for survivor protection: Section 114A of the Indian Evidence Act created a presumption of absence of consent in specified aggravated rape prosecutions when the complainant testifies to non-consent; Section 228A of the IPC criminalised disclosure of a rape survivor's identity (Government of India, 1983; Government of India, n.d.-b; Government of India, n.d.-c). These provisions rebalanced courtroom dynamics, where custodial power and social authority tended to undermine credibility, and they marked an early recognition that the procedure, who to believe, what can be said, and how evidence is framed, is as consequential as the substance.

For children, a distinct legislative trajectory culminated in the POCSO Act, 2012. POCSO created a comprehensive, gender-neutral code for those under 18, complete with Special Courts and child-friendly procedures to record evidence rapidly and to keep trials within reasonable time limits "as far as possible," while ensuring confidentiality and mandatory reporting (Government of India, 2012, sec. 19, 21, 33-37). The Act's evidentiary presumptions (sec 29-30) were designed to counteract the dual vulnerability of children to both abuse and disbelief. In effect, POCSO operationalised the intuition that children require a bespoke legal and clinical pathway, one that is anticipatorily protective rather than reactively punitive.

The 2013 "Nirbhaya" amendments then redrafted the field. The Criminal Law (Amendment) Act, 2013 broadened the definition of rape beyond penile-vaginal intercourse, added or clarified offences such as acid attack (IPC sec 326A-326B), sexual harassment (sec 354A), voyeurism (sec 354C), and stalking (sec 354D), and ─crucially─added enforceable duties for state actors and service providers (Government of India, 2013). IPC section 166A penalised the failure of police to register FIRs in specified sexual-offence cases; CrPC section 357C mandated free, immediate treatment by all hospitals, with IPC section 166B penalising non-treatment. Formally, then, the 2013 amendments did not merely proliferate offences or increase penalties; they sought to embed the state's positive obligations to remove gatekeeping at the first point of contact and to ensure medical care without financial or bureaucratic delay.

The 2018 amendments pursued a different vector ─ escalating penalties and compressing timelines in response to high-profile child sexual assault cases. The Criminal Law (Amendment) Act, 2018,

enhanced minimum sentences and, for certain aggravated offences against very young victims, introduced capital punishment, while inserting CrPC section 173(1A) to require investigations in specified cases to be completed within two months and reinforcing expedited trials under CrPC section 309 (Government of India, 2018; PRS Legislative Research, 2018). These changes reflected the political economy of outrage: legislatures often reach for penalty severity and speed mandates when public conscience is pricked. Whether such changes would translate to better outcomes, however, turned on the capacity of police, medico-legal staff, and courts to meet new challenges without sacrificing quality.

Finally, international frameworks provided both a normative horizon and a comparative yardstick. India is a State party to CEDAW (Convention on the Elimination of All Forms of Discrimination against Women) and the CRC (Convention on the Rights of the Child); the CRC's Articles 19 and 34 specifically obligate protection from sexual abuse and exploitation (UN Treaty Collection, n.d.; Press Information Bureau, 2021; OHCHR, n.d.). Even though India has not acceded to the Istanbul Convention, its "prevention-protection-prosecution-policy" model and survivor-service standards have shaped comparative debates (Council of Europe, 2014/2024). The point here is not that international instruments dictate domestic outcomes; instead, they help define what a rights-consistent system looks like and, in doing so, illuminate gaps between codified ambition and administrative practice.

The Implementation Gap

If the statutory map is the skeleton, implementation is the musculature that allows movement. At the police level, the Supreme Court, in *Lalita Kumari v/s. Government of Uttar Pradesh* (2013), clarified that FIR registration is mandatory when information discloses a cognisable offence, with only a narrow exception for brief preliminary inquiries where the information is unclear (Lalita Kumari v/s Government of Uttar Pradesh, 2013). Executive directions institutionalised "Zero FIR," requiring registration irrespective of jurisdiction with subsequent transfer, and IPC section 166A made refusal to record specified sexual-offence complaints a punishable dereliction (Ministry of Home Affairs, 2013, 2015; Indian Penal Code sec 166A). On paper, the front door to the criminal process stands open. In practice, survivors and NGOs continue to report non-registration or dilution to non-cognisable complaints, particularly in rural and lower-resource settings (Common Cause & Lokniti-CSDS, 2019). The explanation is neither mysterious nor monocausal: organisational culture, workload, performance metrics that under-reward lawful registration, and endemic stereotypes about sexuality and morality all conspire to make discretionary gatekeeping tempting. National

police manuals now emphasise survivor-centred, trauma-informed responses. However, the social cognition of individual officers what they find credible, how they interpret delays in reporting, and what they infer from affect —can still influence formal compliance (Ministry of Women & Child Development, 2023; UN Women, 2021). Unless supervision, training, and accountability align, *Lalita Kumari* risks being a constitutional liability that fades at the station house.

The medical-forensic interface tells a parallel story. Jurisprudence and health policy unequivocally prohibit the "two-finger test." In *Lillu @ Rajesh v/s State of Haryana* (2013) and again in 2022, the Supreme Court held the test and its interpretation violate privacy, bodily integrity, and dignity; the Court insisted that no one be subjected to it and called for training and accountability (Lillu @ Rajesh v/s State of Haryana, 2013; State of Jharkhand v/s Shailendra Kumar Rai, 2022). The Ministry of Health's 2014 Guidelines & Protocols forbid the test and require consent-based, evidence-oriented examinations (Ministry of Health & Family Welfare, 2014). Still, reporting and court interventions reveal uneven compliance—a reminder that norms can travel slowly when they challenge entrenched clinical habits or when facilities operate under staffing and training constraints (Human Rights Watch, 2022; The Indian Express, 2022). Forensics amplify the problem. Project 39A's Forensic Science India Report, published in 2023 using data from 2013-2017, found that DNA profiling divisions had a pendency rate of around 79%, alongside staffing shortages and quality-system weaknesses that undercut the evidentiary value (Project 39A, 2023). The Union Government's National Forensic Infrastructure Enhancement Scheme promises new capacity-CFSLs, NFSU campuses, and a National Forensic Data Centre, but its effect will be determined by whether pendency falls, chain-of-custody practices improve, and accreditation keeps pace (Ministry of Home Affairs, 2024; Press Information Bureau, 2025). The deeper point is that evidence production and preservation are not "technical" add-ons; they are constitutive of the credibility of the survivor's narrative in Court. When labs are backlogged or documentation is defective, reasonable doubt becomes more likely.

Courts, too, carry both load and culture. Even with CrPC section 309's exhortation to complete sexual-offence trials "as far as possible" within two months post-charge-sheet, overall system load undermines expedition. The India Justice Report 2022 counts roughly 49 million pending cases, nearly 69% of which are criminal, and such a volume inevitably ripples into sexual-offence dockets, despite specialised fast-track courts (Tata Trusts et al., 2022; Code of Criminal Procedure, sec. 309). Quality inside the courtroom is equally important. In *Aparna Bhat v/s State of Madhya Pradesh* (2021), the Supreme Court cautioned against gender-stereotyped reasoning and degrading

conditions or remarks at bail and trial, urging gender-sensitisation across the bar and bench. However, survivors still report hostile cross-examination and the resurrection of myths about consent or character, despite statutory limits on past sexual history (Evidence Act sec 53A and related provisions) (Aparna Bhat v/s State of Madhya Pradesh, 2021; Indian Evidence Act sec 53A). Outcomes reflect these structural and cultural impediments: analyses of NCRB data for 2022 place rape conviction rates in the high-20s per cent, reminding us that harsher substantive penalties do not auto-generate adjudicative quality (Reuters, 2024). The solution is neither rhetorical nor singular. It requires enforcing in-camera proceedings, ensuring survivor-friendly procedures, expanding special courts with exclusive dockets, issuing standard directions against stereotypes, and, significantly, monitoring age-wise pendency and reasons for acquittal to inform targeted training (Aparna Bhat v/s State of Madhya Pradesh, 2021).

Compensation and protection complete the picture. The CrPC's section 357A compensation scheme, bolstered by sections 357 B-357C for treatment and reimbursement, One Stop Centres (OSCs) under Mission Shakti, and the Witness Protection Scheme, 2018, approved by the Supreme Court, constitute a layered safety net (Code of Criminal Procedure sec 357A-357C; Mahender Chawla v/s Union of India, 2018). On the ground, survivors often encounter delays in disbursal, uneven psychosocial support, and patchy witness-protection implementation, especially beyond metropolitan centres. Government utilisation data are encouraging but incomplete: by 6 December 2023, the Ministry of Women & Child Development reported 752 OSCs assisting over 8 lakh (801,062) women; by March 2025, 802 OSCs were reported operational (Ministry of Women & Child Development, 2023, 2025). Witness-protection procedures exist on paper, but assessments continue to flag capacity constraints, funding gaps, and weak coordination across police, prosecution, and legal services authorities (Bureau of Police Research & Development, 2024; Mahender Chawla, 2018). Here again, the through-line is that entitlements require architecture: time-bound, digital tracking of Section 357A applications; default timelines for sanction and release; OSC staffing and 24/7 availability benchmarks; district witness-protection cells with budgets and relocation protocols; and contempt consequences for breaches. Without such administrative muscle, safety nets are more promise than protection.

Institutional and Structural Barriers

To understand why implementation falters, the analysis must surface the social stratifications that mediate access to justice. Caste, class, rurality, and disability shape both exposure to harm and facility with institutions.

Violence disproportionately affects Dalit and Adivasi women, with conviction rates low despite rising cases (Reuters, 2024). NFHS-5 shows higher prevalence in rural areas (7% vs 5% urban), reflecting poverty and weaker policing. Disability adds risk: inaccessible facilities, communication barriers, and poor preparedness heighten vulnerability (UNFPA, 2024). Disability multiplies risk and barriers. UNFPA notes that women and girls with disabilities can be up to ten times more likely to experience gender-based violence, and highlights India-specific obstacles: inaccessible police stations and hospitals, communication barriers, including the lack of sign language interpretation, and low provider preparedness (UNFPA India, 2024). Multi-country DHS research similarly links disability status with elevated intimate-partner violence (United Nations Population Fund [UNFPA], 2023). This intersectional lens is operationally decisive. A "universal" protocol, when implemented in a world characterised by unequal infrastructure and discriminatory attitudes, will produce unequal access; therefore, equity-oriented deployment, such as employing more female personnel and trained interpreters, providing ramps and accessible transportation, and utilising special educators and disability-aware counsellors, must accompany doctrinal reform.

The most significant attrition point remains stigma and the social economy of silence. Earlier NFHS-based studies found that formal help-seeking occurred in approximately 1%, with disclosures clustering around family and friends (Dehingia et al., 2022). Using NFHS-5, a 2024 study reports that 14.2% of women experiencing IPV(Intimate Partner Violence) sought any help; among formal sources, police were the most commonly approached at roughly ~7-8% of those who sought help, leaving the majority of disclosures in informal networks (Ghoshal et al., 2024). Global syntheses echo this: fewer than 40% seek any help, and only ~10% report to police (UN Women, 2023, 2024). Normative acceptance of wife-beating continues to depress reporting, with attitudes captured in NFHS-5 analyses (Ghoshal et al., 2024). A criminal justice system that waits passively for complaints thus abdicates its responsibility; it must proactively reduce the emotional and logistical costs of disclosure through confidential helplines, trained first responders, and assurances against retaliation.

Institutional capacity mirrors these social divides. As of January 2022, women comprised ~12% of police overall but only ~8% at officer level, and most states allocated under 3% of police budgets to training, with dramatic dispersion; Telangana approximating ₹28,126 per personnel versus West Bengal ~₹305, and Kerala recording zero training budget in the reference year (BPR&D, 2023; India Justice Report [IJR], 2023, Police Backgrounder). Training infrastructure; 211 schools/academies for ~2.688 million sanctioned personnel, and urban-weighted deployment leaves rural posts understaffed (Rural India Online, 2023, summarising IJR 2022). Sixteen years after

Prakash Singh (2006), the separation of investigation from law and order remains partial (IJR, 2023, Police Backgrounder). On the judicial side, the Supreme Court's directions in *Aparna Bhat* (2021) and the 2023 Handbook on Combating Gender Stereotypes signify a normative shift, and judicial academies have begun to integrate these changes (Supreme Court Observer, 2023; National Judicial Academy, 2023). For medico-legal staff, the 2014 MoHFW Guidelines are authoritative; however, audits reveal patchy compliance and the persistence of banned practices, necessitating regular refresher training and hospital audits (MoHFW, 2014; Human Rights Watch, 2017, 2022). The pattern is consistent: statutory ambition collides with fiscal, organisational, and pedagogic scarcity.

Comparative and Global Perspectives

Comparative models supply both inspiration and caution. South Africa's Thuthuzela Care Centres (TCCs), led by the National Prosecuting Authority, offer 24/7 one-stop hubs co-located with health services, integrating medical care, forensic collection, psychosocial support, case management, and prosecutor-guided investigation aimed at reducing secondary victimisation and cutting case cycle times (National Prosecuting Authority, 2009; Republic of South Africa, n.d.). Scale-up has been steady, with 51 centres listed in government communications, 55 functioning in a 2016 audit, and approximately 63 sites reported in 2023, suggesting institutional endurance (Republic of South Africa, n.d.; NACOSA, 2018; Spotlight, 2023). Literature frequently associates TCCs with improved time to trial and conviction rates; however, public documentation tends to present these as programmatic goals or directional outcomes rather than a single national or centre-specific conviction-rate series (NPA/SVRI, n.d.; NACOSA, 2018). Even with imperfect data, three design features are instructive: prosecutors embedded at the clinical front end, standardised trauma-informed pathways from first contact, and the co-location of services in public hospitals. India's OSCs approach the "single-window" concept. However, consistent co-location with forensic/medical services, as well as prosecutor-led case management, is lacking, offering a transparent vector for convergence (Ministry of Women & Child Development, 2023, 2024, 2025).

The European Union's victims' rights architecture supplies a complementary angle. Directive 2012/29/EU sets minimum standards on victims' rights, requiring accessible information, free and confidential support, protection from secondary victimisation, and participatory rights (European Union, 2012). The 2024 Directive on combating violence against women and domestic violence adds criminal-law and procedural obligations, creating EU-wide offences such as FGM (Female Genital Mutilation), forced marriage, non-consensual sharing of intimate images, and cyber-enabled abuses, with stronger data and service-provision duties; Member States must transpose by

14 June 2027 (European Union, 2024). Notably, the directive refrains from harmonising the definition of rape, leaving national diversity intact while consolidating victim-service guarantees (European Union, 2024). For India, the alignment is most precise at the level of service entitlements; information, support, and protection already partially reflected in post-2013 guarantees, such as CrPC sec 357 C and in-camera trial norms. The divergence, especially the marital-rape exception and the absence of a consent-based definition in line with many European states, remains a site of constitutional and feminist contestation.

A third comparator is sector-specific: Title IX in the United States. Title IX prohibits sex discrimination in federally funded education, with regulations defining grievance procedures and response obligations (eCFR, 34 CFR sec106.44-106.46). The 2020 Final Rule narrowed actionable definitions and mandated live hearings and cross-examination for post-secondary institutions (U.S. Department of Education, 2020). The 2024 regulations, effective August 1, 2024, broadened the definition of sex discrimination (including pregnancy-related conditions) and required "prompt and equitable" grievance procedures, while litigation has produced a patchwork of implementation (U.S. Department of Education, 2024; AP News, 2024; Politico, 2024). The lesson for India is not to import a complex federal scheme but to recognise the value of sector-specific clarity. Universities here rely on POSH and UGC/AICTE directions; a Title IX-style framework adapted to Indian constitutional structure-could specify timelines, notice requirements, evidentiary standards, and appeals, thereby improving transparency and trust in campus grievance processes.

Critical Perspectives

A critical examination of India's post-2013 trajectory reveals a gravitational pull toward punitive measures. Penalties have been ratcheted up repeatedly, culminating in capital punishment for select child-rape provisions in 2018, based on the premise that severity deters (Government of India, 2018). However, the Justice Verma Committee and Law Commission Report No. 262 warned that the death penalty lacks a uniquely deterrent effect and risks drawing reform attention away from investigation quality, survivor services, and witness protection — the mundane but decisive components of justice (Justice Verma Committee, 2013; Law Commission of India, 2015). International rights groups echo this assessment (Amnesty International, 2013, 2024). The policy puzzle, then, is distributive: why do we over-invest in the symbolic capital of harsh penalties and under-invest in the banal infrastructure of care? Part of the answer lies in political time horizons, where the immediacy of public outrage and the visibility of legislative action are contrasted with the slow, less visible accumulation of administrative capability. If the aim is to change survivor

experience and case outcomes, the marginal rupee should go to trained investigators, forensic capacity, psychosocial counsellors, legal aid, and court management systems.

Restorative justice (RJ) debates occupy a different critical space. UNODC's 2020 Handbook catalogues serious risks in sexual-violence contexts; coercion, power imbalance, re-traumatisation and insists on strict safeguards and the primacy of survivor consent (UNODC, 2020). At the same time, specialist models such as Project Restore in New Zealand report positive outcomes, as defined by victims, in carefully screened cases involving trained facilitators and multidisciplinary teams (Project Restore, n.d.). European policy guidance converges on similar conditions: voluntariness, safety assessment, specialist facilitation, and positioning RJ as additional to, not a substitute for, the criminal process (EFRJ, 2023/2024; Council of Europe, 2018). Recent empirical work documents how survivors and responsible parties experience such processes (Jülich, 2024). For India, where impunity anxieties are high and criminal process legitimacy is uneven, the risk of instrumentalising RJ to offload cases is real. If experimented with at all, RJ should be limited to tightly defined contexts with independent oversight and should never be used to short-circuit prosecution where survivors seek it.

Feminist critiques return us to first principles. The marital-rape exception is not a marginal doctrinal quirk; it is a structural statement about whose bodily autonomy counts. Contemporary analyses argue that it is inconsistent with the principles of constitutional equality and autonomy. The Supreme Court's Handbook on Combating Gender Stereotypes represents an institutional acknowledgement that gendered myths have distorted adjudication (Supreme Court of India/e-Committee, 2023/2024; Jagadeesan, 2024; Agarwal, Abdalla, & Cohen, 2022). Eliminating the exception would not, by itself, transform survivor experience, but retaining it entrenches a hierarchy that weakens the normative force of survivor-centred legal reform. The law teaches as it regulates; where it teaches that marriage is a zone of diminished consent, it undermines the culture of consent that the rest of the framework aspires to build.

Policy and Practice Innovations

Fast-track courts (FTSCs), including exclusive POCSO courts, are often held up as evidence of institutional responsiveness. Official dashboards and press releases report that more than 700 FTSCs are operational by mid-2025 and have resulted in over 330,000 cumulative disposals since inception, with 85,595 cases resolved in 2024, compared to 88,902 instituted (Department of Justice, 2025; Press Information Bureau, 2025a, 2025b). These figures demonstrate throughput

capacity. Yet overall pendency growth, judicial vacancies, and uneven investigative quality blunt time-to-trial improvements (India Justice Report, 2025). The sensible way to read FTSCs is not as silver bullets, but as platforms: their effectiveness depends on what is plugged into them, such as trained prosecutors, court-linked counselling, timely forensic reporting, and protection orders, as well as on what they are measured against, including age-wise pendency and reasons for adjournment. Without these complements, fast-track becomes fast-queue.

Technology-enabled reforms are similarly double-edged. ERSS-112 and the 181 women's helpline expand low-barrier contact points; 112's app and SHOUT feature are designed to compress response times, and 181 is operational across most States/UTs and integrated with ERSS (112 India, n.d.-a, n.d.-b; Press Information Bureau, 2025c; Ministry of Women & Child Development, 2023). Implementation, however, is variegated; integration lags can slow warm hand-offs, and state-level disparities in control-room capacity produce uneven experiences (Times of India, 2025). Zero-FIR is now embedded in SOPs, and e-FIR availability is expanding but remains category-limited and state-specific, with some jurisdictions confining e-FIRs to property offences and others including specific "crime against women/POCSO" categories (MHA, 2015; BPRD, 2023/2024; Assam Police, n.d.; Delhi Police, n.d.). For many survivors, especially those needing immediate medico-legal care and protection orders, in-person FIR remains practically important even as CCTNS/ICJS coverage grows (MHA, 2023, 2024). Safety apps like the Delhi Police's Himmat Plus can streamline the first contact process by transmitting an SOS with location and short audio/video clips to the control room (Delhi Police, n.d.-a; Delhi Police, n.d.-b), but rigorous independent evaluations of their impact on crime or clearance rates are limited. The principle is that technology must be braided with service guarantees: answer, dispatch, and closure times should be published as state-wise KPIs; privacy-by-design must be non-negotiable; and ERSS-112 should be integrated with OSCs and legal aid for warm hand-offs.

Civil society and NGOs offer critical connective tissue. Organisations such as PCVC in Chennai operate 24×7 crisis support and survivor-led counselling models. NALSA anchors compensation implementation under the 2018 Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes, while in the U.S., RAINN exemplifies national-scale hotline and counselling integration (PCVC, 2022, 2023; NALSA, 2018/2025; RAINN, n.d.). These contributions are most effective when formalised into referral pathways; police to hospital to OSC to NGO, and funded on multi-year cycles that permit staff retention and protocol maturation. In short, a partnership must be planned, not incidental.

What, then, should survivor-centred practice look like as a matter of routine? At the police level, UN Women's guidance on gender-responsive, trauma-informed interviewing, privacy, non-judgmental engagement, access to an advocate, and interpreter or disability accommodations offers a concrete template that can be embedded in pre-service curricula and reinforced through supervision (UN Women & UNODC, 2021). In health and forensics, WHO clinical and policy guidelines delineate consent-based exams, evidence-oriented care, chain-of-custody, and paths for mental-health and STI prophylaxis, which, when integrated with Sexual Assault Evidence Collection kits and ISO/IEC 17025 accreditation efforts, can lift evidentiary quality (World Health Organisation, 2013; Ministry of Health & Family Welfare, 2014). In courts, stereotype-free reasoning per the Supreme Court's Handbook on Combating Gender Stereotypes, consistent use of in-camera proceedings, allowance for support persons, and disciplined adjournment practices can reshape the affective landscape of trial (Supreme Court of India, 2023/2024). The administrative instrument for all of this is banal but powerful: checklists, audits, and dashboards. If police stations, hospitals, and courts publish quarterly compliance metrics, if district-level witness-protection cells log breach incidents and outcomes, and if forensic labs post pendency and turnaround, the system will have both a mirror and a map.

Conclusion

India's experience since 2013 distils a general lesson about criminal justice reform in contexts of gendered harm. Law on the books is a necessary precondition for justice, but it is not a sufficient condition. Expanded definitions, harsher penalties, and compressed timelines build a legal promise; survivor-centred policing, reliable forensics, stereotype-free adjudication, and accessible support services turn promise into practice. The data points that frame this analysis: 31,516 rapes registered in 2022, conviction rates stuck in the high-20s, millions of pending cases are not mere statistics; they are the contour lines of a justice landscape in which survivors still carry disproportionate burdens (Ministry of Home Affairs, 2024; NCRB, 2023; Reuters, 2024). Global evidence on help-seeking shows why: a majority do not approach formal systems, and when they do, they encounter interfaces that are not consistently designed around their needs (UN Women, 2024; WHO, 2013).

Comparative models from South Africa's prosecutor-anchored TCCs to the EU's victim-rights directives to the U.S. Title IX regime do not offer plug-and-play solutions, but they show that clarity of roles, integration of services, and justiciable entitlements matter. India's OSCs are a step in this direction; their future should be one of deeper clinical co-location, stronger prosecution linkages, and transparent performance reporting (Ministry of Women & Child Development, 2023,

2024, 2025). Fast-track courts demonstrate throughput capacity, but unless paired with investigative quality, forensic readiness, and survivor support, they risk becoming accelerators of uneven process rather than engines of just outcome (Department of Justice, 2025; Press Information Bureau, 2025a; Press Information Bureau, 2025b; India (Justice Report, 2025). Technology can widen the front door, but only organisational guarantees can ensure that a call, tap, or SOS results in dignified care and lawful action (112 India, n.d.-a, n.d.-b; MHA, 2015; BPRD, 2023/2024).

Two strategic pivots follow. First, shift from punitive symbolism to service realism: reallocate marginal investments toward the "boring" infrastructure of justice — training budgets, forensic staffing and accreditation, OSC counsellors, legal aid, and court management systems. This is not an argument against punishment; it is an argument for the institutional preconditions of fair punishment. Second, legislate and adjudicate in ways that dignify autonomy: remove the marital-rape exception, mainstream stereotype-free reasoning, and guarantee accommodations for disability and language. The law teaches; it should teach that consent is indivisible by status and that dignity is not contingent on conformity to stereotype (Supreme Court of India/e-Committee, 2023/2024; Jagadeesan, 2024; Agarwal, Abdalla, & Cohen, 2022).

The horizon is not utopian. It is administratively specific and empirically anchored. Enforce *Lalita Kumari* and Zero-FIR with supervision and accountability; measure police stations and hospitals against survivor-centred checklists; publish lab-wise pendency dashboards; fund witness-protection cells with relocation protocols; and integrate OSCs with prosecutors and courts through protocolised pathways (Lalita Kumari v/s Government of Uttar Pradesh, 2013; Ministry of Home Affairs, 2013, 2015; Ministry of Health & Family Welfare, 2014; Project 39A, 2023; Bureau of Police Research & Development, 2024). These are not glamorous reforms. However, they are the reforms that convert rights into remedies. The promise of the post-2013 decade will be redeemed not by the subsequent amendment alone, but by building the everyday institutions through which a survivor's first disclosure becomes safety, care, evidence, and, ultimately, justice.

***Note**: References in this article are to the Indian Penal Code (IPC), Code of Criminal Procedure (CrPC), and Indian Evidence Act, as these were the governing statutes for the 2012–2023 reforms and case law analysed. These provisions have since been repealed and replaced by the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagrik Suraksha Sanhita, 2023, and the Bharatiya Sakshya Adhiniyam, 2023, which came into force on 1 July 2024.*

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CHAPTER - 2

THE CLASSROOM AND THE COURTROOM: INTERSECTIONS OF EQUITY, POLICY, AND REFORM IN INDIA

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Abstract

Education and criminal justice are often treated as parallel policy domains in India, yet their intersections are deeply consequential. This paper examines how inequities in the classroom can shape pathways to the courtroom, while also exploring how criminal justice reforms employ education as a tool for rehabilitation. Drawing on theoretical perspectives of social reproduction, critical pedagogy, and restorative justice, the study situates the Indian experience within global debates on the "school-to-prison pipeline." The analysis focuses on three interlinked dimensions: first, how exclusionary practices in schools, through language policies, caste-based discrimination, and punitive discipline, can perpetuate cycles of marginalization and delinquency; second, how education within correctional settings, particularly under the Juvenile Justice Act and prison education programs, is positioned as central to rehabilitation and reintegration; and third, how key policy frameworks such as the Right to Education Act and the National Education Policy intersect with criminal justice reforms in promoting equity. By bridging the classroom and the courtroom, the paper argues for an equity-centered framework that recognizes education as both a preventive and reformative mechanism. Such an approach highlights the need for interdisciplinary reforms that integrate pedagogy, policy, and justice in shaping India's future.

Keywords: Education, School-to-Prison Pipeline, Equity, Juvenile Justice and Policy

Introduction

In India, education and criminal justice are largely treated as separate domains within policy and practice. Education is conventionally viewed as a developmental sector concerned with learning, literacy, and human capital formation, while criminal justice is framed as a matter of law, order, and security. Yet, their intersections are both profound and consequential. Schools, as the first major institutional sites of socialization, do not merely transmit knowledge but actively shape children's life trajectories. When these spaces are inclusive and empowering, they can prevent cycles of marginalization by creating pathways of dignity, opportunity, and equity. However, when

educational spaces reproduce inequality through rigid language policies, caste- or class-based exclusion, or punitive disciplinary practices, they risk criminalizing vulnerability rather than alleviating it. The result is that marginalization in the classroom may often find its extension in the courtroom, a phenomenon globally discussed as the "school-to-prison pipeline" (Skiba et al., 2002). While this concept has been extensively examined in the United States and parts of Europe, its relevance in the Indian context requires critical attention, particularly given the layered complexities of caste, tribe, region, gender, and language (Shah, 2001; Kisana, 2020).

If the classroom represents a starting point of opportunity or exclusion, the courtroom represents a site where the state adjudicates on justice, discipline, and rehabilitation. Criminal justice reforms in India increasingly recognize the role of education in both rehabilitation and reintegration. Evidence from global studies indicates that prison education significantly reduces recidivism and supports successful reintegration (Davis et al., 2013; UNESCO, 2020). In India, education in prisons, juvenile reform homes, and correctional facilities is no longer seen as an optional welfare add-on but as central to dignity and rehabilitation (Pandey, 2017). The Juvenile Justice (Care and Protection of Children) Act (2015), the Right to Education Act (2009), and the National Education Policy (NEP, 2020) reveal overlapping commitments where the state negotiates questions of punishment, discipline, and reintegration. Yet, policy and practice remain fragmented, with education on one side and justice on the other. Examining their intersections offers a richer understanding of how equity can be advanced not just in theory but in lived experience. This is particularly urgent in India, where children and young people from marginalized communities are overrepresented both among school dropouts and among juveniles in conflict with the law (NCRB, 2022).

Table: Marginalized School Dropouts and Juvenile Offenders in India

Category	Dropout Rate/Data
Dalit children (elementary)	51%
National average (elementary)	37%
Dalit/Adivasi/Muslim girls (adolescents)	Up to 64%
Juvenile offenders: family income < ₹25,000	55.6%
Juvenile offenders: illiterate or with primary	53%

education	
Juveniles in conflict with the law (16-18 yrs)	76.2% (2021 NCRB)
Juvenile offenders: boys	99%

Source: International Dalit Solidarity Network, Hindustan Times, Rural India Online, and Factly, respectively.

This paper, therefore, argues that education must be understood as both a preventive and reformative mechanism in the broader agenda of criminal justice reform. By bridging the classroom and the courtroom, it seeks to uncover the ways in which educational practices and policies contribute to criminalization or rehabilitation, the ways in which criminal justice reforms incorporate education as a tool for equity, and the lessons that can be drawn for India's reform trajectory. Drawing on theoretical frameworks of social reproduction (Bourdieu & Passeron, 1977), critical pedagogy (Freire, 1970), and restorative justice (Morrison & Vaandering, 2012), the paper situates the Indian experience within wider global debates on equity and justice. Ultimately, it contends that education is not peripheral but central to reimagining criminal justice reform in India, and that only an integrated approach, where pedagogy, policy, and justice converge, can deliver a truly equitable future.

Theoretical Framework

This paper is anchored in four complementary theoretical perspectives that together illuminate the intersections of education, equity, and criminal justice reform in India: social reproduction theory, restorative justice frameworks, critical pedagogy, and a rights-based approach.

Social Reproduction Theory

Pierre Bourdieu's theory of social reproduction posits that schools are not neutral spaces but institutions that reproduce existing social hierarchies by privileging certain forms of cultural and linguistic capital while devaluing others (Bourdieu & Passeron, 1977). In the Indian context, inequities related to caste, class, and language often determine who succeeds in educational spaces and who is excluded. This exclusion can contribute to pathways of vulnerability that increase the likelihood of children entering the juvenile justice system. By applying social reproduction theory,

this paper examines how educational practices can unintentionally reinforce structural inequalities that mirror patterns of marginalization within the criminal justice system.

Restorative Justice Frameworks

Restorative justice emphasizes repairing harm, restoring relationships, and reintegrating offenders into the community rather than prioritizing punishment (Zehr, 2002). Within schools, restorative practices seek to replace zero-tolerance disciplinary policies with dialogue and accountability, reducing the risk of criminalization for minor infractions (Morrison & Vaandering, 2012). In correctional settings, education becomes a core restorative practice that supports rehabilitation and reintegration. This framework provides a lens to analyse how education can function as a tool of restoration in both classrooms and courtrooms.

Critical Pedagogy

Paulo Freire's notion of critical pedagogy views education as a site of either emancipation or oppression, depending on whether it empowers learners to question and transform their realities or merely reproduces dominant ideologies (Freire, 1970). In the context of criminal justice reform, critical pedagogy underscores the transformative potential of prison education and juvenile rehabilitation programs. It also problematizes schooling practices that silence marginalized voices, making them complicit in cycles of exclusion and criminalization.

Rights-Based Approach

Finally, a rights-based approach situates education as a fundamental human right intertwined with the right to dignity and justice (Sen, 2009; United Nations, 1948). In India, this perspective is reflected in the Right to Education Act (2009), which guarantees free and compulsory education, and in the Juvenile Justice Act (2015), which mandates rehabilitation and reintegration through education. By framing education as both a preventive and reformative right, the rights-based approach bridges policy commitments with ethical imperatives, underscoring the need for an integrated equity framework that connects pedagogy and justice. Together, these frameworks allow this paper to analyze the classroom–courtroom nexus in India as a dynamic space where exclusion and opportunity, punishment and rehabilitation, oppression and emancipation intersect.

Education as Prevention: The School-to-Prison Pipeline in the Indian Context

The metaphor of the "school-to-prison pipeline" has become a powerful framework for understanding how educational policies and practices can funnel marginalized students from classrooms into criminal justice systems. Originally conceptualized in the United States to critique zero-tolerance disciplinary measures, racial disproportionality in school punishments, and the overrepresentation of minorities in prisons (Skiba et al., 2002), the framework resonates in India in distinct ways. While India does not explicitly use the term, many systemic practices within schools reproduce vulnerability and exclusion, creating trajectories that increase the likelihood of young people, particularly from marginalized communities, entering the juvenile justice system.

Zero-tolerance and punitive discipline in schools

Globally, research has shown that zero-tolerance policies, where minor infractions result in suspensions, expulsions, or police referrals, contribute significantly to student criminalization (Kupchik, 2010). In India, although formal zero-tolerance regimes are less prevalent, punitive discipline remains embedded in educational practice. Corporal punishment, despite being legally prohibited under the Right to Education Act (2009), continues in many schools, disproportionately affecting children from Dalit, Adivasi, and economically disadvantaged backgrounds (Nair, 2005). Harsh disciplinary practices often alienate students rather than reintegrating them, leading to disengagement, absenteeism, and eventual dropout. This creates a pathway in which disciplinary exclusion functions as a precursor to social exclusion, increasing contact with law enforcement systems.

Language, caste, and economic exclusion as hidden drivers of criminalization

Beyond formal discipline, structural inequities within Indian classrooms, particularly those linked to language, caste, and poverty, act as hidden drivers of exclusion. Schools that prioritize dominant languages such as English or Hindi often marginalize children who speak tribal or regional languages, diminishing their sense of belonging and success (Kisana, 2020). Similarly, caste-based discrimination persists in subtle and overt forms, with Dalit and Adivasi children often stereotyped as "troublesome" or "unfit," reinforcing stigmatization that may follow them into encounters with the justice system (Shah, 2001). Economic deprivation compounds these disadvantages: inadequate resources, irregular attendance, and poor performance create cycles where marginalized children are labelled as failures or delinquents rather than supported as learners. These exclusionary dynamics in the classroom mirror the biases that mark India's criminal justice system.

Dropout rates, child labor, and pathways into juvenile delinquency

One of the most direct links between education and criminalization in India lies in the high rates of school dropout. According to the Ministry of Education's Unified District Information System for Education (UDISE, 2021–22), dropout rates remain significant at the secondary level, particularly among Scheduled Castes, Scheduled Tribes, and economically disadvantaged groups. Dropouts often face limited livelihood opportunities and are more vulnerable to child labor, trafficking, or petty criminal activity (Saxena, 2005). Juvenile Crime Statistics from the National Crime Records Bureau (NCRB, 2022) confirm that a majority of juveniles in conflict with the law come from families with low educational attainment or high dropout histories. Thus, the absence of sustained educational engagement emerges as a strong predictor of juvenile delinquency, making school retention a crucial preventive tool.

Comparative global scholarship vs. Indian realities

The Indian case also invites comparison with global scholarship on the school-to-prison pipeline. In the United States, studies highlight the disproportionate targeting of Black and Latino students under punitive policies (Wald & Losen, 2003), while in the UK, exclusionary practices disproportionately affect working-class and minority ethnic youth (Gillborn, 2008). While India shares similarities in the overrepresentation of marginalized communities, its dynamics are further complicated by caste, tribal identities, and language hierarchies. Unlike Western contexts, where school policing and surveillance are central concerns, in India, the drivers are structural inequities and systemic neglect rather than overt criminalization within schools. This suggests that while the metaphor of the "pipeline" is instructive, Indian realities demand a contextualized interpretation that centers caste, class, language, and regional disparities. In sum, schools in India can either serve as protective spaces that reduce vulnerability to criminalization or as sites of exclusion that exacerbate it. Understanding the school-to-prison pipeline in the Indian context highlights the urgent need for equity-oriented educational reforms that treat prevention not as an external law-and-order measure but as an intrinsic function of inclusive schooling.

Education within Criminal Justice Reform

While exclusion from education often accelerates pathways into criminalization, access to education within the justice system can become a powerful instrument of rehabilitation and social reintegration. Globally and within India, criminal justice reforms increasingly recognize that incarceration without education reinforces cycles of marginalization, whereas providing literacy, skills, and critical learning opportunities can reduce recidivism and foster equity.

Juvenile Justice Act: role of education in rehabilitation

The Juvenile Justice (Care and Protection of Children) Act, 2015, places a strong emphasis on education as a rehabilitative tool for children in conflict with the law. The Act mandates that juveniles should not merely be punished but must be provided opportunities for reformation through access to schooling, vocational training, and counselling (Choudhury, 2016). Juvenile Justice Boards and Child Care Institutions thus serve as spaces where education becomes central to rehabilitation rather than peripheral. However, in practice, resource constraints and uneven implementation often mean that the rehabilitative mandate is weakly fulfilled, with many children exiting institutions without meaningful educational gains (Sharma, 2020). Nevertheless, the Act's provisions mark an important shift from punitive to reformative orientations.

Prison education programs in India: literacy, vocational training, and higher education

Adult prisons in India have also increasingly integrated education as part of correctional reform. Several states run prison schools that provide basic literacy and numeracy programs, vocational training (such as tailoring, carpentry, and agriculture), and in some cases, access to secondary and higher education (Rao, 2018). The National Institute of Open Schooling (NIOS) and Indira Gandhi National Open University (IGNOU) have collaborated with prison departments to offer continuing education programs, allowing incarcerated individuals to pursue academic qualifications (Chaurasia, 2021). Evaluations suggest that such initiatives not only improve employability but also enhance self-esteem and reduce disciplinary infractions within prisons. Still, participation remains limited, with infrastructural deficits and stigma continuing to hinder scalability.

Comparative evidence: Scandinavian models, U.S. prison education reforms, etc.

Comparative international experiences demonstrate that robust prison education programs significantly reduce recidivism. Scandinavian countries such as Norway and Denmark adopt a

“normalization” model, where prison education mirrors mainstream schooling, with curricula tailored to inmates’ needs (Pratt, 2008). This reflects a belief that education fosters reintegration into society rather than perpetuating cycles of exclusion. In the United States, despite a punitive tradition, reforms such as the Second Chance Pell Program have expanded access to higher education in prisons, showing measurable reductions in reoffending (Davis et al., 2013). These global examples illustrate how education, when structurally embedded in correctional systems, can shift criminal justice from retribution to rehabilitation.

Digital education and open universities in correctional settings

The digital revolution is reshaping the possibilities of prison education. In India, partnerships with open universities like IGNOU have increasingly leveraged digital platforms to offer distance education within correctional settings (IGNOU, 2022). Pilot projects involving e-learning modules, video lectures, and secure digital classrooms allow inmates to overcome the limitations of in-person instruction. Such programs also align with the National Education Policy 2020’s vision of technology-enabled learning and inclusivity. Yet challenges remain, including limited digital infrastructure, security concerns, and uneven digital literacy among inmates (Kumar, 2021). Despite these constraints, digital education offers a transformative pathway for democratizing access to knowledge and aligning prison education with 21st-century skills.

In sum, embedding education within criminal justice reform is not merely an act of benevolence but a structural necessity for equity and rehabilitation. From the Juvenile Justice Act to prison education programs and digital innovations, the trajectory suggests a slow but significant recognition of education as a right and a reformative tool. Comparative evidence further underscores that where education is prioritized, criminal justice systems are more humane, effective, and socially restorative.

Policy Intersections in India

The intersections between education and criminal justice reforms in India become most visible when examining policy frameworks. While education policies emphasize universal access, inclusion, and equity, criminal justice policies aim at discipline, rehabilitation, and reintegration. The challenge lies in harmonizing these agendas so that children and adults in conflict with the law are not treated as marginal to educational rights but as central subjects of policy concern.

Right to Education (2009) and its implications for juvenile/at-risk children

The Right of Children to Free and Compulsory Education Act, 2009 (RTE Act), established education as a fundamental right for children aged 6 to 14 years. Although not explicitly framed in terms of criminal justice, its mandate has direct implications for juvenile and at-risk populations. Ensuring enrolment, preventing dropouts, and prohibiting corporal punishment address many of the structural drivers of criminalization (Ramachandran, 2015). Yet, implementation gaps remain stark: many children in observation homes or from marginalized communities fall through the cracks, with limited monitoring of their access to quality education (Srivastava, 2019). Thus, while the RTE offers a preventive framework, its lack of integration with juvenile justice systems limits its transformative potential.

National Education Policy (2020): inclusion, equity, and second-chance education

The National Education Policy (NEP) 2020 expands the equity agenda by emphasizing inclusion of disadvantaged groups, reducing dropout rates, and creating flexible learning pathways. It's called for “second-chance education” for school dropouts and non-traditional learners is particularly relevant for children and youth who intersect with the juvenile justice system (NEP, 2020). The policy also highlights vocational education and digital learning, which could be extended into correctional spaces to support rehabilitation. However, the NEP stops short of explicitly connecting its equity vision to criminal justice, leaving the task of integration to state governments and correctional institutions.

Correctional reforms, prison modernization, and rehabilitation policy

Parallel to education policy, India’s correctional reform initiatives, including the Model Prison Manual (2016) and ongoing prison modernization schemes, emphasize rehabilitation and re-socialization. Education, skill training, and cultural activities are integral components of these frameworks (Bedi, 2016). The Model Prison Manual explicitly recommends collaborations with open universities and vocational institutes, recognizing that reintegration requires both literacy and employable skills. Yet, the prison system’s chronic underfunding, overcrowding, and punitive culture often undermine the rehabilitative vision, making education a low-priority intervention rather than a systemic right (Human Rights Watch, 2017).

Where policies converge and where they conflict

The convergence of education and criminal justice policy in India lies in their shared rhetoric of equity, inclusion, and rehabilitation. Both the RTE and NEP underscore the importance of universal access and second chances, while correctional reforms emphasize education as a tool of dignity and reintegration. However, conflicts emerge in practice. While education policies are rights-based, justice policies often remain control-oriented, treating education as an add-on rather than a legal entitlement for incarcerated or at-risk populations. Moreover, jurisdictional silos, where education ministries and prison departments operate independently, limit coordination. Without structural mechanisms to ensure policy convergence, the promise of equity remains unfulfilled. In essence, India's policy landscape contains strong normative commitments to equity and rehabilitation, but operational divides hinder their realization. Bridging these silos is not merely a technical matter of coordination but a political question of whether the state views marginalized children and incarcerated individuals as rights-bearing citizens or as expendable subjects.

Equity and Identity in the Classroom–Courtroom Nexus

The intersections of education and criminal justice in India cannot be understood without engaging with the social structures that shape exclusion and vulnerability. Classrooms and courtrooms alike are not neutral spaces; they reflect and reproduce hierarchies of caste, language, gender, and region. Examining these axes of identity reveals how certain populations are disproportionately pushed toward criminalization, while others access protections and privileges.

Caste continues to play a defining role in shaping educational experiences and criminal justice outcomes in India. Dalit and Adivasi children frequently face stigma in schools, including segregation, teacher bias, and denial of equal participation (Nambissan, 2009). These exclusions often intersect with language hierarchies, where children whose mother tongues are tribal or regional languages struggle in classrooms dominated by Hindi or English (Mohanty, 2010). Such linguistic marginalization undermines self-esteem, increases dropout risks, and creates vulnerabilities that echo in the justice system. Data from the National Crime Records Bureau (2022) reveal a disproportionate representation of Scheduled Castes and Scheduled Tribes among juveniles in conflict with the law, underscoring how classroom inequities map onto courtroom disparities.

Although the majority of juveniles in conflict with the law are boys, the experiences of girls highlight unique intersections of gender, education, and justice. Girls often encounter layered vulnerabilities: school dropout due to child marriage, domestic responsibilities, or gender-based

violence increases their susceptibility to trafficking, exploitation, and criminalization (UNICEF, 2019). Education serves as a protective factor, with studies showing that access to secondary education reduces early marriage and enhances girls' agency (Jha & Jhingran, 2002). Yet, when girls do come into contact with the justice system, rehabilitative educational opportunities are often weaker than those provided to boys, reflecting systemic gender bias in both educational and correctional institutions (Kumar & Rai, 2020).

Regional and tribal contexts further complicate the classroom-courtroom nexus. In states such as Jharkhand, Chhattisgarh, and parts of the Northeast, tribal children face not only linguistic and cultural exclusion in schools but also securitized state responses that criminalize their communities (Shah, 2018). In conflict-affected regions, schools are often militarized spaces, and children may be caught between state forces and insurgent groups, blurring the line between education and surveillance. For Adivasi children, displacement from land and lack of culturally responsive schooling increase dropout risks and create pathways into exploitative labor or justice systems (Xaxa, 2020). The justice system, in turn, frequently fails to account for the structural disadvantages faced by these groups, treating criminality as individual deviance rather than a product of systemic exclusion.

In sum, the classroom-courtroom nexus is deeply mediated by identity. Caste, language, gender, and region not only determine access to quality education but also shape one's likelihood of criminalization or rehabilitation. Recognizing these inequities is essential for envisioning reforms that move beyond universalist rhetoric to address the lived realities of India's most marginalized populations.

Case Studies / Illustrations

Case studies provide concrete illustrations of how education intersects with criminal justice reform in India, highlighting both the possibilities and limitations of policy on the ground. These examples also reveal the transformative role of education in correctional settings and its potential in reducing reoffending.

State/NGO initiative providing education in correctional settings

One widely cited example is the partnership between Indira Gandhi National Open University (IGNOU) and prison departments across India. Since the early 1990s, IGNOU has provided incarcerated individuals with opportunities to pursue higher education, from certificate courses to postgraduate programs. According to IGNOU's Prison Education Report (2022), over 35,000

inmates have enrolled in various programs, with states like Tihar (Delhi) and Yerwada (Maharashtra) becoming flagship centers. NGO collaborations such as those by Prayas (TISS initiative) further support vocational training, life skills, and post-release rehabilitation (Jain, 2019). Evaluations show that such programs improve inmates' self-confidence and job prospects, thereby reducing recidivism rates.

Juvenile reform homes: successes and failures

Juvenile Justice Boards and Child Care Institutions (CCIs) are meant to integrate education into rehabilitative care. The Observation Home for Boys in Delhi introduced regular schooling with support from the Delhi Education Department and NGOs like Salaam Baalak Trust (Kumar, 2018). While some juveniles were successfully reintegrated into mainstream education, systemic challenges persisted: overcrowding, a shortage of teachers, and a lack of vocational linkages limited long-term impact. In Jharkhand, a study by Singh and Ghosh (2020) revealed that while reform homes offered basic literacy, most failed to provide sustained academic or skill-based opportunities, leading many juveniles to return to vulnerable circumstances upon release. This underlines the gap between legal mandates and institutional realities.

Educational interventions preventing re-offending

The Tihar Jail education and vocational program stands out as a success story. Inmates enrolled in NIOS and IGNOU programs, coupled with vocational training in bakery, carpentry, and computer skills, have shown lower reoffending rates compared to national averages (Bhatia, 2016). Former inmates trained under the Tihar bakery program have successfully established livelihoods post-release, providing anecdotal evidence of education's role in reintegration. Similarly, a pilot project in Kerala prisons that used digital literacy training reported high participation and positive outcomes, with many inmates using acquired skills in post-release employment (Joseph, 2021). These examples echo global findings that access to education is one of the strongest predictors of reduced recidivism (Davis et al., 2013).

Together, these illustrations highlight both promise and limitation. While state-NGO partnerships and innovative prison education initiatives show measurable benefits, juvenile institutions often lag behind, constrained by systemic neglect. The case studies suggest that when educational opportunities are structured, sustained, and linked to livelihood pathways, they significantly enhance rehabilitation and reduce cycles of reoffending.

Discussion

The preceding sections demonstrate that education operates at two critical junctures in the criminal justice landscape: as a preventive tool in the classroom and as a reformative mechanism in the courtroom. Yet, despite strong normative commitments in policy and promising initiatives, systemic gaps and tensions persist.

Education as both preventive and reformative

On the preventive side, schools function as early arenas where inclusion or exclusion is determined. As the analysis of the "school-to-prison pipeline" in India reveals, disciplinary practices, language hierarchies, and structural inequities can increase the likelihood of children, particularly from marginalized communities, entering the justice system (Skiba et al., 2002; Mohanty, 2010). Conversely, inclusive schooling, dropout prevention, and equitable pedagogy can disrupt these trajectories. On the reformative side, education in correctional settings, whether through literacy programs, vocational training, or higher education, has consistently been shown to reduce recidivism and improve reintegration outcomes (Davis et al., 2013; Bhatia, 2016). Thus, education is uniquely positioned to serve as both a preventive intervention and a rehabilitative tool, bridging the gap between classroom and courtroom.

Gaps in current policy and practice

Despite these possibilities, substantial gaps remain in India's education-justice nexus. Policies such as the Right to Education Act (2009) and National Education Policy (2020) contain strong equity mandates but rarely engage explicitly with at-risk or incarcerated populations (Ramachandran, 2015). Juvenile institutions, though mandated to provide schooling, often lack adequate teachers, infrastructure, and monitoring, resulting in perfunctory programs (Sharma, 2020). Prison education initiatives, while innovative, remain unevenly distributed, benefiting some states (e.g., Delhi, Kerala) more than others (Jain, 2019). Moreover, digital education initiatives are still at a pilot stage, hindered by infrastructural and security limitations (Kumar, 2021). This fragmented approach reflects a deeper structural problem: education and justice policies operate in silos, with limited cross-ministerial coordination.

The tension between punitive vs. rehabilitative approaches

Underlying these gaps is a fundamental tension between punitive and rehabilitative orientations. Education, by its very nature, is rehabilitative and emancipatory, yet much of India's justice system

remains embedded in punitive logics, overcrowded prisons, underfunded juvenile homes, and surveillance-oriented school practices (Human Rights Watch, 2017; Shah, 2018). While the Juvenile Justice Act and Model Prison Manual envision rehabilitation, everyday practices often prioritize control and discipline over empowerment. This tension undermines the transformative potential of education, reducing it to a peripheral activity rather than a central pillar of justice reform. Bridging this divide requires a paradigm shift: treating incarcerated or at-risk populations not as objects of control but as rights-bearing citizens entitled to equitable education. In sum, education occupies a dual role in shaping India's justice trajectory, but systemic silos and punitive legacies limit its effectiveness. A robust integration of education into both preventive and reformative strategies is necessary to move toward an equity-centered reform agenda.

Way Forward

The exploration of education and criminal justice in India reveals that classrooms and courtrooms are not isolated domains but mirror each other in their struggles with equity, discipline, and reform. Classrooms can become spaces of empowerment or exclusion, just as courtrooms can tilt toward rehabilitation or punishment. Together, they form a continuum where the denial of educational opportunity often translates into heightened vulnerability to criminalization, while meaningful access to education within correctional systems offers pathways to dignity and reintegration. This shared terrain underscores the urgency of integrating educational and criminal justice reform agendas.

Firstly, preventive interventions must begin in classrooms by addressing structural inequities such as caste-based discrimination, language hierarchies, and gender exclusion. Schools should move away from punitive, zero-tolerance models toward restorative practices that emphasize dialogue, conflict resolution, and inclusion (Braithwaite, 2002; Skiba et al., 2002). Embedding critical pedagogy (Freire, 1970/2000) within curricula can foster resilience and empower students to challenge systemic marginalization. Secondly, within correctional settings, education must be seen not as an optional add-on but as a central pillar of rehabilitation. Scaling up literacy programs, vocational training, higher education opportunities, and digital access can help incarcerated individuals reintegrate successfully into society (Davis et al., 2013; Bhatia, 2016). Models from Scandinavia, where prison education is integrated into broader welfare systems, offer valuable lessons for India's reform trajectory.

Thirdly, a key policy challenge remains the siloed operation of education and justice frameworks. Coordination between the Ministry of Education, the Ministry of Women and Child Development,

and the Ministry of Home Affairs is necessary to ensure continuity of educational rights for at-risk children and incarcerated individuals. Embedding education explicitly into correctional and juvenile justice reforms and vice versa would create a common equity framework where the right to education and the right to dignity intersect (UNESCO, 2021). Finally, moving forward requires an interdisciplinary approach that brings together educators, criminologists, policymakers, social workers, and community actors. Research should explore the lived experiences of children in conflict with the law, the effectiveness of prison education programs, and innovative digital models that bridge classroom and correctional settings. A sustained dialogue across these domains can help India reimagine education not just as preparation for employment but as a tool of justice and social transformation. In conclusion, the classroom and the courtroom are deeply intertwined sites where India's equity project is contested and realized. Reimagining their intersections through restorative, rehabilitative, and rights-based education holds the potential to transform exclusionary cycles into pathways of empowerment and justice.

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CHAPTER- 3

A NECESSITY FOR VICTIM-CENTRED JUSTICE AND EXPEDITED TRIALS: A CRITICAL PATHWAY TO HOLISTIC CRIMINAL JUSTICE REFORM.

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Abstract:

Effective criminal justice reform requires an ontological framing of victim-centred justice, underscoring the primacy of victims' rights and the imperative for timely judicial redress through expedited trial processes. Victim-centred justice is an approach that prioritizes the needs of victims rather than a retributive process, ensuring they receive their rights and the support they require from the justice system. This paper critically examines the victim justice system in contrast to traditional criminal justice models, identifying the specific rights and needs of victims from an ontological perspective. Employing a positivist paradigm and descriptive analysis, the study utilises secondary data from research publications, National Crime Records Bureau (NCRB) reports (2022), and court records (2025) to reveal prevailing trends. Through the lens of critical victimology, the findings demonstrate that protracted trial delays cause significant emotional and psychological distress to victims, often leading to the marginalisation of their experiences within the justice process. This research fills a notable gap by foregrounding victims' perspectives and advocating comprehensive policy reform for expedited trials, ultimately supporting the development of a justice system that better respects and prioritises victims' voices throughout legal proceedings. This paper seeks to emphasize the importance of expedited trials and how a victim-centred approach to justice can significantly benefit victims in their quest for justice. By examining the findings through the framework of critical victimology, it highlights the necessity for transformative changes within the entire justice system.

Keywords: *Victim-centred justice system, Ontological framing, Expedited trial, Critical victimology.*

Conceptualizing the victim-centred justice system in Indian law:

"Victim" refers to a person who has suffered any loss or injury due to the actions or omissions of the accused. This term also includes the guardian or legal heir of such a victim **(BNSS 2023).** The victim-centred approach places the rights and dignity of victims at the forefront, prioritising their well-being and safety in all efforts to prevent and address sexual exploitation, abuse, and harassment, irrespective of the alleged perpetrator's affiliation (Das, 2023) . This approach is grounded in victims' fundamental rights and is guided by a set of core principles. It advocates for a systematic engagement with victims from when allegations are made and throughout all subsequent interactions. Effective implementation of this approach necessitates the empathetic and individualised delivery of continuous, reliable services in a non-judgmental and non-discriminatory manner**.** (*Victims Rights First | United Nations*, n.d.)[1] The Indian criminal justice system has traditionally prioritised the punishment of offenders over delivering justice to victims. This shift prompts two essential arguments for reconsideration. The first argument is retributive, positing that punishing offenders honours the victim's moral status. Failure to impose punishment diminishes the victim's dignity, providing a compelling rationale for holding offenders accountable. The second argument is conventional or epistemic, suggesting that victims feel recognised only when the state implements punishment. Consequently, even if this justification is conventional, acknowledging the victim's moral status offers the state a valid reason to ensure that offenders are punished**..** (Billis et al., 2023) From the traditional paradigm, where the justice system focused on offenders, shifting towards a victim-centred justice system is not as easy as we think. While Indian law has made considerable strides in promoting equality and personal liberty, particularly through the constitutional guarantees outlined in Articles 14 and 21, these efforts have also supported victim protection. Over time, specific laws and initiatives have been introduced to place victims at the heart of the justice system. (Yadav, 2024).

A significant development in this regard was the establishment of compensation schemes for victims, notably through Section 357A of the Criminal Procedure Code. This provision provides financial assistance to victims, helping them cope with their suffering and losses. Furthermore, important legislation such as the Protection of Children from Sexual Offences (POCSO) Act, the Domestic Violence Act, and the SC/ST (Prevention of Atrocities) Act includes measures aimed at ensuring victim safety and support. Additionally, the courts have issued several landmark

[1] *Victims Rights First | United Nations*. (n.d.). Retrieved September 5, 2025, from https://www.un.org/en/victims-rights-first

judgments that uphold the principles of fairness for victims and ensure they receive appropriate relief**.** (*Evolution And Development Of Victim Protection Laws In India: An Analysis*, n.d.)[2]

Victim-centric reforms in the Indian criminal justice system generally focus on three key rights: participatory rights, the right to information, and the right to compensation for the harm suffered. In the current context, implementing the Bhartiya Nagarik Suraksha Sanhita has brought about significant changes in the justice system. One prominent change is renaming the Indian Penal Code to "Bhartiya Nyaya Sanhita." This shift places emphasis on "Nyaya" (Justice) rather than "Danda" (Punishment), highlighting the goal of delivering justice instead of merely penalizing offenders. Furthermore, the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS), introduces victim compensation schemes under Sections 357 and 357A. Section 357 enables courts to mandate compensation from the fines imposed on offenders, while Section 357A requires state governments to develop comprehensive victim compensation schemes in collaboration with Legal Services Authorities..(Bodkhe & Ll, 2025).

Despite ongoing efforts to enhance its effectiveness, the justice system continues to fall short in meeting the profound needs of victims. Every crime leaves a trail of pain, inflicting emotional, psychological, and physical harm that demands redress. It is crucial that the justice system works swiftly to heal these wounds, ensuring that victims emerge from the judicial process not just with a sense of resolution but with restored financial stability, emotional well-being, psychological resilience, and physical safety.

This study utilises a positivist research paradigm to explore victims' experiences within the criminal justice system, specifically focusing on the effects of trial delays. By employing a descriptive research design, it analyses secondary data to identify patterns related to victim justice and streamlined trial processes. Data is collected from three primary sources: National Crime Records Bureau (NCRB) statistics, court records pertaining to trial durations and outcomes, and peer-reviewed academic publications concerning victim rights. Quantitative data from the NCRB and court records are evaluated using descriptive statistical analysis to determine average trial lengths and identify patterns of delays. In addition, qualitative insights from the literature are analysed by manual thematic analysis to gain a deeper understanding of the psychological impacts on victims. The study employs the framework of critical victimology to underscore the centrality of victims and examine how systemic delays exacerbate their vulnerabilities.

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[2] *Evolution And Development Of Victim Protection Laws In India: An Analysis*. (n.d.). Retrieved September 5, 2025, from https://www.ijllr.com/post/evolution-and-development-of-victim-protection-laws-in-india-an-analysis.

Rights of victims: The rights of victims in the traditional criminal justice system were often limited to those of mere witnesses. Victims were frequently regarded as witnesses rather than as essential stakeholders in the process (Srivastava et al., n.d.) . However, over time, the justice system has evolved its approach and made significant strides in enhancing victim rights. Under section 18(8) of the BNSS (which corresponds to section 24(8) of the Cr.P.C), a victim has the right to engage an advocate to assist in the prosecution. However, the advocate's role is generally limited to presenting written arguments after the evidence has been recorded, unless the court grants permission for additional involvement. When filing the First Information Report (FIR) under section 173 of the BNSS (which corresponds to section 154 of the Cr.P.C), the victim is entitled to receive a free copy of the recorded information immediately. For offences outlined in sections 64 to 71, 74 to 79, and 124 of the BNSS, the victim's statement must be recorded by a female police officer. If the victim has a temporary or permanent mental or physical disability, their statement should be recorded at their residence or another convenient location, with an interpreter or special educator present to assist. (Topic: Victimology And Compensation SESSION-III PAPER PRESENTATION ON THE TOPIC OF VICTIMOLOGY AND COMPENSATION, 2024). Victims can also provide information electronically, which must be recorded by police upon signature within three days. If police refuse to record such information, victims can escalate the issue to the Superintendent of Police, and if still unresolved, apply to the Magistrate.

If the police file a final report closing a case, the victim must be notified about the closure. (*RIGHTS OF VICTIMS UNDER BNSS,2023 - Law Drishti*, n.d.)

Article 39(A) ensures that victims have access to free legal aid, preventing anyone from being denied justice due to a lack of adequate legal support. With the implementation of the BNSS, additional support mechanisms have been introduced to further reinforce the rights of victims. For instance, no case can be withdrawn without notifying the victim, and the Zero FIR provision enables victims to file a complaint at any police station, irrespective of geographical location. (Bodkhe & Ll, 2025).

Moreover, the rights to information, participation, appeal, compensation, and protection are fundamental rights guaranteed by the Indian justice system**.** (Muralidhan, 2004).

Needs of victims: The needs of crime victims vary widely based on individual circumstances and the nature of the crime. Victims may require a multitude of support services, including physical, financial, psychological, emotional, and legal assistance**.** (ICJIA | Illinois Criminal Justice Information Authority, 2017).

While the justice system tends to focus primarily on providing financial compensation, this is not the sole requirement for victims. Immediate medical attention and access to counselling services are often critical. Psychological and emotional support are especially important for those who do engage with the court system. (McCart et al., 2010a)

It is also vital to consider the needs of victims who are unable to access the court. These individuals may require legal assistance to file a First Information Report (FIR) and navigate the judicial process. Additionally, they could be at risk of threats from their offenders, highlighting the importance of safety and protection in their support needs. (Crime Against Women & Children-A National Level Model For Victim Support & Assistance System (One Stop Centres), 2023).[3]

The criminal justice system frequently perceives punishment as a pathway toward healing for victims. Yet, in many instances, victims may not seek or desire the punishment of the offenders. Instead, their needs often revolve around compensation or restitution, which, regrettably, may not suffice to alleviate their suffering. It is crucial for the justice system to shift its focus to a victim-centric perspective.

While imposing punishment and offering compensation are essential initial measures to mitigate the trauma of victimization, these actions may not fully address the complex emotional and psychological needs of the victims. The experiences of victims are diverse and multifaceted, reflecting a wide range of emotions from anger and grief to a yearning for closure. Therefore, it is vital to gain a deep understanding of each individual's situation, recognizing that their needs are often varied and unique. By doing so, we can implement more effective support systems that truly resonate with victims and promote their healing journey.

Delay in trials: “Justice delayed is justice denied” According to data from the NCRB, a staggering 75.8% of the prison population comprises under-trial inmates. (India | World Prison Brief, 2022). This figure underscores the significant delays plaguing the justice system. Several factors contribute to the slow disposal of cases, including long-standing vacancies in the courts, insufficient infrastructure, frequent adjournments, and the mindset of litigants.

In her paper, "India’s Criminal Justice System: An Example of Justice Delayed, Justice Denied," Vrinda Bhandari outlines three primary reasons for these delays.

[3] *Crime Against Women & Children-A National Level Model For Victim Support & Assistance System (One Stop Centres)*. (n.d.).

obstruct access to the courts, particularly for individuals residing in remote areas. Many face arduous journeys only to find their cases postponed. Second, ‘internal factors’ relate to the complex procedures that affect all litigants but pose a particular disadvantage to those with limited resources. Lastly, ‘quality factors’ arise from inconsistent application of the law and arbitrary sentencing, disproportionately affecting poorer individuals during processes involving arrest, bail, and sentencing, including potential death penalty cases**.** (Shukla, 2020).

As per the most recent data on judicial pendency in India, the Supreme Court currently has over 86,700 cases pending, with only 5% of criminal cases resolved within one year. High Courts are facing more than 300,000 pending cases, with just 3% of criminal cases disposed of annually. District and Subordinate Courts carry the heaviest load, with over 60 million cases pending, which constitutes 90% of the total backlog. Of these, only 6% of criminal cases and 7% of civil cases are resolved within a year. Alarmingly, nearly 20% of civil cases in district courts have been pending for over five years, illustrating significant delays in these lower courts that handle the majority of civil disputes. These figures collectively indicate an unsustainable backlog exceeding 50 million cases across all court levels, placing substantial pressure on India’s justice delivery system and adversely affecting millions of litigants who face prolonged wait times for resolution and justice. (Timely Justice and the Crisis of Judicial Delays in India - JICE IAS, 2025).

Expedited trial as legal recognition: National judicial data grid shows that over 6.3 million cases are pending in high courts, and 87 thousand cases are pending in the Supreme Court. (NJDG-National Judicial Data Grid, 2025). The traditional justice system has struggled to address systemic delays in courts, creating significant burdens for victims and the justice system as a whole. Various factors contribute to these delays, and it is the responsibility of the justice system to identify and address them (Das, 2023). Initiatives from the BNSS focusing on a victim-centred approach could help mitigate these issues. Key measures such as establishing timelines for investigations and trials, leveraging technological advancements, utilising video conferencing for trials, digitally recording evidence, and reforming bail procedures represent positive steps forward. However, the implementation of these initiatives ultimately rests with law enforcement and justice system officials. The effectiveness of these reforms will be crucial in rebuilding public trust and confidence in the justice system**.** (Sharma, 2023; Yadav, 2024). The expedited trial process helps victims achieve justice quickly and supports those wrongfully arrested. Article 21 protects individuals from being deprived of life or liberty without a lawful, "reasonable, fair, and just" procedure. If this standard is not met, individuals can challenge their detention. A legal procedure is

only considered fair if it guarantees a timely trial to determine guilt. Thus, the right to a speedy trial is essential to the fundamental right to life and liberty outlined in Article 21.(Kamal & Arya, 2016).
The justice system upholds a fundamental principle: "It is acceptable if a hundred criminals escape, but not even one innocent person should be punished." This belief emphasizes the sanctity of individual rights; however, it also highlights a critical flaw in the system when it comes to the identification and prosecution of offenders.
To truly serve justice, our processes for locating criminals must be enhanced. Investigations need to be meticulously conducted, ensuring that every piece of evidence is properly gathered and analyzed, and that witnesses are thoroughly interrogated to provide reliable testimonies. Sadly, this noble principle is being manipulated by many offenders who exploit legal technicalities to prolong their trials, adding to the already heightened frustration surrounding the justice system.
This situation is far from trivial; victims surely deserve the right to swift justice. Yet, a disheartening number of individuals remain unaware that expedited trials are actually a fundamental right. Many are left with the grim belief that court cases will drag on for years, causing their hopes for justice to fade away.
While the justice system strives to advocate for victims in numerous instances, it is imperative that we acknowledge the urgent need for the legal recognition of expedited trials. Such considerations should be treated with the seriousness they deserve, ensuring that all individuals have access to timely justice.

Emotional and psychological experiences: The emotional and psychological trauma experienced by victims is beyond words. Not just financial and physical crisis is faced by victims, but more than the above victimisations, the psychological problems will be highly experienced by the victims.
Individuals who have experienced victimization, particularly from violent crime, are often at a greater risk of being victimized again in the future. It is important to provide information on how to reduce this risk and address the likelihood of revictimization. I recommend taking specific actions when facing intimidation and concerns about future harm. Ensuring physical, emotional, and psychological safety is crucial for victims in the aftermath of a crime.(Oudekerk & Truman, 2017).
Emotional experiences such as fear, shyness, and shame are also important in this context, but in many instances, these are not even considered as a form of victimisation. And crime victims are highly likely to experience post-traumatic stress disorder and anxiety in their lives**.** (McCart et al., 2010b) Although every victim is different, there are some homogeneous responses among them,

such as Shock, numbness, denial, disbelief, anger, confusion, and guilt.(Typical Responses After A Crime? - Victim Support Services, 2025). Crime can have significant emotional and psychological effects on victims, including fear, anger, and sadness. Many may develop issues like anxiety, depression, and post-traumatic stress disorder (PTSD), with these effects lingering long after the incident. Victims often experience social consequences, such as isolation and stigma, feeling ashamed and withdrawing from activities and relationships. Negative attitudes from others can exacerbate their distress and further entrench their sense of isolation. (Sara Thomas et al., 2023). After an event, individuals may experience a variety of physical symptoms. These can include injuries from physical violence, as well as psychological effects that manifest as physical ailments, such as headaches, stomach aches, or an increased frequency of illnesses. Behavioural changes are also common. Victimisation may lead to heightened aggression, hyperactivity, hyperarousal, and difficulties with maintaining focus. Some victims may become withdrawn, while others might exhibit avoidant behaviours or develop a reliance on drugs or alcohol.(*Victimization Consequences, Levels of Impact & Examples - Lesson | Study.Com*, n.d.)

In this context, it is essential to recognize that trauma and PTSD can profoundly affect a victim's ability to communicate their experiences. Victims may not recall the details of the crime as an objective observer would. Their memory might obscure certain elements while retaining other aspects vividly. Consequently, they may find themselves contradicting their earlier statements when questioned about the events, due to traumatic memory loss or confusion. Additionally, victims may experience dissociation, which can hinder their capacity to fully express their needs or may only allow them to do so after a delay. (Daigle et al., 2010) . It is essential to offer victims immediate, compassionate, and impactful support services that honour their dignity and prioritise their emotional and physical recovery. By ensuring that they are treated with utmost respect, we can help restore their sense of safety and well-being in the aftermath of their experiences. (Crime Prevention & Criminal Justice Module 11 Key Issues: 2. The Impact of Crime, Including Trauma, 2019).[4]

Secondary victimisation: Secondary victimisation is defined as negative social or societal reactions that occur as a result of the primary victimisation. This experience is felt by the victim as a further violation of their legitimate rights or entitlements (Montada, 1994). When criminal

[4] *Crime Prevention & Criminal Justice Module 11 Key Issues: 2. The impact of crime, including trauma*. (n.d.). Retrieved September 7, 2025, from https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-11/key-issues/2--the-impact-of-crime-including-trauma.html

proceedings cause psychological harm to victims, this should be viewed as a serious and undesirable consequence of the criminal justice system, highlighting an instance of secondary victimisation. The findings suggest that these proceedings frequently contribute to secondary victimisation for the involved crime victims. In this study, secondary victimisation was evaluated by examining how victims perceived the effects of criminal proceedings on their coping abilities, self-esteem, confidence in the future, trust in the legal system, and belief in a just world. (Orth, 2002)

Secondary victimisation is a widely examined concept within the field of victimology, referring to the additional harm that victims experience from individuals and systems that are intended to provide support and assistance. This harm can manifest in various ways, including victim-blaming, neglecting their needs, or treating them disrespectfully. The factors that contribute to it, and its effects on victims. One significant source of secondary victimisation is the criminal justice system itself. Research indicates that victims of crime frequently feel re-victimised throughout the processes of reporting, investigation, and prosecution. They may encounter feelings of being ignored or disbelieved by law enforcement officers, experience pressure to drop charges or accept plea bargains, and undergo trauma during the trial process. (Ali & Yulia, 2023). The field research data carried out with women victims of domestic violence in the Municipality of Machados, where the great majority of the women who participated in the empirical research of this essay (90%) reported that they suffered some form of secondary victimization when they sought help from a civil police station to report the violence suffered, and of these victimized women, 37.7% were victims of two or more form of secondary victimisation(Dantas Pessoa, 2023).

Ontological necessity: From the perspectives of Critical victimology:

Critical victimology is a perspective within victimology that highlights the ways in which social structures, power imbalances, and institutional biases influence the experiences, perceptions, and recognition of crime victims. This approach critiques traditional victimology by promoting a shift away from assigning individual blame, instead focusing on the broader systemic and societal factors that affect victim recognition and support (R. I. Mawby & S. Walklate, 1994).

Through the lens of critical victimology, we can explore the complex issues regarding how the entire justice system contributes to the difficulties faced by victims. When an individual approaches the justice system in search of solace or redress for their grievances, their struggles cannot simply be brushed aside. It is the fundamental duty of the justice system to provide not only justice but also compassion and support for victims and vulnerable populations. To singularly blame one

segment of this intricate system would be an oversimplification; rather, it is essential that the entire framework operates cohesively and efficiently. Unfortunately, there are significant gaps that exist between the various branches of the justice system, including investigative, judicial, and correctional agencies. These gaps must be identified and addressed urgently to ensure that the pursuit of justice for victims is not impeded by systemic inefficiencies. Beginning with the investigation agency, where initial contact with the public occurs, it is imperative to foster an environment that is not only safe and secure but also enveloping in respect and dignity. Victims should feel encouraged to step forward and voice their complaints, rather than feeling apprehensive or vulnerable in the process. Additionally, while the justice system strives to deliver justice to victims, there is often a disproportionate focus on the punishment of offenders. Transitioning towards a restorative justice model represents a promising shift, yet actualising this concept in real-world scenarios remains a significant challenge. A critical gap persists in the psychological support afforded to victims by the justice system, a gap that must be bridged. A recent survey conducted at various One Stop Centres (OSCs) highlighted a pressing need for psycho-social counsellors. These centres are currently staffed with medical counsellors who competently fulfil their roles; however, it is crucial to acknowledge that their expertise may not adequately address the emotional and social dimensions of a victim's recovery journey. Thus, assigning psycho-social counsellors to OSCs is not just recommended but essential, as adopting a holistic psycho-social approach can yield transformative effects for those seeking assistance. (Crime Against Women & Children-A National Level Model For Victim Support & Assistance System (One Stop Centres), 2023).

The victim, undoubtedly the most vital stakeholder within the justice system, deserves to be prioritised. Their quest for justice should be met with efficiency, ensuring that resolutions are achieved without unnecessary delays, that their fundamental rights are safeguarded, and that the justice they are entitled to is realised. Any infringement on these fundamental rights must be treated with utmost seriousness, prompting decisive and timely actions. Furthermore, the duration of legal trials and proceedings must be scrutinised through the lens of speedy justice, ensuring that victims are not left languishing in a system that ultimately aims to serve them.

Conclusion:

The Victim-Centred approach is often advantageous for those involved in the criminal justice system. While this approach requires significant effort, patience, and time, genuinely practising it and prioritising the victim's best interests can help you earn their trust over time. Building this trust may enable you to uncover more details about the case, which can lead to better corroborative

evidence. (WHAT DOES VICTIM-CENTERED MEAN FOR CRIMINAL JUSTICE ACTORS?, 2015). A victim-centred justice system within Indian law represents a significant shift from a sole emphasis on punishing offenders to prioritising the rights and dignity of victims throughout the legal process. This approach emphasises the vital importance of delivering compassionate and non-discriminatory support that recognises the intrinsic moral worth of victims while actively promoting their ongoing well-being. By prioritizing the voices and experiences of those affected, the justice system cultivates a more equitable and humane legal environment. This is achieved through a proactive engagement with victims, attentively addressing their unique needs that are anchored in fundamental constitutional protections. Such an approach illuminates the essential role of acknowledging victims in the quest for true justice, ensuring that their experiences are validated and their rights upheld.

Limitations: The paper primarily draws from secondary data, deriving insights without the benefit of firsthand information from respondents. To enhance the richness and depth of future research, it would be immensely valuable to focus on the collection of primary data. This effort should include delving into the personal narratives and lived experiences of victims who have navigated the complexities of the justice system. By capturing their unique stories, researchers can gain a more nuanced understanding of the challenges they face and the emotional toll of their journeys, ultimately leading to a more comprehensive exploration of their realities.

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CHAPTER- 4

REHABILITATION OF WOMEN PRISONERS: POLICY GAPS AND GENDER JUSTICE

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Abstract

The rehabilitation of women prisoners remains a neglected dimension of criminal justice in India, where the prison system has traditionally been structured around male incarceration. This paper critically analyses the existing legal and policy framework on rehabilitation of women prisoners in India, with comparative references to international standards such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

The methodology combines doctrinal legal research with empirical data analysis, reviewing statutory provisions, case law, and government reports alongside secondary sources such as peer-reviewed journals and newspaper investigations. The findings reveal that women prisoners often belong to economically and socially marginalised backgrounds and suffer disproportionately from stigma, lack of family support, and post-release discrimination. The lack of policies tailored to the specific needs of female inmates in education, healthcare, skill development, and reintegration underscores the urgent need for reform.

The paper concludes by proposing a multi-layered model of rehabilitation based on restorative justice, community-based alternatives to incarceration, and gender-responsive prison administration. It recommends integrating international standards into domestic law, ensuring judicial monitoring of prison conditions, and designing schemes that address both the immediate needs of women prisoners and their long-term reintegration into society. Addressing these gaps is essential to move India's justice system from a punitive focus toward one that is rehabilitative and gender-responsive.

Introduction

The concept of justice within a modern democratic framework is not limited to the infliction of punishment but extends to the reformation of offenders. The Indian criminal justice system, however, remains heavily punitive, with limited institutional mechanisms for addressing the distinct needs of women prisoners. According to the National Crime Records Bureau (NCRB) Prison Statistics India 2022, women constitute around 4.1% of the total prison population, a small but significant demographic that requires specialised attention. Their experiences of incarceration differ fundamentally from those of men due to biological, psychological, and socio-cultural factors.[5]

Historically, prisons in India were designed with men in mind, both in terms of infrastructure and policy.[6] Having constitutional protections under Articles 14, 15(3), 21 and 39A (free legal aid)[7], and India's ratification of international treaties such as the CEDAW[8] and ICCPR[9], prison administration has not evolved sufficiently to accommodate the gender-specific concerns of female inmates.

The central problem lies not merely in the conditions of confinement but in the inadequate reformation mechanisms post-incarceration. Reintegration prepares prisoners for life after incarceration through healthcare, education, vocational training, counselling, and legal support. For women, this process is compounded by additional socio-economic and familial obstacles. Upon release, they face social stigma, broken family ties, and lack of economic independence.[10] The stigma is often more severe for women because patriarchal norms attach disproportionate shame to female criminality compared to male offenders.

The Supreme Court has repeatedly intervened in prison matters—for example, in Sheela Barse v Union of India[11]. Yet, post-incarceration support as a principle has received only peripheral attention. This study combines doctrinal analysis with statistical data to provide a comprehensive picture of gendered vulnerabilities in Indian prisons.

This article seeks to address the following core questions:

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[5] National Crime Records Bureau, *Prison Statistics India 2022* (Ministry of Home Affairs, Government of India 2023).
[6] B B Pande, '*Prison Reforms in India: Issues and Challenges*' (2017) 59(3) Journal of the Indian Law Institute 345
[7] Constitution of India 1950, arts 14, 15(3), 21, 39A.
[8] Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW).
[9] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).
[10] Shubhangi Bhatnagar, *The Gendered Stigma of Incarceration: Women Prisoners in India* (2020) 42(4) Economic and Political Weekly 23
[11] *Sheela Barse v Union of India* (1983) 2 SCC 96.

- What are the existing policy and legal frameworks governing the rehabilitation of women prisoners in India?
- Where do the gaps lie in ensuring gender-sensitive rehabilitation?
- How have courts and international norms shaped the discourse on gender justice in prisons?
- What reforms are necessary to make post-incarceration support meaningful for women inmates?

The paper adopts a doctrinal and comparative methodology, combining analysis of legal instruments, case laws, and secondary literature with statistical data. By situating reformation measures within the framework of gender justice, the study underscores the importance of moving beyond the rhetoric of equality to embrace substantive justice tailored to the lived realities of women.

Women in Prison: A Statistical Overview

Global Perspective

Across the world, women constitute a minority within prison populations, but their numbers are steadily rising. According to the World Female Imprisonment List 2022, there are over 740,000 women and girls incarcerated worldwide, accounting for approximately 6.9% of the global prison population.[12] While this percentage may appear small, the rise is stark: the female prison population has grown by more than 60% since 2000, outpacing the growth rate of male prisoners.[13]

The United Nations office on Drugs and Crime (UNODC) attributes this increase partly to the criminalisation of poverty-related offences, drug-related crimes, and migration-related laws that disproportionately affect women.[14] In many developing countries, including India, women in prison often come from socio-economically marginalised groups, with limited access to legal aid and social protection.

[12] Roy Walmsley, World Female Imprisonment List (4th edn, Institute for Crime & Justice Policy Research 2022) 1.
[13] Ibid.
[14] UNODC, Global Study on Women Deprived of Liberty (United Nations 2019) 15.

Socio-Economic and Demographic Background

Women prisoners in India disproportionately belong to vulnerable communities. NCRB data shows that a large majority come from economically weaker sections, often with little or no formal education.[7] A study by the Commonwealth Human Rights Initiative notes that majority of women prisoners have no formal education beyond primary level.[8] Many were employed in unorganised sectors prior to incarceration, working as domestic labourers, agricultural workers, or small-scale vendors.

Further, social marginalisation plays a key role. A significant number of women prisoners belong to Scheduled Castes, Scheduled Tribes, and minority communities.[9] The intersection of gender, caste, and class exacerbates their vulnerability, making reintegration into society after prison even more challenging.

Categories of Crimes

The offences for which women are incarcerated also reveal critical insights. NCRB statistics indicate that the majority of female inmates are booked for crimes under the Indian Penal Code (IPC), particularly under sections related to:

- Murder (Section 302 IPC): Convicted women are imprisoned for homicide, often linked to domestic violence, dowry disputes, or family conflicts.[10]
- Dowry Deaths (Section 304B IPC): A substantial number of undertrial women are implicated in dowry-related cases, frequently due to complaints filed by in-laws or neighbours.[15]
- Drug-related offences (NDPS Act): Women, especially from border states like Punjab and northeastern regions, are increasingly incarcerated for possession and trafficking of narcotics, often as couriers rather than primary actors.[16]
- Property-related offences: Theft, cheating, and related crimes also constitute a significant proportion of undertrial women.
- Notably, the United Nations Bangkok Rules recognise that women are often imprisoned for non-violent offences, and that incarceration has disproportionately severe consequences for them compared to men.[17]

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[15] Ibid.
[16] CHRI, *Women in Prison: India Report* (Commonwealth Human Rights Initiative 2020)
[17] UNGA, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules),* UN Doc A/RES/65/229 (2010).

Conditions of Incarceration in India

The prison infrastructure in India was historically designed for men, with women's needs considered an afterthought. As of 2022, India has 32 exclusive women's prisons, excluding 1,500 female inmates housed in male prison wings.[18] This segregation often leads to overcrowding and lack of access to adequate health and rehabilitation facilities.

In India, women account for a small but important segment of the prison population. The NCRB Prison Statistics India 2022 reports that out of 5,73,220 prisoners, 23,772 were women, representing around 4.1% of the total.[19] Among these, only 4240 are kept in exclusive women prison.[20]

A regional breakdown reveals significant variations: states like Uttar Pradesh, Madhya Pradesh, Bihar, and Maharashtra house the largest populations of women prisoners.[21] These states are also among those with the highest overall incarceration rates, reflecting both demographic size and systemic pressures.

Implications for Rehabilitation

The statistical overview reveals a paradox: while women form only a small proportion of the prison population, their vulnerabilities are unique and acute. High proportions of under trials, socio-economic marginalisation, and family responsibilities compound the difficulties of incarceration. The lack of adequate infrastructure, coupled with stigma upon release, creates formidable challenges to reformation measures.

The figures underscore the need for urgent gender-sensitive policies that go beyond custodial management and prioritise reformation, reintegration, and social support. Without such interventions, the principle of gender justice in criminal law remains aspirational rather than real.

Existing Legal and Policy Framework

Constitutional Protections

The Indian Constitution provides the foundation for safeguarding the rights of women prisoners. Article 14 guarantees equality before the law, while Article 15(3) permits special provisions for

[18] NCRB, *Prison Statistics India 2022* (n 1).
[19] Ibid.
[20] Ibid.
[21] Ibid.

women and children.[22] Article 21, as expansively interpreted by the Supreme Court, ensures the right to life and personal liberty, which includes the right to dignity, health, and humane treatment in custody.[23]

In Sunil Batra v Delhi Administration (1978), the Supreme Court recognized that all prisoners retain fundamental rights subject to incarceration limits.[24] The Court linked custodial conditions to the broader mandate of Article 21, laying the groundwork for subsequent gender-sensitive interventions.

Article 39A mandates free legal aid to ensure that prisoners—particularly women from disadvantaged backgrounds—can access justice. However, the actual implementation of legal aid in prisons remains inconsistent across states.[25]

Statutory Framework

The Prisons Act 1894

The Prisons Act, still operative in large parts of India, is the primary legislation regulating prison administration.[26] However, it is criticised as outdated, colonial in orientation, and largely ignores rehabilitation, especially gender-specific needs. The Act contains no gender-specific provisions and focuses largely on discipline and security.

Prison Manuals and Model Prison Manual 2016

States have their own prison manuals, many of which incorporate rules for women prisoners, such as separate enclosures, provision for female wardens, and basic health facilities. The Model Prison Manual 2016, issued by the Ministry of Home Affairs, represents a progressive attempt at reform. It recognises the special needs of women[27], including:

- Separate accommodation and staff.
- Facilities for pregnant women and nursing mothers.
- Provision of crèche facilities for children up to six years.

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[22] Constitution of India 1950, art 15(3).
[23] *Maneka Gandhi v Union of India* AIR 1978 SC 597.
[24] *Sunil Batra v Delhi Administration* AIR (1978 SC 494.
[25] National Legal Services Authority (NALSA), *Annual Report 2022–23*.
[26] The Prisons Act 1894.
[27] Ministry of Home Affairs, *Model Prison Manual 2016*.

- Vocational training and educational programmes.

Other Relevant Legislations

- Code of Criminal Procedure 1973 (CrPC): Special consideration for bail to women.[28]
- Juvenile Justice (Care and Protection of Children) Act 2015: Governs children of women prisoners if separated.[29]
- Legal Services Authorities Act 1987: Establishes a framework for free legal aid, crucial for women undertrials.[30]

Judicial Pronouncements

The Indian judiciary has played a pivotal role in recognising the rights of women prisoners and directing reforms.

- Sheela Barse v Union of India (1983): The Supreme Court mandated legal aid and humane treatment for female undertrials, recognising the specific vulnerabilities of women.[31]
- R D Upadhyay v State of AP (2007): Laid down detailed guidelines on the treatment of children living with women prisoners, including provisions for nutrition, medical care, and education.[32]
- Inhuman Conditions in 1382 Prisons, In Re (2016): The Court directed all states to improve prison conditions and highlighted the special needs of women, including the provision of sanitary materials and vocational training.[33]
- State of Maharashtra v Chandrabhan Tale (1983): Emphasised the importance of rehabilitation and skill development, linking prison reform with Article 21.[34]

These cases collectively demonstrate the judiciary's recognition that incarceration does not extinguish fundamental rights, and that reintegration into society is integral to justice.

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[28] Code of Criminal Procedure 1973, s 437.
[29] Juvenile Justice (Care and Protection of Children) Act 2015.
[30] Legal Services Authorities Act 1987.
[31] *Sheela Barse v Union of India* (n 7).
[32] *R D Upadhyay v State of AP* (2007) 15 SCC 337.
[33] *Inhuman Conditions in 1382 Prisons*, In Re (2016) 3 SCC 700.
[34] *State of Maharashtra v Chandrabhan Tale* (1983) 4 SCC 27.

Policy Gaps within Frameworks

Despite constitutional guarantees, statutory provisions, and international obligations, significant gaps persist:

- The Prisons Act 1894 is outdated and does not reflect gender justice.
- Implementation of the Model Prison Manual 2016 is uneven, with many states failing to establish crèches, vocational programmes, or adequate healthcare.
- Legal aid services for women undertrials are underfunded and inaccessible in many prisons.
- International standards such as the Bangkok Rules remain aspirational, with minimal incorporation into domestic practice.
- Monitoring and accountability mechanisms remain weak, with few independent inspections conducted annually.

Thus, although India's legal framework formally recognises women prisoners' rights, the absence of gender-responsive enforcement mechanisms weakens reintegration and post-incarceration support.

Policy Gaps in Rehabilitation of Women Prisoners

Health and Medical Care

Health is one of the most neglected aspects of women's incarceration. Despite the Model Prison Manual 2016 recommending separate hospital wards, gynecological care, and regular medical check-ups, most prisons still lack these facilities.[35] A 2018 NHRC report found that female inmates often received delayed treatment, and prisons rarely employed female doctors or gynecologists.[36] While the Supreme Court in R D Upadhyay v State of AP issued guidelines for pregnant women and children in prisons, application is inadequate.[37] A 2022 Parliamentary Standing Committee on Home Affairs report noted that several prisons did not have proper maternity wards or access to obstetric care.[38] Menstrual hygiene is another pressing issue: women frequently lack adequate sanitary products, despite Supreme Court directions.[39]

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[35] *Model Prison Manual 2016* (n 23).
[36] NHRC, *Report on Women in Prison and Children of Women Prisoners in India* (2018).
[37] *R D Upadhyay v State of AP* (n 28).
[38] Parliamentary Standing Committee on Home Affairs, *108th Report on Prison Reforms* (2022).
[39] *Inhuman Conditions in 1382 Prisons*, In Re (n 29).

Mental health challenges are exacerbated by trauma from domestic violence, sexual abuse, or societal stigma. Studies show higher prevalence of depression, anxiety, and post-traumatic stress among incarcerated women, particularly survivors of domestic violence or sexual abuse.[40] Yet mental health professionals are rarely available within prison facilities, and counseling remains minimal.

Children of Women Prisoners

Where possible, foster care or community-based alternatives should be explored to prevent developmental harm. This practice raises ethical concerns about punishing children for their mothers' incarceration. The lack of coordination between prison authorities and child welfare committees exacerbates the problem.

The 2022 NCRB data further highlights that 1,867 children live with their mothers in prisons across India.[41] The absence of crèche facilities, lack of trained caregivers, and insufficient medical facilities for children remain pressing concerns.

Vocational Training and Education

Support after release requires equipping women prisoners with employable skills such as tailoring, weaving, computer literacy, and crafts.[42] However, most prisons restrict women to stereotypical "feminine" activities such as cooking, sewing, and embroidery.[43] This gendered approach reinforces social hierarchies rather than empowering women for post-release employment.

Further, educational opportunities remain limited. According to a Commonwealth Human Rights Initiative study 2020, a high percentage of women inmates reported no access to formal education while incarcerated.[44] Digital literacy and entrepreneurship training are largely absent, limiting post-release employability.

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[40] Seema Singh, 'Mental Health of Women Prisoners in India: Neglect and Challenges' (2021) 45(2) *Indian Journal of Psychiatry* 123.

[41] Priya Prakash and others,*'Behind Prison Walls: Critical Overview of the Mental Health Trajectories of Children Living With Incarcerated Mothers* (2024) 16(7) Cureus e64664 https://doi.org/10.7759/cureus.64664.

[42] *Model Prison Manua 2016* (n 23).

[43] B B Pande, *'Prison Reforms in India: Issues and Challenges'* ((n 2).

[44] CHRI, Women in Prison: India Report (2020).

Reintegration and Stigma

The greatest challenge lies after release. Women prisoners often face rejection from families, abandonment by spouses, and social ostracism. Most of the released women face housing and employment challenges underscoring systemic gaps.[45]

Legal and financial support mechanisms are inadequate. Though the Legal Services Authorities Act 1987 provides for post-release legal aid, practical assistance in securing housing, employment, or credit is minimal.[46] Reintegration schemes, where they exist, are poorly funded and fail to address the compounded stigma of gender and criminality.

Under trial Women and Prolonged Detention

Prolonged pre-trial detention often exacerbates psychological stress and reduces the likelihood of successful reintegration.[47] Many remain incarcerated for minor offences simply because they cannot afford bail. Section 437 of the CrPC allows for leniency toward women, but courts seldom invoke this provision systematically.[48] This results in prolonged detention without conviction, undermining rehabilitation prospects.

The Supreme Court in Hussainara Khatoon v State of Bihar recognised the right to speedy trial as part of Article 21, yet undertrial women remain trapped in cycles of delay.[49] Reintegration in such cases becomes secondary, as survival inside prison consumes all attention.

Structural and Administrative Gaps

Several institutional deficiencies hinder effective reintegration:

- Inadequate infrastructure: Only 32 exclusive women's prisons exist in India, forcing the majority into enclosures within male prisons.[50]
- Shortage of female staff: Women prisoners are often supervised by male guards, raising safety concerns.[51]
- Limited allocation for post-incarceration support: Prison budgets allocate the majority of funds to security, with minimal spending on post incarceration support, education, or vocational training.

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[45] TISS, *Status of Women Prisoners in India: A Study* (2019).
[46] Legal Services Authorities Act (n 26).
[47] NCRB, *Prison Statistics India 2022* (n 1).
[48] Code of Criminal Procedure 1973 (n 24).
[49] *Hussainara Khatoon v State of Bihar* (1979) 3 SCR 532.
[50] NCRB, *Prison Statistics India 2022* (n 1).
[51] Ministry of Home Affairs, *Annual Report on Prison Administration 2021–22*.

- Insufficient oversight: Prison visiting boards and human rights commissions lack the resources and authority to enforce reforms.

The Gender Justice Perspective

Feminist criminology underscores that women offenders are not simply "criminals" but individuals shaped by socio-economic vulnerabilities, histories of violence, and patriarchal oppression.[52] Ignoring these contexts reduces reintegration to superficial measures. True gender justice requires policies that address structural inequalities, provide holistic care, and ensure that women prisoners are treated as rights-bearing citizens rather than as burdens on the system.

Judicial Interventions and Case Law Analysis

The Indian judiciary has played a crucial role in shaping the discourse on prison reforms and safeguarding the rights of prisoners, particularly women. Judicial interventions have often filled the policy vacuum created by the inadequacy of legislative and executive measures. Through public interest litigation (PILs) and suo motu actions, courts have recognised prisoners' rights as an extension of constitutional guarantees under Articles 14, 19, 21, and 39A. This section examines landmark judgments, with special focus on women prisoners, and evaluates their impact on post incarceration support and gender justice.

Recognition of Prisoners' Rights under Article 21

The watershed moment came with Sunil Batra v Delhi Administration (1978), where the Supreme Court held that prison walls do not keep out fundamental rights.[53] This case established that the right to life and personal liberty under Article 21 applies to prisoners, including those under sentence of death. The Court emphasised humane treatment and prohibited solitary confinement unless absolutely necessary. While this judgment was not gender-specific, it laid the foundation for recognising women prisoners' rights.

In Sheela Barse v State of Maharashtra (1983), the Supreme Court directly addressed the plight of women prisoners.[54] A PIL was filed highlighting custodial violence against female inmates and the absence of female police officers during interrogation. The Court ordered that interrogation of

[52] Meda Chesney-Lind, *The Female Offender: Girls, Women and Crime* (3rd edn, SAGE 2017).
[53] *Sunil Batra v Delhi Administration* (n 20).
[54] *Sheela Barse v State of Maharashtra* (n 7).

female suspects must take place only in the presence of female officers, and directed separate lock-ups for women. This judgment remains seminal in linking prison rights with gender justice.

Judicial Emphasis on Children of Women Prisoners

The question of children living with incarcerated mothers has drawn considerable judicial concern. In R D Upadhyay v State of Andhra Pradesh,[55] the Supreme Court issued comprehensive guidelines for the care, education, and health of children residing with their mothers in prisons. The Court directed that children below six years may stay with their mothers but must be provided proper nutrition, medical facilities, and opportunities for education. Beyond six years, they were to be handed over to relatives or welfare homes. This case highlighted the intersection of women's incarceration with child rights, underscoring the need for gender-sensitive reformation measures.

Right to Legal Aid and Fair Treatment

In Hussainara Khatoon v State of Bihar,[56] the Supreme Court drew attention to the plight of under trial prisoners, many of whom were women languishing in jail for years due to lack of legal aid. The Court held that free legal aid is an essential element of Article 21. Similarly, in State of Maharashtra v Prabhakar Pandurang Sanzgiri (1966),[57] it affirmed that a prisoner is entitled to the protection of personal liberty and cannot be deprived of it except according to procedure established by law. These cases collectively reinforce the judiciary's approach of extending constitutional safeguards inside prisons.

Judicial Directions on Prison Reforms

In Inhuman Conditions in 1382 Prisons, In Re (2016),[58] the Supreme Court issued wide-ranging directions to improve prison conditions, including the need for modern facilities, vocational training, and adequate staff. While not exclusively focused on women, the Court observed that female prisoners face unique problems that must be addressed through gender-specific policies.

More recently, in Re: Inhuman Conditions in 1382 Prisons (2018 follow-up),[59] the Court stressed the importance of rehabilitation and reintegration, urging state governments to adopt measures that

[55] *R D Upadhyay v State of Andhra Pradesh* (n 28).
[56] *Hussainara Khatoon v State of Bihar* (n 45).
[57] *State of Maharashtra v Prabhakar Pandurang Sanzgiri* (1966) 1 SCR 702.
[58] *Inhuman Conditions in 1382 Prisons*, In Re (n 29).
[59] Inhuman Conditions in 1382 Prisons, In Re (2018) 11 SCC 734.

facilitate prisoners' return to society. The judgment acknowledged international guidelines such as the Bangkok Rules (2010), though implementation remains uneven.

The Bombay High Court in Roshni v State of Maharashtra (2017) highlighted the neglect of counselling services for women prisoners. These rulings reflect judicial recognition of the systemic neglect faced by women inmates.

Analysis of Judicial Impact

The judiciary has been progressive in recognising prisoners' rights, particularly of women, but implementation remains a challenge. Most judgments provide guidelines without concrete mechanisms for enforcement. Monitoring committees exist but often lack resources. The judiciary's reliance on executive compliance means that many of its progressive directions remain only partially implemented. Moreover, rehabilitation has frequently been overshadowed by immediate concerns of custodial violence and overcrowding.

Despite these shortcomings, judicial activism has created a normative framework that situates women prisoners' rights within the larger ambit of constitutional morality and gender justice. Courts have not only recognised the dignity of women inmates but have also expanded the discourse to include their children and post-release reintegration. However, without legislative and administrative follow-up, the transformative potential of these rulings remains underutilised.

International Standards and Comparative Perspectives

The rehabilitation of women prisoners cannot be understood in isolation from international norms and comparative experiences across jurisdictions. The global discourse on prison reforms has consistently emphasised the principle that incarceration must serve not only punitive but also rehabilitative purposes, particularly in the case of women, who often suffer disproportionately from imprisonment due to their gendered social roles.

The United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) provide the broad framework for humane treatment of all prisoners. These rules emphasise the dignity of prisoners, access to healthcare, education, and vocational training, and the objective of social reintegration.[60] However, recognising that women prisoners face unique challenges, the United Nations adopted the Rules for the Treatment of Women Prisoners and Non-custodial

[60] United Nations Office on Drugs and Crime, *The Nelson Mandela Rules: The United Nations Standard Minimum Rules for the Treatment of Prisoners* (UNODC 2015).

Measures for Women Offenders.[61] The Bangkok Rules are significant in highlighting issues such as reproductive health, childcare responsibilities, vulnerability to abuse, and the need for gender-sensitive alternatives to imprisonment. They urge states to use non-custodial sanctions where feasible, especially for women who are pregnant or primary caregivers.

Other human rights instruments reinforce this gender-sensitive approach. The Convention on the Elimination of All Forms of Discrimination Against Women 1979 obliges states to take measures to eliminate discrimination in all spheres, including the administration of justice.[62] The International Covenant on Civil and Political Rights 1966 under Article 10 recognises the inherent dignity of prisoners and identifies rehabilitation as the essential aim of incarceration.[63] Similarly, the Beijing Rules 1985 on juvenile justice underscore the importance of considering the best interests of children, which directly affects policies concerning children residing with incarcerated mothers.[64]

Comparative experiences also offer valuable insights. The United Kingdom has introduced specialised women's centres that function as community-based alternatives to imprisonment, focusing on counselling, skill development, and reintegration.[65] Evaluations of these centres show reduced reoffending rates and better reintegration outcomes compared to traditional incarceration. In the United States, although women's incarceration rates are high, reforms such as trauma-informed care and family reunification programmes have been piloted in some states.[66] Nordic countries, particularly Norway, follow a radically different model, where prisons are small, open, and focused on normalisation—prison life closely mirrors life outside, with emphasis on education, work, and therapy.[67] These systems are rooted in restorative justice and recognise that reintegration is a collective social responsibility.

Programmes in the UK and Nordic countries have documented reductions in recidivism rates by up to 20–30% among women released from specialized facilities.

Despite being a signatory to these international instruments, India has only partially incorporated these standards. The Bangkok Rules, in particular, remain inadequately incorporated into Indian prison laws. While some High Court and Supreme Court judgments reference international

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[61] United Nations General Assembly, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (Bangkok Rules), UN Doc A/RES/65/229 (21 December 2010).
[62] Convention on the Elimination of All Forms of Discrimination Against Women (n4).
[63] International Covenant on Civil and Political Rights (n 7).
[64] United Nations, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), GA Res 40/33 (29 November 1985).
[65] Ministry of Justice (UK), Female Offender Strategy (UK Government 2018).
[66] Stephanie Covington, 'Women and Addiction: A Trauma-Informed Approach' (2017) 19 *Journal of Substance Abuse Treatment* 97.
[67] John Pratt and Anna Eriksson, 'Comparative Penal Cultures: The Scandinavian Exceptionalism' (2013) 17(3) *Theoretical Criminology* 401.

guidelines, administrative follow-through is weak. Unlike the UK or Nordic countries, India has not developed strong non-custodial alternatives for women offenders, nor does it have community-based women's centres for rehabilitation.

The comparative picture suggests that meaningful rehabilitation requires three core elements: (a) gender-responsive alternatives to imprisonment, (b) investment in community-based reintegration programmes, and (c) systemic recognition of the intersection between incarceration, poverty, and social stigma. India's prison administration remains structurally focused on confinement rather than rehabilitation, leading to policy gaps that international standards specifically seek to bridge.

Thus, the international and comparative experience highlights that rehabilitation is not an optional element but an essential part of justice. Incorporating lessons from the Bangkok Rules and from successful comparative models, India must reorient its prison policies from punitive isolation towards restorative and community-driven reintegration. Without such reforms, the constitutional promise of equality and dignity for women prisoners will remain unfulfilled.

India has yet to adopt such systemic reforms, relying instead on piecemeal schemes that lack sustainability.

Recommendations and Conclusion

Recommendations

The rehabilitation of women prisoners requires a paradigm shift in India's criminal justice policy. Based on the analysis above, the following reforms are recommended:

- Development of Non-custodial Alternatives – Community-based women's centres, probation, and restorative justice measures must be promoted, particularly for first-time and minor offenders who are often incarcerated due to poverty rather than serious criminality.[68]
- Comprehensive Rehabilitation Programmes – Education, vocational training, and entrepreneurship schemes must be tailored to women inmates, with special focus on employability post-release. Partnerships with NGOs and private employers can strengthen reintegration.[69]

[68] Ministry of Justice (UK), *Female Offender Strategy* (n 6).
[69] National Human Rights Commission, *Advisory on Prison Reforms* (NHRC 2021).

- Judicial Oversight and Monitoring – High Courts should establish regular monitoring committees to oversee prison conditions and ensure compliance with rehabilitation directives. Judicial training on gender-sensitive incarceration should also be institutionalised.[70]

- Support for Children of Incarcerated Mothers – Robust schemes for nutrition, healthcare, and education of children living with their mothers in prisons must be implemented, while alternatives to institutionalisation should be explored.[71]

- Stigma Reduction and Social Reintegration – Awareness campaigns and state-sponsored halfway homes should be established to counteract stigma and provide transitional support to women after release.[72]

Conclusion

The analysis demonstrates that rehabilitation of women prisoners in India remains peripheral within the prison system, overshadowed by punitive approaches and administrative neglect. Despite constitutional guarantees and progressive judicial pronouncements, policy gaps persist in healthcare, education, skill development, and reintegration. Comparative models from the United Kingdom and Nordic countries illustrate that community-driven, gender-responsive alternatives yield more effective rehabilitative outcomes.

Achieving genuine gender justice requires recognising that women prisoners are not merely offenders but individuals shaped by systemic inequalities—poverty, patriarchy, and marginalisation. Post-incarceration support is both a constitutional duty and a moral imperative; a justice system that ensures reintegration of women offenders strengthens families, communities, and the constitutional vision of dignity and equality.

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[71] *R D Upadhyay v State of Andhra Pradesh* (n 28).
[72] Rashmi Tiwari, 'Women in Indian Prisons: A Study on Human Rights and Gender Justice' (2021) 8(2) *Indian Journal of Criminology* 55.

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CHAPTER-5

EVALUATING THE EFFECTIVENESS OF CYBERCRIME LEGISLATION IN ENSURING DIGITAL SAFETY FOR WOMEN AND CHILDREN IN INDIA

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Abstract

Cybercrimes such as online harassment, stalking, grooming and exploitation of women and children are on the rise in India. This paper examines the role of the cybercrime laws of India, specifically the Information Technology Act of 2000, the POCSO Act and some provisions of the Bharatiya Nyaya Sanhita, in promoting digital safety. These laws do provide the legal backbone to deal with cyberstalking and child pornography but the rate of conviction is low, awareness is lacking and technological barriers render enforcement weak. The current paper discusses the necessity of specialized cybercrime divisions, digital awareness programs, and cooperation between countries to overcome such challenges. Recommendations for changes to laws will be based on the evolving cyber threats, such as deep fakes and Artificial Intelligence misuse. The present study emphasizes the importance of improving law enforcement efforts and victim support systems to create a safer digital environment for women and children.

Keywords: Child, Women, Online, Social Media, Cybercrime, POCSO, IT Act

Introduction

Crimes are an inevitable part of the society. It started when Humans started to claim humans, Land and properties as their own. With Human evolution, the method of committing crime is also

changed. We have seen various scientific innovations in the world till Today. In that, Digital transformation is also major huge step in the development. This development may have caused numerous good developments. But it also causes substantiate amount of criminal activities.

The rapid growth of digitalization caused India as a major player in the global digital resources. Some examples of Cybercrimes like online harassment, cyber pornography, cyber fraud, cyberstalking, and exploitation have become more common. Crimes involving digital, especially those that target women and children has seen a drastic rise due to the global digitalisation. It causes serious risks to the personal safety and psychological well-being of the victimised individuals of vulnerable groups such as women and children.

The recent statistics shows the severity of the Cybercrime's problem: In India in between the January and April 2024, there are over 740,000 complaints were filed on the National Cybercrime Reporting Portal, as a result of cybercriminal activities. It shows losses exceeding ₹1,750 crores were reported by the Indian citizens. This concerning trend to combat cybercrime highlights the urgent need for strong legislation and enforcement mechanisms.

There are still obstacles to overcome in order to effectively combat cybercrime because of the India inadequate current legal frameworks. Due to the day to day evolvement and development of technology, the crimes are frequently out ways the existing legistations, leaving gaps that cybercriminals take loopholes of the law and the enforcement. And also there is need for educating the public and make aware regarding cyber threats and victims support legal options.

By Assessing and analysing the India's current legal frameworks by comparing with other nation's cyber-criminal laws, and offering practical legal and societal recommendations for strengthening the digital safety measures in India. The purpose of this paper is to assess how well India's cyber related criminal laws protect women and children in the online platforms.

Research Objectives

- To assess the effectiveness of India's current cybercrime laws in protecting women and children with other nations.
- To identify challenges in the implementation and enforcement of the cyber laws in India.
- To propose recommendations for enhancing digital safety of Women and Children in India.

Definition of Cybercrime

The US Department of Justice (1989, as cited in Halder et al., 2012) defined computer crimes as "those crimes where knowledge of a computer system is essential to commit the crime" (Parker, 1989). McConnell International (2000, as cited in Halder et al., 2012) defined cybercrimes as "harmful acts committed from or against a computer or network".

According to the council of Europe (2001, as cited in Halder et al., 2012),

This convention presented the concept of cyber offences in five dimensions. They are (i) offences against the confidentiality, integrity and availability of computer data and systems; (ii) Computer related offences; (iii) content related offences; (iv) offences related to infringements of copyright; (v) abetting or aiding such offences.

The first group, i.e., offences against the confidentiality, integrity and availability of computer data and systems included the following:

(a) Intentional illegal access to the whole or any part of the computer system by infringing security measures. The motive could be either to obtain computer data, or any other dishonest intention, or illegal access in relation to a computer system that is connected to another computer;

(b) Intentional illegal interception without any proper rights whatsoever, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data;

(c) Intentionally interfering with the data without any proper rights what so ever;

(d) System interference, i.e., hindering of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data;

(e) Misuse of devices; this includes the production, sale, procurement for use, import, distribution of a computer device or programme designed or adapted primarily for the purposes of offences mentioned above under point (a) or a computer password, access code, or similar data by which the whole or any part of a computer system is capable of being accessed, and the possession of any of these items with a criminal intent (Council of Europe, 2001).

The second group, i.e. 'Computer related offences' would mean:

(a) computer related forgery i.e., the input, alteration, deletion, or suppression of computer data resulting in inauthentic data with the intent that it may be acted upon for legal purposes as if it were authentic for fraudulent purposes; and

(b) computer related fraud, i.e., intentionally causing of a loss of property to another person by either

(1) any input, alteration, deletion or suppression of computer data, or (2) any interference with the functioning of a computer system, or both with fraudulent purpose for procuring monetary gain for one person or for another person which deal with child pornography only. It includes procuring, making, offering, distributing and possessing child pornographic materials in the computer system or using the computer systems to do all these for the monetary gains. Child pornography is defined and described as materials that visually portray (i) an act by a 'minor', where he is engaged in sexually explicit conduct; or (ii) an act by a person "appearing" to be a minor, who is engaged in sexually explicit conduct; or (iii) realistic images representing a minor, who is engaged in sexually explicit conduct. The Convention shows the age limit to be termed as minor, as less than 18 years. The Convention also specifies that lower age limit could be shown as 16 years in some cases.

The fourth group indicates ‘Offences related to infringements of copyright’, i.e., when the offence infringes the law copyrights and related rights of the member country. The last group includes aiding and abetting any or all of the cyber offences that are grouped above.

Cybercrimes against women are: “Crimes targeted against women with a motive to intentionally harm the victim, using modern telecommunication networks such as the Internet (Chat rooms, emails, notice boards and groups) and mobile phones (SMS/MMS)”. (Halder etal., 2012)

Cybercrimes against child defined as offenses that are targeted against child with a motive to intentionally harm the victim, using games, social Medias etc,

Major forms of Cybercrime focusing Women and Child

Cyberstalking

It involves the use of the internet or other electronic means to stalk or harass an individual in the online platforms. Stalkers may monitor, intimidate, or threaten victims (women and children). It may to lead to severe psychological distress and fear. Women are more victimised to cyberstalking, which can continues to offline threats.

Cyberbullying

It refers to the act of posting, sending, or sharing negative, harmful, accusations, false, or mean content about the victim or someone else, typically through online platforms. Children and adolescents are vulnerable targets of cyberbullying, leading to issues like depression, anxiety, and in extreme cases, suicide.

Online Grooming

It involves abusers befriending with the minors by gaining their trust in the intent of sexual abuse at the online platforms. This involves manipulating the child into sending explicit picture and videos of themselves and arranging face to face meetings.

Cyber Pornography and Deepfake

The creation, distribution, or consumption of explicit content without consent is known as Cyber pornography. With Innovations in technology like photo video editing and Artificial Intelligence, deepfake pornography—where individuals' faces are taken and pasted onto explicit videos—has become a growing concern, particularly affecting women who are celebrities.

Sextortion

In this, where the victims are lured into providing sexual images or favours under threat of sharing their private images of them and sensitive information about them. Both women and children can fall victim to sextortion, leading to severe psychological trauma and in case of extreme, they may commit suicide.

Cyber Defamation

It is the process of spreading false information about an personnel in the online media to damage their reputation or growth. Women often face accusation regarding their character through malicious posts, comments, or fabricated (edited) content.

Exposure to Inappropriate Content

The predator may send and force the children to sexual contents. It can cause long terms impacts on their development, following the wrong path, porn addiction and well-being.

Comparison of India's Cyber law and enforcement with other nations like United States of America, United Kingdom, Russia

Cybercrime & Punishments

Cybercrime	India (IT Act, 2000, POCSO, IT act, POSH act)	USA (CFAA, ECPA, CISA)	UK (Computer Misuse Act, GDPR)	Russia (Criminal Code & IT Laws)
Cyber Fraud	3 years jail + ₹1 lakh fine	20 years jail	10 years jail	5 years jail

Child Pornography	5 years jail + ₹10 lakh fine	30 years jail	15 years jail	10 years jail
Cyber bullying & Harassment	No specific law (only IPC 354D)	5-10 years jail	5 years jail	5 years jail
Data Theft	3 years jail + ₹5 lakh fine	10 years jail	10 years jail	7 years jail

Law Enforcement & Cybercrime Investigation

Aspect	India	USA	UK	Russia
Who Investigates?	CERT-In and Police Cyber Crime Units	FBI Cyber Crime Division, National Security Agency, Homeland Security	National Crime Agency (NCA), The National Cyber Security Centre	Federal Security Service (FSB), Cyber Police
How to Report?	Cybercrime.gov.in	IC3.gov (FBI)	Action Fraud (UK)	Reports to FSB
Jurisdiction	Cases handled by State	Federal-level prosecution	Prosecuted under UK laws	Cases handled by FSB
International Cooperation	Limited (Interpol, CERT alliances)	Strong cooperation with INTERPOL, EUROPOL	Member of Budapest Convention	Limited cooperation (cyberwarfare concerns)

Conclusion

This paper highlights the critical need for prompt and comprehensive cybercrime legislation to safeguard women and children in India. While existing legislation, such as the Information Technology Act, 2000, provide a basic legal structure. But they often fall short in investigating and prosecuting the unique challenges posed by cybercrimes targeting these vulnerable groups. The rapid development of technology and the increasing problems of cyber threats makes continuous updates to legal provisions, improved international cooperation, and a multifactorial approach that includes public awareness, capacity building, and technological advancements. India can better protect its citizens from the various dangers of cybercrime by adaption united and adaptable legislation and it can ensure a safe digital environment for women and children.

Recommendations

- By updating the India's Information Technology Act, 2000 to address online harassment, cyberbullying, cyber pornography and cyberstalking of women and children. Similar to the practices in the USA (CFAA) and UK (Computer Misuse Act), with harsher penalties.
- Enact and enforce specialized laws for child exploitation, online grooming, and child pornography similar to the USA's Adam Walsh Act and UK's Sexual Offences Act.
- Train and deploy dedicated cybercrime units to address women and children-related cybercrimes, similar to the FBI's Cyber Crime Division in the USA and the UK's National Crime Agency (NCA).
- Improve cybercrime reporting platforms to make them more accessible, easy to report and anonymous, similar to the USA's IC3 and UK's Action Fraud. This will encourage more women and children to report cybercrimes.

- Establish specialized helplines call and units and support systems for cybercrime victims, offering legal assistance and psychological support.
- Launch cyber awareness programs and new initiatives focusing on women and children's digital safety, inspired by global initiatives
- Include digital safety lessons in school curriculums like case studies, stories, poem to teach children how to protect themselves online and recognize threats, following the UK's school cyber programs.
- Improve international collaboration with global organizations like INTERPOL and EUROPOL to tackle international cybercrimes affecting women and children, similar to practices in the USA and UK.
- Adopt stricter cross-border laws for data protection and cybercrimes targeting vulnerable populations with global cooperation to prevent exploitation.

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- Cyber security Information Sharing Act, 2015
- Computer Misuse Act, 1990
- General Data Protection Regulation.

CHAPTER- 6

FROM PUNISHMENT TO PREVENTION: BEHAVIOURAL SCIENCE IN INDIA'S JUSTICE REFORMS

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Abstract

India's criminal justice system is gradually shifting from a punitive approach to one that values prevention, rehabilitation, and reintegration. Behavioural science being an area that studies human thought and action, can help shape better investigations, fairer trials, and more humane correctional practices. This article explores how behavioural science is being integrated into India's justice reforms, the role of forensic psychology and criminal profiling, ethical and legal concerns, and ways to make these reforms effective and rights based.

*(**Keywords:** Behavioural science, criminal profiling, prevention, rehabilitation, and reintegration)*

Introduction

India's criminal justice system is undergoing one of its most significant transformations in recent decades. The new Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA) which replaced the Indian Penal Code (IPC), Criminal Procedure Code (CrPC), and Evidence Act in 2023, mark a clear attempt to modernize law enforcement and judicial processes (Ministry of Home Affairs [MHA], 2023). These laws emphasize speedier trials, scientific investigation, and citizen protection. Alongside this legal overhaul, the Model Prisons and Correctional Services Act (2024) seek to replace punishment with reformation, education, and rehabilitation (MHA, 2024).

Behavioural science offers valuable tools for these reforms. It studies why people commit crimes, how they make decisions, and what factors encourage or deter offending. When applied carefully, behavioural insights can help reduce recidivism, improve policing, and promote fairness (Behavioural Insights Team [BIT], 2014).

Behavioural Science in Indian Criminal Justice

Behavioural science can be applied across multiple stages of the justice system, spanning from crime prevention to sentencing and rehabilitation. India's NITI Aayog, in partnership with the Centre for Social and Behavioural Change, has already set up a Behavioural Insights Unit (BIU) to apply psychology and behavioural economics to public policy (NITI Aayog, 2025). In criminal justice, this could mean using nudges, counselling, and risk assessments to change behaviours instead of simply punishing them.

1. Policing and Investigation

Behavioural science helps officers understand criminal motives and patterns. For example, using psychological profiling can guide investigators to focus on suspects who fit behavioural traits linked to specific crimes (IJCRT, 2024). A real-life example is the Nirbhaya case (Mukesh &

Another v. State for NCT of Delhi, 2017), where forensic and psychological profiling helped reconstruct the offenders' behaviour and establish intent. Similarly, modern investigative tools like Crime and Criminal Tracking Network & Systems (CCTNS) use data analytics to predict hotspots and identify repeat offenders as an indirect use of behavioural data (Lokniti, 2023).

Police departments in Chandigarh and Kerala have piloted behavioural interview training to improve victim and witness handling (Bureau of Police Research & Development [BPRD], 2025). These efforts show how small behavioural improvements can strengthen community trust.

2. **Courts and Sentencing**

Courts increasingly rely on psychological assessments to decide bail, probation, or sentencing. Behavioural experts can assist judges in understanding offenders' mental states, motives, and likelihood of reoffending (Vishwakarma University Law Journal [VULJ], 2024). The Supreme Court in Accused X v. State of Maharashtra (2019) considered psychiatric evaluations while commuting a death sentence, recognizing the importance of mental health and reformation potential. This shows a gradual shift from retribution to rehabilitation.

3. **Prisons and Rehabilitation**

Behavioural programs in prisons such as cognitive-behavioural therapy (CBT), anger management, and vocational training can reduce violence and improve reintegration (Drishti IAS, 2024). In Jaipur, the "Jail Chaupal" initiative encouraged dialogue between inmates and officers, leading to fewer disciplinary issues and better inmate morale (Times of India, 2025). Behavioural incentives like rewards for good conduct and participation in education programs have also shown positive results.

Criminal Profiling and Behavioural Forensics

Criminal profiling, a branch of forensic psychology, is gaining attention in India. Profilers study crime scenes and behavioural patterns to build psychological portraits of offenders. For instance, in serial or sexual crimes, profiling helps narrow suspects and understand motives

(Kumar, 2025). However, it must be used alongside forensic evidence and not as a standalone tool.

The Central Bureau of Investigation (CBI) and National Investigation Agency (NIA) have started including behavioural experts in special cases, reflecting an institutional acceptance of profiling. However, there are challenges like the lack of trained professionals, absence of standard methodology, and doubts about admissibility in court (IJCRT, 2024). Therefore, profiling must be scientific, transparent, and reviewed by independent experts to avoid bias.

Ethical and Legal Concerns

While behavioural tools promise efficiency, they also raise several legal and ethical questions. 1.

Privacy and Data Protection

Behavioural analysis often relies on large data sets, such as biometric or social media data. Under the Digital Personal Data Protection Act (2023), law enforcement agencies must protect individual

privacy and ensure data use is proportionate (MeitY, 2023). Without safeguards, profiling could lead to excessive surveillance or misuse of personal data.

Algorithmic Bias and Fairness

When predictive models are used in policing or bail decisions, they can reflect social biases. The Status of Policing in India Report (2023) found that marginalized groups often face greater scrutiny. Thus, behavioural or AI-based systems must be transparent, tested, and audited for bias (Lokniti, 2023).

Institutional Capacity

India lacks enough forensic psychologists and trained behavioural experts. Many police stations and prisons rely on ad-hoc counselling instead of structured psychological services (MHA, 2024). Strengthening human capacity is crucial for reforms to work effectively.

Case Examples of Preventive Justice in Action

The Tihar Jail Reform Model in Delhi introduced vocational and psychological programs focusing on behavioural change. It helped lower inmate violence and improved employment outcomes post-release. Similarly, in Kerala's Open Prison System, behavioural assessment determines which prisoners qualify for less restrictive settings, reinforcing trust and self
discipline (Drishti IAS, 2024).

In State of Haryana v. Jagdish (2010), the Supreme Court emphasized that punishment should aim for reformation, not revenge. This judicial stance supports using behavioural interventions for offender reintegration.

Recommendations for Effective Reform

1. **Pilot Behavioural Interventions** – Start with small-scale pilots in select prisons and police districts, monitor outcomes, and publish results (BIT, 2014).
2. **Train Specialists** – Introduce certified programs in forensic psychology, behavioural criminology, and correctional counselling.
3. **Ethical Data Governance** – Establish independent oversight boards to audit behavioural tools and predictive algorithms (MeitY, 2023).
4. **Evidence Standards** – Courts should accept behavioural evidence only when based on validated methods and presented by accredited experts.
5. **Community Engagement** – Use behavioural nudges in community policing. E.g., campaigns that promote social responsibility, youth mentorship, and early mental health intervention.

Conclusion

Behavioural science gives India a practical pathway to move from punishment to prevention. By understanding human behaviour, justice reforms can address the roots of crime instead of reacting after harm occurs. However, these tools must be implemented with ethics, transparency, and rigorous evaluation. When behavioural methods are combined with strong legal safeguards and trained professionals, India's justice system can become both more humane and more effective. The challenge is not only to change laws but to change mindsets, seeing offenders as individuals capable of change rather than merely subjects of punishment.

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CHAPTER-7

INCRIMINATING MARITAL RAPE IN INDIA: NAVIGATING LAW AND SOCIOLOGICAL BARRIERS ON THE PATH TOWARDS REFORM.

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Abstract

Criminalization of marital rape is one of the most sensitive topics in India's legal and social frameworks. Due to rising requests to criminalize marital rape, this study explores the social and legal struggles that prevent marital rape in India from being criminalized. Section 63 of the Bharatiya Nyaya Sanhita states the definition for rape, but it excludes the non-consensual sex by spouse. Marital rape is not criminalized because of some pressing concerns, such as the possibility of misuse and rooted views on the marriage from the many generations.

This study also explores how Indian courts, international human rights, and constitutional rights intersect with the common view that depicts marriage as a private matter. Using a qualitative approach to law documents, case studies, and opinions, the research attempts to pinpoint the main barriers to reform, such as cultural beliefs and concerns regarding the sanctity of marriage. To criminalize marital rape, this research also explores views on marital rape laws from around the world. This paper concludes by providing a fair strategy for resolving marital rape.

Keywords: Marital Rape, non-consensual sex, Laws, Rape, Domestic Violence

Introduction:

Rape is one of the most heinous and severe punishment receiving crimes in the world. In recent years, Rape is a rising crime in the Country of India. Most of the Rape Victims know their perpetrator. In India, Section 63 of Bharatiya Nyaya Sanhita (BNS) defines rape as a non-consensual act involving sexual intercourse or any form of sexual assault by a man on a woman, where consent is either absent or obtained through coercion, deception, or force. The definition covers penetration of any body part or object into a woman's vagina, mouth, urethra, or anus without her consent. Consent must be free and voluntary. If it is obtained through fear, force, fraud, or intoxication, it is not considered valid.

Marital rape remains an exception in the BNS, except when the wife is below 18 years of age, in which case the act is regarded as statutory rape. Rape is seen as a violent act rather than a sexual act because most of the rape have committed to show dominance rather than Sexual intent.

Rape in marriage is a serious issue in which the husband will force the wife to have sexual intercourse. It is termed as Marital Rape. It is seen as violence and dominance against women. Marital Rape is defined as "Unwanted intercourse or penetration obtained by force, the threat of force, or when the wife is unable to consent". Marital Rape is not viewed as a serious matter in this Society, because women are seen as property of men after marriage. India is unwilling to recognize spousal rape as a crime even though many countries criminalized the marital rape.

Marital rape can be classified into nonphysical sexual coercion and forced sex. Nonphysical sexual coercion means sexually manipulating or pressurizing the spouse for sexual intercourse without the use of physical forces like verbal threats, psychological manipulation & emotional pressure, etc., Nonphysical sexual coercion can be classified into two types namely social coercion and interpersonal coercion. Social coercion refers to having thought that the wife must satisfy the sexual demands of the husband. Interpersonal coercion means the husband's dominance in the relationship and compliance with the wife to attend to it. Forced sex means using physical force, manipulating and coercing the wife into the sexual activity. Forced sex can be classified into battering rape, force-only rape, and obsessive rape. Battering rape refers to doing sexual intercourse violently with anger. Force only refers to the use of small of violence to achieve sexual demands by power, dominance, etc., Obsessive rape refers to unusual types of sexual activity such as the usage of bondages, etc.

Statement of Problem:

In India, the criminalization of marital rape is a deep issue, because it can't be implicated due to legal provisions, cultural norms, and sociological barriers. Even though marital rape is criminalized in many countries and it concerns human rights and women's rights it is excluded from the Rape. The Bharatiya Nyaya Sanhita (BNS) does not include the marital rape as a crime unless the wife is under the age of 18 years. From ancient times, people believed that sexual interest in marriage was the prerogative power of the husband as per the religious and cultural norms. Even though some of them came forward to report it, many of the victims were blamed and cursed by society. This study explores the cultural, sociological, and legal obstacles preventing the criminalization of marital rape.

Impact of Marital rape on victims:

The consequences of marital rape can be long-lasting and incurable due to it occurring in a relationship that the woman can't leave. The wife may suffer physical harm like bruises, genitalia injuries, and internal bleeding, etc., Victims of marital rape may suffer psychological harm like depression, post-traumatic stress disorder, hopelessness, worthlessness because it is committed by someone they trust to have a lifelong bond. Victim will be isolated from others because they can't share their issue with others due to the social stigma and blaming.

Need for the criminalization of marital rape:

India is committed to the guidelines of the Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW). CEDAW advised India to criminalize the marital rape. By giving exceptions to marital rape, India is compromising Human rights and women's rights. To ensure justice and gender equality, India should criminalize marital rape. To eliminate the physical and psychological harm done to the wife by Husband in the form of marital rape. The justice verma committee (2013) also recommended incriminating marital rape.

Cultural and Religious obstacles:

We are living in a patriarchal society. Patriarchal society means where men dominate and have power and exploit, and oppress women. Patriarchal society is a key barrier in criminalizing marital rape, where women are submissive to their husbands. Wives are seen as the property of their husbands, and they can do whatever they want. So the husbands don't need sexual consent from the wives. Religious norms are also a barrier to criminalizing marital rape. In Muslim, if the husband asks to have sexual intercourse while the wife is on death bed, she has to do it.

Sociological obstacles:

Economic dependence is also an obstacle to criminalizing marital rape. In India, above 75% of married wives were economically dependent on their husbands. If they have to report it, they have to leave the relationship. So the wives will not come forward to report the rape within the marriage. Stigmatization and blaming are also a key barrier to marital rape criminalization. Marriage is seen as a private matter, if the wife reports violence or rape within the marriage, nobody will not consider it. Society believes these matters should be resolved within the family. Wives who report violence or rape within the marriage will be abandoned by the family. Fear of being revenged is

also an obstacle to reporting marital rape. If the wife reports rape, she may be revenged by the husband or his family.

Legal obstacles:

There is less political will for criminalizing marital rape in India. Law experts say that criminalization of marital rape will lead to false accusations, misuse of the law, and threatening weapons against the husband and it may collapse the family's cultural norms. Removing the exception of marital rape in rape will create a crisis among other religious acts, which allows husbands to get sex whenever they want.

Criminalising marital rape internationally:

United Nations have advised to take measures against marital rape as a sexual violence against women. CEDAW has also instructed the nations to enforce laws to punish all violence against women including marital rape. 4 in 10 countries have criminalized marital rape around the world. Before the 1970s, there is no provision to punish marital rape all around the world. But after that, the countries started to enact laws against marital rape. More than 50 countries have penalized marital rape. But in Asia, the countries did not show the will to penalize marital rape. Countries like United States America, the United Kingdom, Canada, France and South Africa have already penalized marital rape.

Conclusion:

The Criminalisation of marital rape in India involves a problematic intersection of legal, cultural, and sociological challenges. Even though marital rape is illegal in global perspective, but Indian legal system doesn’t include it as a crime in Bharatiya Nyaya Sanhita. This debarment of marriage from the definition of rape causes gender inequality, promotes patriarchal norms, and denies women’s right to bodily autonomy within marriage.

The criminalization of marital rape is crucial in India to line up India’s laws with constitutional guarantees of equality, dignity, and personal liberty, with international human rights provisions. The outlaw of marital rape will provide legal assistance to victims, challenge social and cultural norms that view marriage as a space of unspoken sexual consent, and helps to eradicate the power politics that leave women vulnerable to sexual violence within the marriage.

Anyhow, addressing this issue needed more than just legal reform. A major sociological change is requiring, one that educates and raises awareness about consent, gender equality, and the rights of

women within marriage. Legal change, supported by cultural transformation, can lead to a society where women's voices are heard, respected, and protected in all province, including marriage.
In conclusion, the criminalization of marital rape in India is not only a legal issue but an important step toward achieving gender equity and protecting the fundamental rights of women. Addressing marital rape as a crime would not only provide justice for victims and also mark a significant step forward in India's ongoing battle against gender-based violence.

Suggestions:

- Amending the Bharatiya Nyaya Sanhita by eliminating exception to marital rape in the Section 63 of BNS.
- Extend awareness about marital rape through public information to help victims and join with others who have faced similar issues.
- Support the women to define and label forced sex by husbands as marital rape, providing them the strength to challenge and fight against it.
- Help the women to understood that marital rape is not a personal issue or their fault, and stir up to speak about it and seek help.
- Teach the women that, they have the right to sexual freedom in marriage, including the right to say "no" to their husbands.
- Form self-help groups for marital rape victims to provide psychological support and decrease the feelings of loneliness and shame.
- Create agencies to offer counselling or therapy for men with histories of domestic violence, aiming to diminish future incidents.
- Legally clarify that marriage does not implicit consent to sexual intercourse. Consent must be precise regardless of marital status.
- Lawyers should advocate for outlawing of marital rape, arguing that it violates women's rights to integrity, sexual autonomy, and equal protection under the law.
- Establish provisions that permits husbands to claim compensation if proven that false allegations of marital rape have been made.

- Create laws that allow marital rape victims to claim compensation from their husbands, and offer state support to help victims to get divorces.
- Highlights the need for a large-scale social shift in attitudes toward women. Legal reform alone won't erase marital rape without addressing male domination and women's subjection in society.

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CHAPTER-8

THE DIGITAL ADVANCEMENT IN THE EVIDENCES: THE REVOLUTIONARY IMPACT OF USAGE OF ELECTRONIC RECORDS IN BHARATIYA SAKSHYA ADHINIYAM.

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Abstract

After the Enforcement of Bharatiya Sakshya Adhiniyam, the Indian courts were permitted to use the electronic and digital records as evidence in the Indian courts, and it is a significant shift in the Indian criminal justice system. With the adaptation of a new type of evidence that is electronic records, it has also changed the collection and submission of evidence in court. This qualitative study explores how developments in technology have changed judicial procedures. The impact of using electronic documents such as images, videography, metadata, etc. as evidence in legal proceedings was studied in this research through opinions from experts and self-reported opinions.

This paper also studies how the electronic evidence is causing changes in speed of acquiring the evidence, transparency of the evidence, and accuracy while used in the legal proceeding. This adaptation of taking electronic records as evidence raises questions like reliability and validity of the evidence, data protection, and criminal justice system capacities to keep up with the technological advancements. This research also provides suggestions to the criminal justice system for the reliable use of electronic records as evidence.

Keywords: Electronic evidences, Digital Evidences, Evidences, Laws, Bharatiya Sakshya Adhiniyam, BSA

Introduction:

Bharatiya Sakshya Adhiniyam (BSA) is the India's new evidence act. It was replaced the Indian evidence act, 1872. It was enacted in December 2023 in parliament of India. It was enforced in 1st July, 2024. The Bhartiya Sakshya Adhiniyam, 2023, is a significant development in the legal

landscape of India. It addresses the pressing need to update the evidence law framework in light of the swift improvements in technology. Traditional legal systems must change to be relevant, efficient, and successful in an increasingly digital environment.

The Bhartiya Sakshya Adhiniyam, 2023, is a milestone piece of Indian legislation that puts technology at the middle of the legal system and completely changes the way evidence is collected, presented, and evaluated in Indian courts. The Indian Evidence Act has been updated numerous times to keep it relevant over the years. The biggest shift came in 2000 when the Parliament of India passed the Information Technology Act, 2000. This law helped bring technology into the legal system, allowing digital and electronic evidence, like emails and messages, to be used in court. These updates made sure that the Evidence Act could handle modern technology and digital information. In the previous years, when digital technology didn't exist, courts mostly relied on paper documents and physical evidence to prove cases. But as the world has shifted into the digital age, new types of evidence, like multimedia files, electronic records, and digital signatures, have come up. This has created some challenges for courts, especially when it comes to accepting and understanding these new types of evidence, as the older legal systems were not designed to handle such complex digital evidence.

By providing a clear and modern legal framework that recognises digital evidence, the Bharatiya Sakshya Adhiniyam, 2023 is trying to solve this issues .One of the most important features of this updated law is that it gives clear definitions and classifications for what counts as digital evidence, like emails, social media posts, and electronic documents. It also lays down clear guidelines on how this evidence should be collected, stored, and presented in court. By doing this, the new Adhiniyam ensures that digital evidence is treated fairly and is given the same importance as traditional forms of proof. This new law is a major step towards making the Indian legal system more capable of handling cases in today's digital world.

Major improvements like how courts has to handle digital evidence were introduced in the Bharatiya Sakshya Adhiniyam, 2023. BSA makes sure that electronic materials, like emails, multimedia files, and other digital records, are evaluated with the same care and attention as traditional paper documents. By doing this, the law helps to make court decisions more reliable and fair. It reduces the chances of mistakes or misuse of digital data, helping to create a better and more efficient judicial system. Another important feature of the new act is its strong focus on cyber security. Since digital evidence is vulnerable to tampering, hacking, and cyber-attacks, the Adhiniyam includes strict measures to protect electronic data. These measures cover how data is

stored, transmitted, and verified, making sure that the evidence stays secure and unaltered throughout its journey in the legal process. This ensures that the courts can rely on the integrity of digital evidence when making their decisions.

Statement of problem:

The growing influence of digital technology has drastically changed how evidence is managed in the criminal justice system. Traditional provisions in the Evidence Act, primarily designed for physical documents and oral testimony, have struggled to keep pace with the increasing reliance on electronic records, such as emails, digital signatures, and multimedia files. The recent amendments to key sections of the Bhartiya Sakshya Adhiniyam, particularly Sections 2, 58, 61, and 63, have introduced significant changes to accommodate the rise of digital evidence. However, these changes also present new challenges. This research seeks to explore the impact of these revisions on the admissibility, authentication, and reliability of electronic records in Indian courts. It aims to analyze whether the updates in the Bhartiya Sakshya Adhiniyam adequately address the challenges posed by digital evidence or if further legal frameworks and technological safeguards are required to ensure justice in the digital era.

Section 2: Definitions

The definitions section has been updated to include definitions pertinent to digital evidence. This is significant as it recognizes various forms of electronic records, digital signatures, and other technological advancements. The term "electronic record" is defined, which includes any data generated, received, or stored in electronic form. This broadens the scope of what can be considered as evidence in a court of law, moving beyond traditional physical forms of evidence.

Impacts

The recognition of electronic records under the Bharatiya Sakshya Adhiniyam has brought several positive and negative impacts. On the positive side, it provides clarity on digital evidence, includes new types like emails and social media posts, and aligns legal practices with modern technology, fostering efficiency and global compatibility. It promotes digital transactions, reduces paper dependency, and empowers legal practitioners with stronger tools. However, challenges include potential misuse due to public misunderstanding, vulnerability to manipulation, and the complexity of legal terms. Inconsistencies in application, unequal access to technology, increased legal costs,

cybersecurity risks, and the potential for misinterpreting digital evidence also present concerns, potentially leading to longer legal battles and unequal opportunities in presenting evidence.

Section 58: Secondary Evidence

The BSA emphasizes that secondary evidence can be admitted if the original document is unavailable, including electronic records. The revised section recognizes that photocopies and digital reproductions can serve as secondary evidence, provided they meet certain criteria for authenticity.

Impact:

The Bhartiya Sakshya Adhiniyam's recognition of secondary evidence, including digital records, brings several positive and negative impacts. On the positive side, it expands the types of evidence admissible in court, making it easier to present digital copies when originals are unavailable, which can expedite trials and encourage better digital storage practices. It also supports the use of hybrid evidence and streamlines the submission process, with technology enhancing the reliability of digital copies. However, challenges arise in authenticating secondary evidence, leading to potential legal disputes, inconsistent application across courts, and increased reliance on digital records. Verification costs, the risk of incomplete or misleading evidence, and the possibility of data loss due to technical failures or cyberattacks also pose significant concerns.

Section 61: Electronic Records and Digital Signatures

This section explicitly acknowledges digital signatures as a valid means of signing documents, thus granting them legal standing equivalent to traditional handwritten signatures. It outlines the requirements for the admissibility of electronic records in court, including the conditions under which they can be accepted as evidence.

Impacts

The legal recognition of digital signatures under the Bhartiya Sakshya Adhiniyam has streamlined business transactions, allowing for faster, secure, and eco-friendly contract processes. They reduce the risk of forgery, promote accessibility by enabling remote signing, and align Indian practices with international standards, benefiting cross-border transactions. However, challenges remain, including unequal access to technology, the risk of cyberattacks, and difficulties for some individuals in understanding digital signature processes. Regulatory complexities, potential misuse, and the need for continuous updates to legal frameworks also pose challenges, along with the initial costs of implementing secure solutions.

Section 63: Admissibility of Electronic Records

The BSA specifies criteria for the admissibility of electronic records, including the requirement for proper authentication. It broadens the definition of admissible evidence to include a variety of electronic formats and systems for collecting and presenting electronic records.

Impacts

The expanded admissibility of electronic evidence under the Bharatiya Sakshya Adhiniyam brings several positive and negative impacts to legal proceedings. On the positive side, it facilitates faster and more efficient trials by accepting a wider range of digital evidence like emails and text messages, encouraging the use of digital communications in various cases. This modern approach supports cases involving cybercrimes, increases transparency through clearer timelines, and simplifies evidence collection for legal practitioners. It also encourages organizations to maintain better digital records, reduces tampering risks, broadens investigative tools for law enforcement, and supports remote testimonies in global litigation. However, the changes also pose challenges in verifying the authenticity of digital records, increasing the risk of misinterpretation and leading to prolonged disputes over admissibility. The legal framework surrounding electronic evidence is complex and inconsistent across jurisdictions, requiring additional expertise and training for legal professionals. Moreover, the reliance on digital literacy, potential data breaches, overemphasis on digital evidence over traditional forms, and risks of cyber manipulation raise concerns about the integrity of digital evidence in the judicial system.

Conclusion:

The digital advancements in the Bharatiya Sakshya Adhiniyam (BSA) mark a conversion shift in the way evidence is defined, gathered, and admitted in Indian courts. The updated sections 2, 58, 61, and 63 addresses the growing significance of electronic records in legal proceedings, providing both opportunities and disputes.

Section 2 provides clear definitions of digital evidence, helping legal professionals to adapt contemporary practices and ensuring a more extensive understanding of what composes valid evidence. Section 58’s compliance of secondary digital evidence facilitates the smooth presentation of documents when originals are unavailable, though it introduces disputes in verifying authenticity. Section 61 enhances the legal acceptance of electronic records and digital signatures, improving the efficiency of contracts and business transactions but raising concerns about cyber security and

public access to the required technology. Section 63, which deals with the admissibility of electronic records, improves the pace of legal proceedings but requires proper safeguards against misuse, tampering, and interpretation errors.

These reforms make the legal system more relevant in a digital era, supporting the transition to a technology-driven society. However, they also introduce risks, such as unequal access to digital tools, increased legal costs, and potential for cyber threats, which need to be addressed carefully.

Suggestions:

- High efforts should be made to educate the public, particularly in rural and less technologically proficient communities, about the requirements and procedures for presenting digital evidence, make sure that no one is disadvantaged due to lack of knowledge or resources.
- Continuous training programs for judges, lawyers, and law enforcement officials on handling and interpreting digital evidence will ensure the effective and consistent application of the BSA provisions.
- Given the vulnerability of electronic records to hacking and tampering, stricter protocols and secure systems should be implemented to protect digital evidence from cyberattacks.
- To avoid unpredictability in the application of digital evidence across courts, clear guidelines must be developed and uniformly enforced, ensuring that the same standards are followed nationwide.
- Courts should have access to digital forensics experts who can verify the authenticity and integrity of electronic records, reducing challenges and misinterpretations during trials.
- The government should introduce measures to make digital tools and technologies more inexpensive and accessible, especially in rural areas, so that all citizens can effectively participate in the digital legal process.
- While electronic evidence is valuable, it should not overshadow traditional forms of evidence. Courts should attempt to balance both types, ensuring that no critical information is neglected.
- The pace of technological advancement necessitates regular reviews and updates to the legal framework to ensure the BSA remains relevant and powerful in dealing with emerging technologies.

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CHAPTER-9

IDEAL AIMS VS. REALISTIC IMPLEMENTATION: A COMPARATIVE STUDY OF JUVENILE JUSTICE SYSTEM IN INDIA AND THE UK

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Abstract

The concept of juvenile justice has evolved globally as a response to the recognition that children, due to their cognitive and psychological immaturity, cannot be equated with adults in the eyes of the law. Rooted in the principles of rehabilitation, reform, and reintegration, the juvenile justice system aims to protect the best interests of children in conflict with the law. International frameworks such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, 1985)**,** the United Nations Convention on the Rights of the Child (UNCRC, 1989)**,** and the Riyadh Guidelines (1990) have served as guiding principles for nations to develop separate and child-friendly justice systems.

This comparative study examines the ideal aims of juvenile justice—rehabilitation, protection, and social reintegration—against the realistic implementation within the legal and institutional frameworks of India and the United Kingdom. The research highlights that, while both nations have adopted child-cantered laws—the Juvenile Justice (Care and Protection of Children) Act, 2015 in India and the Crime and Disorder Act, 1998 in the UK—persistent challenges remain in ensuring uniform implementation, adequate rehabilitation infrastructure, and community participation. The study also explores how societal perceptions, political pressures, and media narratives influence policy decisions and judicial outcomes. The findings suggest that bridging the gap between idealism and practicality requires stronger institutional mechanisms, better-trained personnel, and continuous monitoring aligned with international child rights standards.

Keywords: Juvenile Justice, Rehabilitation, UNCRC

Introduction

Crime has existed since the beginning of human civilization, reflecting the complexities of human behaviour and societal evolution. However, the way crime is perceived, studied, and punished has undergone significant transformation over time. The emergence of Criminology as a scientific discipline marked a shift from moralistic and theological interpretations of crime to rational, psychological, and sociological understandings. The Classical School of Criminology, led by Cesare Beccaria and Jeremy Bentham in the 18th century, was founded on the notion of free will and rational choice, asserting that individuals commit crimes after weighing pleasure against pain. Yet, this universal concept of free will was later challenged by the Neo-Classical School of Criminology, which recognized that certain groups particularly children, the mentally ill, and those lacking full cognitive maturity cannot be held to the same standard of responsibility as rational adults.

As societies modernized, the moral and legal recognition of children as a distinct category in the justice system gained prominence. The 20th century witnessed two world wars, which brought widespread human suffering and raised global awareness of human rights. These historical events served as the foundation for the formation of the United Nations, which sought to promote peace, justice, and human dignity across nations. Within this broader humanitarian framework, the rights and welfare of children emerged as a central concern, especially as they were often subjected to the same punitive criminal justice systems as adults. The need for a separate and reformative juvenile justice mechanism became a global priority.

Evolution of International Juvenile Justice Framework

Recognizing these concerns, the United Nations took landmark steps in reforming the treatment of juveniles within justice systems worldwide. In 1985, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) were introduced, establishing an international framework for the fair treatment of juveniles. These rules emphasized that children differ from adults in their psychological development and moral understanding, and therefore require specialized treatment that prioritizes rehabilitation over punishment.

Further, the United Nations Convention on the Rights of the Child (UNCRC), 1989, reaffirmed the "best interests of the child" as the fundamental principle guiding all actions concerning children. Complementing this, the Riyadh Guidelines (1990) provided preventive strategies to address juvenile delinquency through education, community engagement, and family-based support systems. Collectively, these instruments reflected the global consensus that children should not be treated as miniature adults but as individuals capable of reform and reintegration into society.

Comparative Context: India and the United Kingdom

Both India and the United Kingdom share a common legal heritage due to British colonial influence, and both countries' legal systems are rooted in the principles of common law. Despite this shared foundation, their socio-economic realities, political ideologies, and cultural structures differ considerably. Consequently, the implementation of juvenile justice has evolved in distinct ways within these nations.

In India, the Juvenile Justice (Care and Protection of Children) Act, 1986, marked the beginning of a formal juvenile justice system that aimed to align with international standards. The Act defined juveniles, established Juvenile Courts, and emphasized care, protection, and rehabilitation rather than punishment. Over time, subsequent amendments—especially the Juvenile Justice Act of 2000 and 2015—further refined the definition of juveniles and introduced new procedures for children in conflict with the law and those in need of care and protection. However, debates around the age of criminal responsibility and the treatment of juveniles in heinous crimes continue to challenge India's commitment to restorative justice principles.

In the United Kingdom, the Crime and Disorder Act, 1998, established a comprehensive framework for youth justice. It introduced the Youth Justice Board (YJB) and Youth Offending Teams (YOTs), emphasizing early intervention, restorative practices, and community-based corrections. The Act focused on accountability combined with rehabilitation, reflecting the principles of the UNCRC and the Beijing Rules. Yet, despite these progressive measures, both the UK and India face similar dilemmas — balancing public demand for security and justice with the rehabilitative ideals of child-cantered justice.

Review of Literature

Rani and Pareek (2015) explore and critique the Juvenile Justice Amendment Act (2015) on the adultification of juveniles between 16 -18 years as a mockery of the Constitution and based on an arbitrary assumption of psychological evaluation**.**

Professor Jo Phoenix (2018) explores the concept of 'child-friendly justice' in UK youth justice, critiquing risk-based, punitive reforms and system expansion since the 1998 Act, and underlines how class and race inequalities are compounded within current youth justice practices.

Haines & Case (2015) advocate a positive, rights-based youth justice model prioritizing child participation, engagement, and challenging offender-centric approaches in the existing system.
D Marshall (2018) underlines that the Youth offending in the United Kingdom (England & Wales) continues to be dealt with by a punitive criminal justice approach rather than an idealistic educational or welfare-based approach.

V Kumari (2016) focuses on the difficulty present in the language of the JJ Act,2015 and possible interpretation to secure ‘Best interest of child’

Statement of the Problem

Despite international conventions and national legislations, both India and the United Kingdom face persistent challenges in implementing a truly restorative juvenile justice system. The gap between the ideals of legislation and the realities of enforcement has led to recurring controversies, particularly regarding age determination, trial procedures, and the treatment of juveniles involved in serious crimes. This has raised critical questions about the philosophical foundations of justice, societal attitudes toward child offenders, and the psychological understanding of crime and culpability among juveniles.

Significance of the Study

This study seeks to explore the evolution, philosophical foundations, and implementation of juvenile justice systems in India and the United Kingdom through the lens of international human rights law and criminological theory. It highlights how the principles of rehabilitation, protection, and best interests of the child have been interpreted within two common law jurisdictions.

Furthermore, it examines the contemporary challenges, such as public perception, judicial attitudes, and socio-political pressures that continue to influence the treatment of juveniles in conflict with the law.

Philosophical Foundation of Juvenile Justice: From Retribution to Rehabilitation

The philosophy underlying juvenile justice has evolved from the punitive principles of retribution to the reformative and rehabilitative ideals of modern criminology. Both India and the United Kingdom share the common goal of protecting juveniles from the harshness of the adult criminal system. The Beijing Rules (1985) and UNCRC (1989) emphasize the "best interests of the child" and promote individualized treatment based on age, maturity, and background. In both nations, the juvenile justice philosophy aims to reform rather than punish yet the extent of implementation varies due to social, economic, and political influences.

Historical Evolution of Juvenile Justice Systems

The historical trajectory of juvenile justice reveals the transformation of societal attitudes toward children in conflict with the law.

- In the UK, the reform began as early as the *Children Act, 1908*, introducing separate juvenile courts and borstal institutions. Later reforms culminated in the Crime and Disorder Act, 1998**,** which established the Youth Justice Board (YJB) and Youth Offending Teams (YOTs).
- In India, the journey started with the Juvenile Justice Act, 1986, evolving through the Juvenile Justice (Care and Protection of Children) Act, 2000**,** and its 2015 amendment, which allowed juveniles aged 16–18 to be tried as adults in heinous offences.

  This evolution highlights the growing tension between the ideal of rehabilitation and the public demand for deterrence and safety.

Legal Framework and Institutional Structure

The UK operates a highly structured system through the Youth Justice Board, specialized Youth Courts, and diversion programs emphasizing community service and mediation.

Conversely, India's juvenile system, although aligned with the UNCRC, suffers from infrastructural and administrative limitations. Juvenile Justice Boards (JJBs), Child Welfare

Committees (CWCs), and Observation Homes are functional, but their efficiency is hindered by lack of trained personnel, overburdened case loads, and uneven state-level implementation.
Thus, while both frameworks share a commitment to restorative justice**,** the UK demonstrates stronger institutional coherence**,** whereas India's system struggles with practical implementation despite progressive legislation.

Social Perception and Media Influence

Public perception plays a crucial role in shaping juvenile justice policies. In both countries, high-profile cases involving juvenile offenders often generate media sensationalism, creating a demand for harsher punishments. For instance, the 2012 Delhi Nirbhaya **case** in India and the James Bulger case (1993**)** in the UK provoked widespread debate on lowering the age of criminal responsibility. Such incidents reveal the fragile balance between justice for victims and protection of children's rights. The media-driven public outrage often pushes policymakers toward punitive reforms, overshadowing the core rehabilitative ideals of juvenile justice.

Psychological and Developmental Considerations

Modern criminology acknowledges that children differ fundamentally from adults in cognitive, moral, and emotional development. The neuroscientific perspective asserts that the adolescent brain is still developing, particularly in areas controlling impulse and risk evaluation.
While both nations recognize this, India's implementation lacks consistent psychological evaluation and counselling support, whereas the UK system incorporates psychological assessments and diversionary programs into its justice procedures.
This disparity illustrates how the ideal principle of psychological rehabilitation remains largely theoretical in India, whereas the UK has integrated it into its operational framework.

Implementation Challenges and Systemic Barriers

Despite strong legislative frameworks, both India and the UK face barriers to achieving ideal juvenile justice outcomes. In India, challenges include poor infrastructure, lack of trained personnel, and social stigma associated with offenders. The absence of effective post-release reintegration programs often leads to recidivism. In the UK, while administrative efficiency is higher, critics argue that government austerity measures have reduced funding for youth rehabilitation, leading to over-reliance on custodial sentences for repeat offenders.

Hence, both systems reflect a gap between policy intent and ground reality, illustrating the divergence between ideal aims and practical outcomes.

Conclusion

The comparative study of the juvenile justice systems in India and the United Kingdom reveals that while both countries have embraced the ideals of restorative justice, their implementation realities remain deeply influenced by cultural, social, and economic conditions. Rooted in the United Nations Convention on the Rights of the Child (UNCRC) and the Beijing Rules, both nations aim to protect juveniles through specialized institutions, child-friendly courts, and rehabilitative measures.

However, in practice, India's system faces persistent challenges such as infrastructural deficiencies, inconsistent enforcement, and societal stigma toward offenders. In contrast, the United Kingdom's system, though more organized, faces criticism for growing punitive tendencies and declining welfare support.

The study underscores that the true measure of an effective juvenile justice system lies not merely in its laws but in its ability to balance justice, compassion, and rehabilitation. Strengthening psychological evaluation, community participation, and reintegration programs remains essential in both jurisdictions. Ultimately, realizing the *ideal aims* of juvenile justice demands not only legislative will but also societal empathy and sustained commitment to the holistic development of every child in conflict with the law.

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CHAPTER-10

BETWEEN CAUSES AND CONSEQUENCES: PSYCHOLOGICAL EFFECTS OF CRIME IN THE MIRROR OF SOCIETY

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Abstract

Crime does not occur in isolation; it is a product of interrelated social, psychological, and structural forces. Every action arises from a reason, and within this causal framework, crime reflects both personal intent and societal influence. This study critically explores the philosophical foundations of criminal behavior through the lenses of causation, responsibility, and social context. The work emphasizes that crime is not merely an event affecting the offender and the victim but a reflection of deeper contradictions within social structures—such as class, caste, religion, and economic disparity—that shape individual choices and moral reasoning. Drawing from critical philosophy and political economy, the research examines how environmental conditions, deprivation, and inequality form the psychological backdrop for deviant behavior. Furthermore, it integrates Becerra's Classical School principles to analyze how reason, free will, and proportionate punishment contribute to the justice system's framework of fairness and accountability. The philosophical inquiry extends to the question of personal responsibility, proposing that culpability must be understood within both individual and structural dimensions. The study suggests that understanding the motives and conditions behind criminal behavior requires not only legal interpretation but also ethical reflection on social justice and human need. Hence, the paper aims to bridge theoretical philosophy with criminological thought, fostering a holistic understanding of how crime emerges, evolves, and can be meaningfully addressed within a just societal order.

Key Words: Reasoning, Criticism, philosophy and psychological

Introduction

Criminology of philosophical criticism goes beyond the traditional understanding of crime as a mere social or legal event. It seeks to ask fundamental questions such as why a crime occurs, *how* it happens, and who bears responsibility within the social framework. This philosophical critique views crime as a product of interconnected structures social, political, psychological, and economic rather than as an isolated act. Just as a machine requires energy to function, crime arises within specific social and psychological conditions that sustain its existence.

The Indian socio-political context provides a complex background for understanding such philosophical criminology. India's political system is a hybrid model drawing principles from diverse ideologies including British capitalism and Soviet communism creating contradictions within its social structure. These contradictions, shaped by caste, class, and economic disparity, form the ground for both social progress and destruction. Class struggle, inequality, and the denial of opportunities have historically given rise to ideological resistance movements such as Naxalism, which, although rooted in social justice, are often labelled as terrorism. This labeling process itself reflects a conspiracy of power a psychological and political mechanism to suppress revolutionary thought and maintain existing hierarchies.

Conspiracy theory, within this philosophical framework, represents the manipulation of truth and collective belief to control social perception. It transforms contradictions into accepted norms, enslaving human intellect by preventing critical thought. Religion, caste, and education systems have historically contributed to this control by institutionalizing inequality through divine and social justification. The ancient Varna system, for instance, denied education and rights to the oppressed, ensuring their subordination. Thus, inequality was not an accident but a deliberate social construction reinforced by ideology.

This intellectual stagnation sustains the psychology of dominance and submission. Conspiracy theories, social myths, and distorted narratives prevent individuals from understanding the true causes of their oppression. When people cease to question, they cease to think critically, and this intellectual subjugation becomes a form of crime itself—a philosophical crime against human reason. Consequently, criminal behaviour in such a society cannot be understood without examining the environmental and ideological conditions that produce it.

Philosophical criminology, therefore, demands a shift from moral judgment to critical reflection. It challenges us to identify whether the fault lies with individuals, the government, or the broader social structure that perpetuates inequality and injustice. Only by fostering intellectual freedom and critical inquiry can society transcend the cyclical relationship between crime, punishment, and social control.

Review of Literature

Dilek Baysal (2023)

The society and the environment in it are affected by the crime of an individual. The law and justice are not sufficient to fix this. This is one of the reasons why crime is rampant. The
Social ranking and environment elements to be justified and safety the social political

David canter & Donna youngs (2016)

If a person becomes a criminal due to the changes in society, then after the crime is committed, various impacts occur in that society, which examines the relationship between society and crime.

Zarsanga & intikhab Alam& Shahid Iqbal & Alam geer khan (2018)

His family is also an accomplice in committing a crime, that is, drug-using parents and economically advanced families, on the one hand, those who commit crimes for their daily living, and on the other hand, those who commit crimes to maintain their status quo.

Mai Stafford & Tarani Chandola & Michael Marmot (2007)

The law may provide a way to prevent a crime but does not address the underlying psychological problem, so there is a high chance of re-offending. So the focus in motivation of reconstruction of offenders and rehabilitation, reinforcement Maine objective of the statement

Ichiro Kawachi Bruce P kennedy Richard G wilkinson c (1999)

Crime is seen as a component of social hierarchy and this phenomenon hinders the development of a society and is a reason for politics. In modern version of depressed class and unemployment problem and crime was increasing it's a circle structure of society

Daniel Larsson (2006)

Generally, if a crime is committed for a thing or money, it is also for the economic betterment of the criminal. This is an important psychology that can occur in this society. Only there valuable thing, we will also get value, even if he is bad. 2. This kind of psychology is the problem in society.

Statement of Problems

What we need to note from this is that we should think about anything scientifically and express our ideas with rational self-thinking and investigate the motives and causes of crime and find

solutions for it through our humanity and ideological theory and prevent it with our law. We should observe with a scientific and philosophical perspective why this environment cooperated with the psychological cause and instead of looking for answers, looking for the reasons for that question is the first solution to any problem. We should think about it philosophically and speak with knowledge without believing any news that is beyond our knowledge and self-thinking. Criticism the answer and analysis the understanding of universal fact. The is reason why the crime is happened how to operate by higher class person the analysis subject other problem is known as philosophical and critical criminology

The conceptual understanding about criminology and philosophy

The concept of CRIMINOLOGY and philosophy is the study of crime and the method of preventing crime. This criminology is a multifaceted field in which it studies what crime is and how it happens. Similarly, philosophy is called the starting point of science because the main reason for this philosophy is called research. It is a concept between criminology and philosophy. This philosophy and criminology provide a complete solution to the study of crime by combining it with criminology. This philosophy poses the questions of why, how, and for what. Any event or crime should be viewed philosophically from a scientific perspective because we cannot accept any idea that does not reach self-reflection. It is an impossible idea.
How philosophy and criminology work together to prevent crime can be seen in this society with a small example, namely conspiracy theory. This conspiracy theory is a psychologically false message that is spread among an individual or a community of people. Even though that idea is contrary to science and philosophy, it is accepted as correct by the people living in the society. This is the purpose of conspiracy theory. It is in the way we approach the problems in society. It shows how to look at crime. Philosophy explains the reason for that crime. If we want to look at a society or a person, we must think scientifically and examine it with a philosophical perspective and be psychologically aware. And this question is our society before the formative period to put this question before us because want man lives separately then he stared all in common when was the community together with the crowd man lives the structure start to new concepts since then principal and rules made for himself if implement, man from then until today whatever the development a four pillars of society without of society is not a Full free society likes equality,social justice, self-thinking and conceptual framework of understanding the any matters A crime is not just a human being hurting another human being. It is a crime that takes place in many ways. It goes by different names. It is used for political reasons. Superstitions, conflicting ideas in religion, unemployment, poverty, violence, class, color. These are the different names for such crimes. We need to think about this and find the answer. The unity of criminal and philosophy is to scientifically examine what the crime has created in this society and the purpose of it

The relationship between psychological and social elements

The Psychology is how a person thinks and what the purpose of it is and how his perspective in this society is and why is there a different perspective and that is through social theories. Society is the second place of a person where he can teach him how to be in this place and this society, due to some manipulation and environment, he chooses a different path and starts living in contradiction. The reason is social theory and social elements that everyone is equal and points out differences where it should be taught. That too with the help of psychology, for example, discriminate against a person in the name of God and try to prove it to a person through stories and opinions. Media, which is a part of social elements, is a good example. It does not simply tell a message but expresses ideas emotionally and the 4-cast system is a psychological manipulation of ideas that are not scientific. This is still taught in our curriculum today. There is an opinion that this is true, but the idea that the information contained in it is false is often not accepted by the public. The reason is that they have associated God with psychological thinking. How does this work? Well, these misconceptions are spread through theoretical psychology. The idea that God comes from each part of the body, belonging to each color, is something that science cannot reach. The subtlety in this is that in order to use a particular community of people for their own selfish interests and maintain their power and responsibility, they have given them a name and myths. This has been deeply ingrained in people through stories and opinions over time. Today, society has undergone so many changes, but no one accepts such wrong psychological ideas even today. If these wrong psychological ideas are spread, saying that this is wrong, it is called conspiracy Theory. From a scientific perspective, and if this psychology is used for good thinking, it is called philosophy.

The role of criticism in the social structure

Generally, criticism is a contradictory idea that arises when we read or think about it, and it raises questions about why, what for, and how. We often do not practice this because the social elements and environment do not cooperate with it because this criticism presents various ultimate crimes. It has labeled those who fought for their race with different names as terrorists. This social environment and the government and if they start asking for their rights, the view falls on them in this society that they are criminals. In this effort, criticism should be discussed with our social perspective, that is, Hinduism, which is practiced in India, is a unified religion. The doctrine in it is also suitable for it, but it is only for certain people. In no god theory or religion is there a concept that a person is inferior by birth, but in Hinduism there is such a concept. A society that looks up to even criminals because they are inferior by birth, makes its fellow man suffer by using the false idea that a person is inferior by birth. Not only this, there is some contradiction in this struggle. The worker who builds and maintains an institution with his labor struggles for daily life, but the capitalist who profits from that labor gets a good status and lives in this. This is the exploitation of labor. This is what the ideology of communism says and Karl Marx would have clearly understood this. However, without capitalism, that country will not prosper. However, socialism plays a major role in that ideology of communism. This is an incomplete concept. Each individual ideology includes each principle, that is, left-wing and right-wing. Both of these ideologies include a specific principle, but what we need to think about is why we should not combine these two ideologies and

form a new principle because in the right-wing, ethnicity, language, culture is not important, but in the left-wing, ethnicity, language, culture plays an important role. Through this, we need to understand that we should follow our best ideology and examine which of the two ideologies is contradictory. This left wing right wing a modern version Hindu Muslim Christian religions and many other religions like this have created different perspectives among the people through this and it presents the problem of inequality and social injustice in the society.

The problem faced by scientific thought in the society

The point of interest for the development of this social structure was scientific thinking, but the thought that helped in its development in the beginning is that scientific thinking is being created with a misunderstanding in today's society. Some theories in society say that we should use science in society, but instead, if an event happens, it is said that it happens in the name of religion or in the name of God, but none of us know the knowledge behind it and it is not taught. In today's era, for example, a god with a human body and an animal face created a story for it. This conspiracy theory is based on knowledge. If it is said that there is no God, it is against the principle of religion. There is also a misunderstanding We believe in some false information because we don't think scientifically. Some ideas in astrology say that a planet is given a specific name and that it rules a person based on time and omens. But if you ask if there is any scientific evidence for this, there is none. Astrology is a branch of astronomy that is based on the observation of certain important points in the sky to predict events, but this is being misused in this society. And the society and social civilization has lot of myths and unactable information and believe by people.

The conspiracy Theory is help to create major problems

A conspiracy theory is the secretive practice of an illegal or unnatural act by a select few peoples Some of the ideas we believe to be true in history are conspiracy theories For example, at one time in the United States, a rumor spread that their internet data was leaked and stolen, but in the same year, a certain smartphone company expanded its market and increased its profits. The politics in this is that there is a subtle view that the government has lost its value to a particular institution. We have clearly examined this and this is why many scholars and academicians have said that whatever happens, it should be thought and acted with education. How does this conspiracy theory work in the reservation system in India? India is a democratic country where state governments rule only at the center, with a partner. In a democratic country, the first objective is equality, equality, democracy, a government elected by the people. But according to the law, only fifty percent of the central government and 50% of the state government should be reserved, but in Tamil Nadu, a total

of 69 percent is reserved, which is illegal. And there is a misconception in Tamil Nadu that the people believe that the most reservation is for the oppressed people, but when compared to other communities, the percentage of reservation for them is less. India has been independent for more than 75 years, but a small city called Singapore is a country that should be seen in the world with awe. How did a country with a small land area and a small population become a developed country? Why is our India not developing? What is the reason for this? India is a diverse country with all the resources, but why is India not developing? Similarly, Africa has a lot of metals, but that country is still not developing. The people of that country are being exploited without their knowledge. With the help of our conspiracy theory, some political shake-ups are being implemented. What is the political perspective behind this Wherever people start exploiting them without their knowledge, revolutionaries will always be there, and those who fought sincerely for a while will be oppressed and branded as terrorists. It is during this period that conspiracy theories begin to work.

The social context of society structural planning

The social structure is bases and responsibilities of social context Structural planning can either alleviate or worsen inequalities. The spatial layout of cities is a physical manifestation of social and economic hierarchies, often creating disparities in access to resources, services, and opportunities. A critical social perspective considers how factors such as income, race, ethnicity, and gender are influenced by the uneven distribution of things like green spaces, healthy food options, and reliable transportation the urban political economy Drawing on Marxist geography, this perspective views the city as shaped by capitalist forces. It critiques how development is often driven by the interests of powerful growth coalitions (developers, investors), which prioritize profit over social equity. It analyzes how this can lead to uneven development, where capital is invested in some areas while others are left to decline.

The alternative perspective of society

Sociology provides several perspectives for viewing society that go beyond everyday experience. The functionalist perspective Sees society as a complex system whose parts work together to promote solidarity and stability. It focuses on the functions and dysfunctions of social institutions and how they contribute to the overall health of society, like a body with its organs. Sustainable development An alternative perspective to traditional development, it emphasizes a balance between environmental protection and economic growth. It critiques models that fail to address the interconnectedness of environmental degradation and poverty.

The concept of fact and fiction

The objective truths supported by verifiable evidence, while fiction is imaginative and created from the author's imagination rather than actual events. Facts accurately describe reality, encompassing real people and incidents, whereas fiction may feature imaginary elements but can also incorporate factual details, making the distinction sometimes subtle. Distinguishing between them requires critical evaluation of sources and a clear understanding that facts are provable, while fiction is invented. Critical Evaluation: It's crucial to critically evaluate information to distinguish between factual and fictional accounts, especially in the age of abundant online content. Creative Expression: Fiction allows for creative expression and the exploration of universal themes, even though it is not based on actual events.

The relationship between social behavior and society behavior

Social behavior is an individual's or group's actions within a social context, whereas "society behavior" is not a standard term, but likely refers to the collective actions or patterns of behavior exhibited by society as a whole, or the social behaviors that constitute and shape society. There is a reciprocal relationship: society, with its norms and structures, shapes social behavior, and in turn, individual and collective social behaviors reinforce or change society's structures and dynamics Society establishes accepted standards for behavior (social norms), which individuals internalize and follow to navigate social situations and gain approval. Society can be seen as a mirror reflecting the consequences of individual and group behaviors, demonstrating how actions influence the broader community.

Philosophical reason for social ranking in social structure

Philosophical justifications for social ranking stem from ideas of natural order, the perceived need for social control and stability, and theories of merit and achievement. For example, philosophies like Plato's often posited inherent differences in human capacity justifying a stratified society. However, other philosophical views, such as those emphasizing universal moral equality, argue that hierarchical structures are fundamentally unjust because they contradict the idea that all individuals are inherently equal Arguments supporting social ranking

Natural Inequality: Some philosophies suggest that individuals are born with different abilities, virtues, or capacities, and that natural hierarchies reflect these inherent differences, according to this philosophical view Social Order and Stability: Philosophers have argued that a structured hierarchy, with distinct roles and ranks, is essential for maintaining social order, stability, and efficiency in a complex society.

The instability of social psychology

The "instability" of social psychology primarily refers to its historical replicability crisis, where many findings proved difficult to reproduce. This instability also encompasses methodological limitations, such as the effects of demand characteristics and consent issues in experiments, and

ongoing debates about overgeneralization and the very nature of social behavior itself. Major Factors Contributing to Instability Failed Reproductions: Many key findings in social psychology have been difficult or impossible to replicate in subsequent studies, eroding confidence in the field's knowledge of methodological weakness Demand Characteristics: Experiments are vulnerable to participants behaving in unusual ways because they try to please the experimenter or guess the study's hypothesis.Theoretical and Conceptual Issues Nature of Social Behavior Social psychology studies human behavior, which is complex and influenced by both individual characteristics and the immediate social situation, making universal laws difficult to establish

Intellectual thinking and critical thinking

Intellectual thinking refers to the use of intelligence to conceptualize, understand, and learn, while critical thinking is a more specific, higher-order skill involving the active and disciplined analysis, evaluation, and application of information to form beliefs and guide actions. In essence, intellectual thinking is a broader faculty, and critical thinking is a method to improve and apply that faculty by using intellectual standards like clarity, depth, and logic to judge the quality of our thoughts.

The traditional system and modern system

Traditional and modern systems differ primarily in their focus, with traditional systems being teacher-centered, curriculum-fixed, and emphasizing memorization, while modern systems are student-centered, flexible, and promote critical thinking and technological integration. Traditional systems prioritize discipline and established knowledge, often using lectures and textbooks, whereas modern systems utilize interactive methods, technology, and continuous assessment to foster creativity and holistic development this systematical method of condition in the system it differ the two ideas of interpretation life and opposite thought of mind

Conclusion

Crime, when viewed through the mirror of society, reflects not only an individual's deviance but also the collective failures, contradictions, and inequalities embedded within the social structure. Between causes and consequences lies the psychological dimension—a space where human emotions, needs, and frustrations interact with systemic injustice. This study reveals that crime is not merely a violation of law; it is an outcome of deep psychological conflict born from social alienation, economic disparity, and moral distortion within the community.

The causes of crime, rooted in deprivation, discrimination, and ideological manipulation, evolve into psychological consequences that affect both the offender and the victim. Fear, guilt, aggression, and trauma become social emotions that circulate within families, communities, and institutions, shaping public perception and state response. The society that condemns the criminal often fails to

question the social environment that produced him, thereby perpetuating the cycle of violence and punishment.

Philosophically, this reflection urges a critical rethinking of justice—not as retribution, but as restoration of human dignity and intellectual freedom. Psychological understanding of crime must therefore move beyond pathology to a study of the moral and emotional structure of society itself. The conscience of a society can be measured not by how it punishes crime, but by how it prevents it—through equality, education, and empathy.

Ultimately, the mirror of society reveals that every crime is both a personal act and a social message. The path to reducing crime lies not in harsher laws, but in deeper human understanding—where psychological healing, critical thinking, and social reform merge to restore balance between the causes and consequences of human behavior

Suggestions

- To analyse the relationship between cost of matters and reason of matter for understanding the complexity of society
- To learn the philosophical critique it focuses the question of answer with reference and reason sources
- The conceptual understanding of universal fact and to interact with the society deals with social elements.

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CHAPTER- 11

NAVIGATING LEGAL COMPLEXITIES: CONTEMPORARY CHALLENGES CONFRONTING LAW ENFORCEMENT AGENCIES

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Abstract:

In addition, this research study provides a comprehensive analysis of the myriad legal challenges that are now being faced by law enforcement agencies all over the world in the present day. A comprehensive and in-depth analysis of the phrase "current legal issues in law enforcement" is included in the title of the respective research. These issues are intricately linked to the primary aim of the institutions, which is to safeguard and provide for the individuals who fall within its purview. In order to have a better understanding of the complexities, repercussions, and potential solutions associated with these legal concerns, the purpose of this article is to give a detailed assessment of these matters. The fundamental purpose of this research is to accomplish the goal of enhancing knowledge of the ever-changing legal framework that governs law enforcement. This is the most likely location where the examination will take place. The following is a summary of the most important aspects of the research paper, along with an explanation of the relevance of each of those aspects: In order to preserve the rule of law and guarantee the protection of the general public, the actions that are carried out by law enforcement personnel are of the utmost importance. The efforts of those who are responsible for maintaining law and order have the potential to accomplish both of these goals. Despite this, businesses are required to negotiate through a number of regulatory restraints that have a substantial impact on their corporate operations as well as their contacts with the local people. There are significant implications associated with each of these legislative restrictions. Nevertheless, they are working hard to find answers to these problems and are making a concentrated effort to do so. Despite the difficulties they are encountering, they continue to steer their company in the right direction. During the introduction, the background for the discussion is established by underlining the significance of law enforcement in today's society as well as the increasing complexity of the legal framework within which they function. This will act as a jumping off point for more discussion in the future. This lays the groundwork for the ensuing argument that will later be presented. After finishing this, the reader will be more prepared to participate in the subsequent conversation that will take place.

Keywords: Law Enforcement, Legal, Challenges and Law

Introduction

The numerous law enforcement groups that can be found in countries all over the world bear the lion's share of the responsibility for protecting the general public, upholding the rule of law, and keeping order and stability in their own countries. When they do this, they run into an increasingly complex web of legal concerns, all of which have an impact on the kind of goal they are seeking to achieve as a consequence of the actions that they are taking as a result of their actions. The ever-evolving legal landscape in the field of policing presents a wide variety of challenges, each of which has its own distinct set of repercussions, problems, and possible solutions. These difficulties can be divided into two distinct groups: those that are systemic and those that are situational. The goal of this research paper is to conduct a thorough investigation into the current legal issues that law enforcement agencies are facing. By going in this manner, the author is working towards the objective of demonstrating a thorough knowledge of the complexity that is inherent in the topic of law enforcement. This takes him closer to accomplishing that goal; therefore, he is making progress towards achieving that target. When it comes to ensuring the continued safety and well-being of communities, one of the most important functions that authorities in law enforcement perform is one that is extremely necessary to perform. In the same vein, their methods and activities need to be in agreement with the legal standards and principles that serve as the foundation for democratic communities. In recent years, a significant number of new legal challenges have surfaced, making it essential to conduct a comprehensive investigation in order to successfully traverse the complex intersection of law and policing in a way that is both efficient and effective. Due to the fact that both of these spheres are affected by this convergence, it is possible to conceptualise it as a multifaceted relationship between law and policing. Throughout the course of this investigation, the significance of identifying the factors that contribute to these legal issues and developing workable solutions has been hammered home time and again. The implications of these issues go far beyond the confines of law enforcement agencies; rather, they sever the very link that exists between citizens and those who are tasked with the responsibility of protecting them from harm in their communities. The ramifications of these difficulties reach far beyond the borders of law enforcement institutions. To begin the process of bringing about greater openness, accountability, and efficiency in the practices of law enforcement, it is necessary to have knowledge of these contemporary legal difficulties.

Review of Literature

Shiv Raman (2019), "Cyber Crimes in India: Issues, Challenges, and Strategies," analyses and finds information about cyber crimes that is virtual in nature but affects real people (including natural as well as artificial) real rights. and the cyber crimes are 'Crimes against Humanity,Crimes against Development', and above all, ‘Crimes against Civilization’. Cyber Crimes include the attributes of blue- and white-

colour crimes.

Godara and Samiksha (2011), the authors topic for “Prevention and control of cyber crimes in India: problems, issues, and strategies,” find that the process of crime prevention essentially requires the cooperation and active support of citizens, institutions, industries, and the government alike. Therefore, a sound strategy for the prevention of cybercrimes necessitates the mobilisation of community participation in combating this menace. Ritu (2017), The author conducts research for "Cybercrime: A National and International Perspective." The way to overcome these crimes can broadly be classified into three categories: cyber laws, education, and policymaking. All the above ways to handle cyber crimes are very significant. This lack of work is required to improve the existing work or to set new paradigms for controlling cyber attacks. Mehkarkar Gajanan

Sonappa (2017), author, informs things for cyber crimes “the Law Relating to Cyber Crime Investigation with Reference to Criminal Law of India A Comparative Study” the Indian Penal Code changes various times as per need, however the speed of change is quite more than the amendment in the criminal law, therefore it already has various loopholes. However, the substantive law is thought not to require more change every time; however, the policies for execution are required to meet the changing needs of the time. Chowbe, V S (2014) The author's topic for “Legal Control of Cyber Crime in India " The investigation stretches to focus on the various problems prevailing with computer technology in cyberspace, with special reference to India and the probable prospects available in the area. It has been observed that cyberspace today is not the only matter of curiosity; more serious and alarming issues are involved that require urgent attention.

Policy Governs Force and Justification Your bundle includes these two items Getting a Good Understanding of the Laws and Procedures That Are Involved in the Use of Force This subchapter gives a thorough study of such regulations and delves further into the complexity of the protocols that law enforcement agencies have in place in order to govern the use of physical force. In order to

accomplish this goal, a comprehensive assessment of the application of the relevant policies is offered. Additionally, an analysis of the elements of those policies as well as the legal foundations on which those policies are established is also presented. The following types of materials are required for the delivery of instructional lessons and the administrative management of projects: In the following section of this article, we will go over the many methods that are implemented during training in order to ensure that law enforcement officers have a complete understanding of, and are able to competently apply, the guidelines that are associated with the deployment of physical force. The following is a rundown of the various procedures and checkpoints that come into play with accountability: An investigation into the processes that are already in place to hold members of law enforcement agencies accountable for their acts, with a particular emphasis on the carrying out of internal investigations, the implementation of external oversight, and the carrying out of statutory requirements. Particularly, the emphasis of the inquiry will be placed on holding members of law enforcement accountable for the activities that they have undertaken.

Civil Rights Violations and Police Misconduct Cause Disputes

Taking Measures to Combat the Issue of Improper Behaviour on the Part of Those Holding Positions of Authority Within the Criminal Justice System The following step is to launch an investigation into a variety of issues related to illegal behaviour by law enforcement personnel. This study focuses a lot of attention on three of the most important problems that society is dealing with right now: racial profiling, abuses of authority, and abuses of civil rights. The society is currently working to solve these issues. In Addition to the Alternatives That Are Currently Available, There W ill Also Be Legal Consequences Those who have been victimised are welcome to apply for the following: A discussion and analysis of the potential legal punishments that may be imposed on police officers who are involved in cases of misconduct, as well as a discussion and analysis of the potential legal remedies that could be imposed on victims who have suffered abuses of their civil rights In addition, a discussion and analysis of the potential legal penalties that could be imposed on victims who have faced abuses of their civil rights This essay discusses a number of subjects, including the potential legal repercussions that victims of civil rights violations might experience. This study also examines the potential legal repercussions that victims of events described in the report who have had their civil rights violated might experience. These victims' civil rights have been violated as a result of the events recounted in the report. This study also provides a discussion and analysis of the possible legal repercussions for victims who have

been subjected to violations of their civil rights. These victims have been subjected to violations of their civil rights. These victims' civil rights have been violated in various ways throughout their ordeals. The fact that these victims' constitutional rights were infringed upon in some way as a result of the events that took place is the reason why their names are listed in the report.
The impact of different monitoring technologies on the right to privacy guaranteed by the US Constitution It is imperative that research be conducted on the moral and ethical dilemmas that have emerged as a direct result of the increasing deployment of various forms of electronic surveillance technology. These dilemmas have become apparent as a direct result of the rising deployment of these technologies. The focus of this examination should be on the impact that these technologies have had and continue to have on the constitutionally protected right to privacy of individuals, as well as the factors that are addressed in the Fourth Amendment. This section delves a little deeper into the ongoing debate regarding the question of whether or not it is more important to protect the private rights of individuals or the benefits of increasing public safety through the development of new technology. A compromise was reached between worries about the safety of the general public and private interests. In particular, the topic of whether or not it is more necessary to defend the personal liberties of individuals is the primary emphasis of this section's discussion. At the heart of the conversation that is taking place right now is the question of whether or not people should have the opportunity to exercise their right to privacy by defending it for themselves.
Data mining might involve gathering or sharing data and Both are part of data mining An investigation into the ethical and legal responsibilities that come with the practises of data gathering, notably in areas like the stop-and-frisk procedures that are currently being carried out in the United States of America This section offers a primer-level overview of the legal imperatives that compel law enforcement bodies to maintain openness in their operations. The discussion in this section will focus on these imperatives, which are connected to the exchange of data. This summary is also included in the section that is titled "Transparency Requirements," which is the part of the document that you are currently reading. You can discover it by clicking here. This is of the utmost

significance not only in circumstances involving racial disparities but also in other matters that are of interest to the general public as a whole. It is also of the utmost value in the context of other issues.

During rallies and other actions, command and control must be maintained in the face of unexpected emergencies There will be an analysis of the different legal aspects that make up how police

respond to public protests within the framework of the laws that have already been made for these kinds of events. This framework has been built for protests. The reaction will be constructed out of the components in question. An investigation into the legal challenges that arise over how law enforcement agencies respond to public protests, with a particular emphasis on finding a middle ground between the opposing goals of maintaining public order and respecting the rights of protestors as stipulated in the First Amendment. This investigation will focus on finding a middle ground between the goals of maintaining public order and respecting the rights of protestors as stipulated in the First Amendment. This inquiry will centre on discovering a solution that satisfies both the objectives of preserving public order and complying with the requirements of the First Amendment with regard to the rights of demonstrators. We will investigate the legal consequences of how law enforcement agencies respond to rallies and other sorts of public gatherings as part of the parameters of our study. As a direct result of protests and demonstrations, this section provides an outline of the myriad legal ramifications that may befall law enforcement agencies and officers. These ramifications include both potential civil and criminal liability. Civil rights violations,

constitutional infractions, and constitutional violations including the use of force are all examples of these ramifications. It is possible that this will result in legal action, disciplinary action, or even accusations of criminal wrongdoing. All of these outcomes are possible. In this particular section of the article, under the heading "Legal Consequences," a more in-depth treatment of these legal repercussions is provided. You may find this piece of the article by following this link. Depending on the specifics of the scenario and the nature of the offence, these repercussions could lead to the offender being held accountable in both a civil and a criminal capacity for their actions. Along with undercover and covert operations, covert informants and activities are crucial.

Legal Standards and Ethical Considerations: This section analyses the legal standards and ethical considerations that surround the use of confidential informants and undercover operations, with a special emphasis on scenarios that involve entrapment and issues relating to due process. Additionally, this section investigates the legal standards and ethical considerations that accompany the use of confidential informants and undercover operations. In addition, the legal and ethical norms, as well as the issues that come along with using confidential informants and conducting undercover operations, are discussed in this section. In addition, this section delves into the legal and ethical issues that arise when conducting covert operations and making use of confidential informants. In addition, this section looks into the myriad of different ways in which the employment of confidential informants and covert operations might result in a breach of constitutional rights. This section of the study also contains a comprehensive analysis of the use of confidential informants and covert operations, which may be found in the next paragraph.

Reclaiming one's holdings involves regaining control and safeguarding one's ownership rights An investigation into the complicated legal factors that are involved in the process of asset forfeiture, including the inherent tension that develops as a result of the fact that law enforcement organisations are expected to combat criminal groups while simultaneously safeguarding the rights of property owners, The following are some examples of recent advancements in both legal theory and legal practise; however, this list does not contain every recent development in any of these areas. This section presents an analysis of recent legislative revisions and court decisions that have an impact on the process of asset forfeiture and the manner in which it is carried out. These legislative

modifications and judicial decisions are relevant because they affect the manner in which asset forfeiture is carried out. There have been a lot of legislative changes, and there have also been a lot of judicial rulings, so the manner in which the method is carried out could be altered by those things. Over the course of the previous few years, there have been a wide range of different movements and precedents that have taken place. This will be the primary emphasis of the effort, which will be targeted at improving people's awareness of the many various legislative and legal precedents that have been altered during the previous few years. The work will be focused on boosting people's awareness of the many different legislative and legal precedents that have been amended. The effort will be geared towards educating people about the numerous legislative and legal precedents that have been updated, and that will be the primary focus of the work.

The Justice Administration and Mental Illness Treatment Systems require reform An analysis of the many different legal considerations that come into play when members of law enforcement interact with people who are suffering from mental health conditions The fundamental objective of this study is to come up with strategies for resolving conflicts that are not only legal but also respectful

of the parties involved and secure. This article, which is about the subject matter and is named "Legal Factors in Mental Health Encounters," includes a discussion of the subject matter and provides an examination of the legal concerns that come into play during interactions between law enforcement and those who are struggling with mental health conditions. The fact that the study examines these different legal considerations is where the title of the piece derives from. This analysis can be found in the section of the report titled "Legal Factors in Mental Health Encounters."

Police efficiency was improved by reorganising to follow new laws and norms A look at the latest laws that were passed to encourage police reform and accountability, with a focus on how well these changes work and any legal issues that might come up while they are being put into place. This analysis will look at recent legislative measures that have been enacted with the purpose of promoting police reform and accountability. The research will take a look at recent legislative initiatives that have been implemented with the purpose of improving police reform and accountability. During the course of this research, we will also take into account any potential legal challenges that may arise as a result of the adoption of these revisions. This is something that

we will do since we want to make sure that we don't run into any problems down the road. In the course of carrying out this research, we will also take into consideration any potential legal impediments that may come up in the process of putting these measures into effect. This will be done in order to ensure that we are as prepared as possible.

Suggestions

Implement faster service provider data access channels for urgent circumstances. Establish explicit cross-border data exchange mechanisms that respect state sovereignty and enable law enforcement. Invest in ongoing law enforcement technological training. Provide enough funds to buy and maintain cutting-edge gear. Develop and share digital evidence gathering, preservation, and presentation best practices. Provide digital forensic expert certification to maintain high evidence handling standards.

Conclusion

The comprehensive research offered on contemporary legal difficulties faced by law enforcement revealed that police in today's society is complex and continuously changing. This came to attention due to the availability of the test. To achieve success in this attempt, it was imperative to effectively capture the attention of the general populace. The objective of this analysis was to address the necessity of acknowledging this particular truth. This examination was conducted because law enforcement is currently directly addressing these concerns. The study's findings brought the importance of the issue to people's notice and made it a top priority. This happened as a direct result of the study's conclusions. The objective of this study was to examine the primary legal challenges currently faced by law enforcement agencies, their personnel, and the communities they are entrusted to safeguard. Another purpose of this research was to provide a comprehensive analysis of the primary legal challenges faced by individuals hired by such businesses. The purpose of this research was to provide a summary. In addition, this group encompasses both the employees of these institutions and the communities that have entrusted them with the duty of safeguarding them. The relevance of this objective cannot be overstated, as it was the primary motivation behind the

research conducted. As our study project nears conclusion, it is becoming more evident that addressing these legal challenges is not only essential but also the responsibility of law enforcement agencies, lawmakers, and the entire community. Both of these groups have the responsibility of tackling these difficulties. We have clearly recognised the importance of this issue. This concept has become evident as we are approaching the completion of the research project that we have been diligently working on. I have been clearly informed that this is a matter that is getting more and more evident as we approach the completion of our task. This is something that I have well understood. It is evident to both of us that we are nearing the completion of
the study assignment that we have been given. Collectively, we have mutually reached the determination that this is indeed the situation. As we approach the completion of our research study, it has become increasingly evident to us.

We are fully aware and focused on the fact that this specific subject is being questioned.

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CHAPTER-12

TRUSTING THE PATTERN": A CRITICAL EXAMINATION OF MODUS OPERANDI AND MISIDENTIFICATION IN CRIME INVESTIGATION

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Abstract

The modus operandi (MO) of an offender has traditionally been considered a cornerstone in criminal investigation and behavioral profiling. It reflects the distinct methods, habits, and patterns adopted by criminals to execute and conceal their offenses. However, when different offenders employ similar MOs— either intentionally or coincidentally—there arises a profound risk of misidentification. This research initially investigates how investigative dependence on MO similarity, without adequate corroboration, can lead to erroneous assumptions and flawed offender linkage. Drawing upon case studies, forensic behavioral analysis, and investigative theory, this study systematically examines the cognitive and procedural pitfalls that occur when investigators prioritize pattern recognition over empirical evidence. The paper argues that identical or overlapping MOs may emerge due to shared situational opportunities, exposure to media coverage, or imitation among offenders. Hence, attributing a crime solely on behavioral resemblance can distort investigative direction and undermine judicial fairness. Through analytical evaluation, the study proposes a structured investigative framework and biological evidentiary validation. The findings underscore that forensic reliability is achieved not by trusting the modus operandi alone, but by triangulating it with trace evidence, witness accounts, and technological analyses such as DNA profiling and digital forensics. This study mainly emphasizes that while the modus operandi remains an indispensable investigative guide, it must be supported by precise, evidence-based evaluation. Only through holistic and scientifically grounded investigation can law enforcement ensure accurate offender identification and uphold the integrity of justice.

Keywords: Modus operandi, offender misidentification, crime pattern similarity, accurate

investigation.

Introduction

Criminal investigation relies on a spectrum of behavioral, physical, and forensic indicators to identify offenders and reconstruct the sequence of criminal acts. Among these, *modus operandi* (MO)—a Latin term meaning “method of operation”—has long been regarded as a cornerstone in behavioral analysis. It represents the distinct pattern, approach, or technique consistently adopted by an offender to commit crime. This behavioral signature often reflects the offender’s experience, motivation, psychological disposition, and adaptability. However, with the advancement of criminal knowledge, media exposure, and digital interconnectivity, the same or similar modus operandi can be employed by multiple offenders, leading to significant investigative complications. Such replication not only challenges the credibility of behavioral profiling but also increases the risk of suspect misidentification, potentially derailing the pursuit of justice. Historically, the study of modus operandi has assisted investigators in connecting seemingly unrelated crimes and in predicting potential offender behavior. It serves as a cognitive blueprint through which patterns of crime execution are focused. In policing, recurring MO elements—such as weapon choice, entry method, victim type, and time of offense—were considered distinctive enough to point toward a common perpetrator. Investigators viewed these consistencies as behavioral "signatures" that could be used to link cases or profile an unknown suspect. The significance of MO lies in its psychological and operational insight. It provides clues about the offender’s comfort zone, skill level, and learning curve. However, this same reliance on behavioral uniformity becomes problematic when different individuals, intentionally or otherwise, replicate similar methods. The investigative system, trained to recognize patterns, may inadvertently interpret similarity as sameness—confusing behavioral coincidence with identity. This cognitive bias can result in false linkages between crimes and wrongful attribution of guilt. In contemporary scenarios, offenders have unprecedented access to information about investigative methods, past cases, and similar procedures. The widespread availability of crime-related content in media and digital platforms enables offenders to imitate refine, or even distort known modus operandi. This phenomenon blurs the distinction between original behavioral patterns and copied methods. Two offenders operating under similar circumstances—such as socioeconomic pressure, urban settings, or opportunity—might naturally adopt analogous approaches to achieve their criminal objectives. Furthermore, psychological and environmental factors can contribute to these similarities. For instance, crimes involving burglary, fraud, or

sexual assault often display overlapping behavioral traits due to the shared objectives and constraints of such offenses.

Consequently, investigators may observe nearly identical patterns across unrelated offenders. When investigative conclusions rely excessively on these observable similarities without deeper forensic validation, the risk of misidentifying innocent individuals increases—and resources may be diverted away from the actual perpetrator. The issue extends beyond individual cases: it challenges the epistemological foundation of behavioral analysis. The assumption that modus operandi directly correlates with offender identity must be re-evaluated in light of evolving crime typologies. Human behavior is adaptive and influenced by numerous external stimuli, making it inherently fluid rather than static. Therefore, using modus operandi as an exclusive tool for identification undermines the objectivity that modern criminal investigation demands. The future of effective criminal investigation depends on harmonizing behavioral insight with forensic certainty. When modus operandi is properly analyzed, it becomes a powerful interpretive tool rather than a misleading indicator. Cross- disciplinary collaboration is essential to ensure accuracy, integrity, and justice. This research paper seeks to explore how reliance on identical or similar modus operandi can lead to investigative errors and misidentification of suspects. It emphasizes the need for balanced, critical, and scientifically grounded investigation practices. By examining legal case studies and contemporary methodologies, this study aims to reaffirm that truth in criminal investigation arises not from behavioral resemblance alone, but from the convergence of evidence, logic, and forensic accuracy.

Review of Literature

- **Burrell, A., Costello, L., & Woodhams, J. (2024).**Methods used to link crimes using behavior: A literature review. Journal of Investigative Psychology and Offender Profiling. Outlines how behavioral methods are used in crime linkages, emphasizing inconsistent approaches and the need for standardization to prevent misidentification from overlapping.
- **Davies, K., & Woodhams, J. (2019).**The practice of crime linkage. Focusing on behavioral consistency and distinctiveness. Notes that similar MOs can lead to false linkages and stresses the need for clearer operational frameworks.
- **Hazelwood, R. R., & Warren, J. L. (2019).** Explains the distinctions between modus operandi (MO), ritual, and signature in serial crimes. Warns that relying solely on MO can lead to

mislinking when offenders use similar methods.

- **Beauregard, E., Chopin, J., & Andersen, M. A. (2022).** Finds that MO patterns in sexual assaults remain stable over time, implying that behavioral overlap among offenders can contribute to misidentification.

- **Woodhams, J., Hollin, C. R., & Bull, R. (2007)**.Reviews empirical evidence on behavioral consistency in offending. Concludes that MO can be influenced by situational factors, sometimes reducing its reliability in linking crimes.
- **Buivell, A., & Tonkin, M. (2020).** Discusses the application of behavioral crime linkage in sexual offenses. Highlights its benefits and cautions against misidentification due to data inconsistency and shared behavioral traits.
- **Woodhams, J., Tonkin, M., Buivell, A., & Bull, R. (2019).** Large-scale empirical study testing crime linkage accuracy. Shows that real-world complexity reduces the accuracy of MO-based linkages, increasing the risk of offender misidentification.

Statement of the Problem

In criminal investigations, the analysis of an offender's modus operandi—the method or pattern of committing a crime—has long been considered an essential tool in linking crimes and identifying suspects. Investigators often assume that each offender's modus operandi is distinctive and consistent, making it possible to connect multiple offenses to a single individual. However, this assumption is increasingly being challenged in modern crime investigation.

Different offenders may adopt similar techniques, strategies, or behaviors when committing crimes due to exposure to the same social influences, media portrayals, or access to online information about criminal methods. As a result, crimes committed by unrelated offenders may appear strikingly similar, leading investigators to believe they were committed by the same person. This overlap in modus operandi can cause serious investigative errors, including the misidentification and wrongful accusation of innocent individuals.

Such errors not only undermine the credibility of law enforcement agencies but also delay justice by allowing the real offenders to remain unpunished. Overreliance on behavioral patterns without sufficient corroborative evidence such as forensic, digital, or eyewitness data—intensifies the problem. Furthermore, limited training and outdated profiling techniques may contribute to investigative bias and procedural mistakes.

Therefore, the core problem addressed in this study is the misidentification of offenders resulting from the use of similar modus operandi by different criminals. This research seeks to understand the factors contributing to this issue and to develop strategies to enhance the accuracy of offender identification while reducing the risk of investigative error.

Concept and Importance of Modus Operandi in Criminal Investigations

The term modus operandi refers to the distinctive methods or patterns an offender uses when committing a crime. It has traditionally been regarded as the behavioral "signature" of a criminal, assisting investigators in connecting similar offenses and identifying potential suspects. Over time, criminal profiling has relied heavily on the assumption that each offender's modus operandi is unique and consistent. This concept has contributed significantly to solving serial crimes and understanding offender psychology.

Factors Contributing to Similar Modus Operandi among Different Offenders

In an increasingly digital and interconnected world, offenders have easy access to information about criminal techniques through media, films, and online platforms. Many imitate previously successful methods to reduce the risk of detection. Moreover, similar socioeconomic conditions, peer influences, and environmental factors can produce comparable criminal behaviors. Consequently, unrelated offenders may commit crimes using identical tools or strategies, creating overlaps that complicate investigative efforts.

Challenges and Consequences of Misidentification in Criminal Investigations

Overreliance on behavioral similarities often leads to the misidentification of suspects. Innocent individuals may face wrongful accusations, while the actual offenders continue their criminal activities. Such investigative errors erode public confidence in the justice system and consume valuable time and resources. Beyond procedural issues, wrongful identification can cause severe emotional and psychological distress to those falsely accused. Hence, achieving accuracy in offender identification is essential to maintaining justice and public trust.

Limitations of Relying Solely on Behavioral Evidence

Although behavioral evidence, including modus operandi, offers important insights into criminal

tendencies, it must be corroborated with objective data. Without supporting forensic, digital, or eyewitness evidence, behavioral profiling risks becoming speculative. Investigators may also experience biases in ways that confirm existing assumptions. Therefore, relying solely on behavioral clues may compromise investigative objectivity and lead to errors in judgment

Strategies for Enhancing Accuracy in Offender Identifications

A comprehensive, multidisciplinary approach is vital to minimizing misidentification. Combining behavioral profiling with forensic science, digital forensics, and data- driven analysis enhances investigative accuracy. Training programs that strengthen critical thinking and promote awareness of cognitive bias can further improve reliability. Emphasizing corroborative evidence ensures that modus operandi functions as a helpful guide rather than the sole determinant of guilt.

Discussion

The concept of modus operandi has long served as a fundamental analytical tool in criminal profiling and investigation. It refers to the characteristic methods and patterns that offenders use to commit crimes, often reflecting their skills, experiences, and psychological motivations. However, one of the major challenges faced by investigators and forensic professionals is that different offenders can display remarkably similar patterns of behavior, resulting in the misidentification of the actual perpetrator. The reliance on behavioral similarities without corroborating evidence can create substantial risks, including wrongful arrests, flawed prosecutions, and the erosion of public confidence in the justice system. In many criminal cases, investigators depend heavily on the M.O. as a primary clue linking crimes to a single suspect. This dependence arises because patterns—such as the choice of weapon, timing, or method of entry—often provide investigators with a narrative to follow. Yet, such patterns are not always unique. Many offenders, especially those who commit similar types of crimes within the same geographic region, may imitate one another or rely on common techniques.

For example, burglars may favor breaking in during nighttime hours using similar tools, or sexual offenders may follow recurring victim selection patterns based on vulnerability. When investigators assume that these similarities point to a single offender, the investigative process may become biased, narrowing the suspect pool prematurely and ignoring alternative possibilities (Douglas & Burgess, 2008).

The misidentification of offenders based on similar M.O. patterns has profound implications for both the investigation and the criminal justice process as a whole. First, such cases can lead to wrongful accusations and convictions of innocent individuals. These miscarriages of justice not only harm the accused but also allow the real offender to remain at large, continuing to endanger society. Second, investigative teams may expend substantial resources pursuing a misleading line of inquiry. As a result, valuable time and evidence can be lost, complicating efforts to identify the true perpetrators. The psychological and social consequences of these errors are equally severe, particularly for victims who may lose faith in the system's ability to deliver justice.

Another contributing factor to misidentification is the overreliance on subjective interpretations of behavioral evidence. While M.O. analysis can provide useful insights, it is not a definitive form of identification. Unlike physical evidence—such as DNA, fingerprints, or digital records—behavioral patterns cannot conclusively link a suspect to a specific crime. Investigators may unintentionally allow cognitive biases, such as confirmation bias or tunnel vision, to influence their judgments when they focus too narrowly on M.O. similarities.

Research in forensic psychology emphasizes that behavioral evidence should always be corroborated with objective forms of proof (Canter 2011). This means that the M.O. should be treated as a supplementary lead rather than primary evidence of guilt. To mitigate the risk of misidentification, criminal investigations must adopt a multi-evidence approach. The integration of strong physical evidence, credible eyewitness testimonies, and medical or

forensic reports can substantially improve accuracy.

For instance, DNA profiling and biometric evidence can confirm or refute the connection between a suspect and a crime scene with scientific precision. Similarly, eyewitness statements—when collected carefully and free from suggestive questioning—can provide additional context that behavioral evidence alone cannot offer. Medical and forensic reports, such as injury analysis and toxicology findings, can further support or contradict behavioral inferences. Together, these evidentiary forms create a holistic framework that strengthens the validity of criminal investigations and reduces the likelihood of misidentification.

Furthermore, continued training and awareness among law enforcement personnel are critical. Investigators should be educated on the limitations of behavioral profiling and trained to recognize cognitive biases that can distort reasoning. Interdisciplinary collaboration between criminologists, psychologists, and forensic experts can also enhance investigative accuracy by promoting evidence-based decision-making. The integration of modern investigative technologies—such as digital surveillance, geographic profiling, and MO analysis—combined with empirical data reinforces objectivity (Tuesday, 2012).

The use of modus operandi remains an important component of criminal investigation, but it must be employed with caution. The similarity of methods used by different offenders can easily lead to misidentification, investigative struggles, and the unjust implication of innocent individuals. Therefore, relying solely on behavioral patterns should be avoided. Instead, investigations must prioritize the collection and corroboration of strong physical evidence, reliable eyewitness accounts, and comprehensive medical and forensic reports.

By strengthening these evidentiary foundations, the criminal justice system can reduce investigative errors, enhance accuracy, and ensure that justice is served both fairly and effectively.

Conclusion

The analysis of modus operandi remains a valuable investigative tool for understanding offender behavior and linking crimes. However, overdependence on this approach can lead to significant investigative challenges, especially when different offenders employ similar methods. The assumption that behavioral similarity equates to offender identity risks misdirecting investigations and may result in serious miscarriages of justice. When the same or comparable modus operandi (M.O.) is adopted by multiple offenders—whether through imitation, coincidence, or shared environmental factors—the risk of misidentification increases substantially. Such errors not only compromise the accuracy of investigations but also undermine the credibility of the entire criminal justice system.

To prevent these mistakes, behavioral similarities must always be supported by reliable proof. Strong forensic evidence—such as DNA, fingerprints, and digital data—should be central to investigations, alongside credible eyewitness accounts and medical reports. Together, these elements enhance accuracy and fairness in identifying true offenders. In conclusion, while the study of modus operandi remains a useful investigative tool, it must be applied cautiously and in conjunction with concrete evidence. Combining behavioral insights with scientific proof helps avoid misidentification, protects the innocent, and ensures justice is both accurate and equitable.

Suggestions

- Strengthen the Use of Forensic and Scientific Evidence Investigations should rely more heavily on objective forensic techniques—such as DNA profiling, fingerprint analysis, and digital forensics—rather than depending solely on behavioral similarities.
- Scientific evidence provides verifiable connections between suspects and crimes, reducing the risk of wrongful identification based on shared modus operandi patterns.

- ❖ Improve Training for Investigators Police and investigators should receive better training to understand the limits of using behavioral clues.
- ❖ Training should focus on avoiding personal biases and learning how to combine behavioral evidence with scientific proof for more reliable results.
- ❖ Investigators should work with criminologists, psychologists, and forensic experts to study cases from different angles.
- ❖ This teamwork helps make the identification of offenders more accurate and fair.
- ❖ Support Findings with witness and Reports Behavioral clues should be supported by strong evidence
- ❖ Eyewitness statements, medical records, and forensic documents confirming findings through multiple sources helps avoids misidentification and ensures that justice is correctly served.

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CHAPTER-13

ARTIFICIAL INTELLIGENCE AND CRIMINAL JUSTICE SYSTEM IN INDIA: A CRITICAL STUDY

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Abstract

Artificial intelligence (AI) has emerged as a transformative force in the field of criminal justice, with the potential to significantly impact the Indian Penal Code (IPC) and the broader legal landscape in India. AI technologies, such as machine learning and data analytics, are being increasingly integrated into various facets of the criminal justice system to enhance efficiency, accuracy, and fairness. This introduction provides an overview of how AI is being leveraged within the context of the Indian Penal Code, from predictive policing and crime analysis to evidence management and legal research. It highlights the promise and challenges of AI in criminal justice and underscores the need for responsible and ethical use of these technologies to ensure that they serve the interests of justice and the rule of law in India.

Artificial intelligence (AI) has found its way into various sectors, and the criminal justice system is no exception. This research paper explores the integration of AI in the criminal justice system, focusing on its applications, benefits, challenges, and ethical implications. We examine how AI technologies, such as predictive policing, risk assessment algorithms, and facial recognition, are reshaping law enforcement, court proceedings, and corrections. We also discuss the potential advantages, drawbacks, and the importance of maintaining transparency, fairness, and accountability in the adoption of AI in the criminal justice system.

The integration of Artificial Intelligence (AI) technologies into the criminal justice system has become a subject of increasing interest and debate. This research paper explores the current landscape of AI applications in criminal justice, focusing on its potential benefits, challenges, and ethical implications. The paper reviews the use of AI in various stages of the criminal justice process, including law enforcement, judicial decision-making, and corrections. Additionally, it discusses the impact of AI on fairness, transparency, accountability, and the protection of individual rights within the criminal justice system.

Keywords: Artificial intelligence, criminal justice, justice system.

Introduction:

The criminal justice system can transform how law enforcement agency's function, boost efficiency, and enhance overall results. This document examines the prospects, obstacles, and ethical aspects linked to the implementation of AI technologies within the Indian criminal justice system. The Indian criminal justice system, similar to many others worldwide, encounters issues

like case backlogs, limited resources, and the necessity for swift and equitable resolution. The integration of AI technologies can provide creative solutions to tackle these challenges. AI uses in criminal justice include predictive policing, crime analysis, case management, and judicial decision-making. Artificial intelligence (AI) has become a revolutionary influence in the realm of criminal justice, offering the potential to greatly affect the Indian Penal Code (IPC) and the wider legal framework in India.AI technologies, including machine learning and data Analytics are progressively being incorporated into diverse aspects of the criminal justice system to improve effectiveness, precision, and equity. This opening presents an examination of how AI is utilized in relation to the Indian Penal Code, related to predictive policing and crime examination to proof handling and juridical inquiry. It emphasizes the potential and difficulties of AI in crime justice and highlights the importance of responsible and ethical application of these technologies to guarantee that they promote the interests of justice and the rule of law in India.

Background:

The integration of AI within the criminal justice system holds potential. enhanced effectiveness, precision, and impartiality in choices-creating processes. Nonetheless, it also brings up issues concerning prejudice, confidentiality, and the possibility of unforeseen outcomes. This document intends to deliver an extensive summary of the present condition of AI in the field of criminal justice.

Objectives:

▪ Investigate the uses of AI in police work, legal processes, and rehabilitation.
▪ Explore the advantages and obstacles related to AI integration.
▪ Examine the moral factors related to the application of artificial intelligence in the criminal justice system.

Artificial Intelligence in Law Enforcement:

1. Predictive Policing

▪ Talk about the application of AI algorithms for crime prediction,focal points and distribute resources.
▪ Investigate issues associated with bias and the perpetuation of current inequalities.

2. Surveillance Technologies

▪ Investigate the function of AI- powered monitoring technologies in preventing crime.
▪ Discuss the consequences for privacy and civil rights.

Applications of Artificial Intelligence in the Criminal justice System:

1. Predictive Policing

▪ Investigate the function of AI-driven monitoring technologies in preventing crime.
▪ Discuss the consequences for privacy and civil rights

2. Risk Assessment Algorithms

▪ Describe the application of AI-based risk evaluation instruments for release, judgment, and conditional release choices.
▪ Evaluate the likelihood of bias and issues related to fairness in these algorithms.

3. Facial Recognition

▪ Explore the role of facial recognition technology in identifying suspects and improving surveillance.
▪ Discuss concerns related to privacy, accuracy and potential misuse of facial recognition.

Benefits of Artificial Intelligence in the Criminal Justice System:

1. **Improved Effectiveness**

▪ Explain how AI can streamline repetitive tasks, resulting in faster case handling.
▪ Examine the possible financial savings for law enforcement organizations.

2. **Minimized Prejudice**

▪ Describe how AI can assist in reducing human biases in processes for making decisions.
▪ Explore the consequences for equitable and unbiased justice.

3. **Optimized Resource Distribution**

▪ Examine how AI can enhance resource distribution by detecting crime-prone areas and assigning law enforcement resources appropriately.

Challenges:

1.Data Privacy and Security: The application of AI in criminal justice requires gathering and examining extensive datasets, prompting worries regarding privacy and security of confidential data.

2.Bias and Fairness: AI algorithms can adopt biases included in the training data, which could result in biased results. Guaranteeing equity andResponsibility in AI systems is essential.

3.Public Trust and Ethical Concerns: The use of AI in law enforcement could generate ethical concerns and worries within the community, necessitating clear strategies and messaging to establish and uphold trust.
4.Technical Limitations: AI systems are not flawless, and technical constraints could lead to mistakes or misunderstandings. This highlights the necessity for human supervision.

Ethical considerations:

▪ **Transparency**: Clear AI algorithms and processes of making decisions are crucial for guaranteeing responsibility and fostering public confidence.

▪ **Accountability:** Defining transparent pathways of responsibility for the choices made by AI systems is essential to tackle issues regarding mistakes or prejudices.

▪ **Human Oversight:** Although AI can improve productivity, human supervision is crucial for understanding intricate circumstances and tackle the constraints of AI technologies.

Artificial intelligence in relation with Criminal Procedure Code, 1973:

Artificial intelligence (AI) in connection with crime, The Code of Criminal Procedure (CrPC) serves a significant function in multiple facets of the legal procedure, providing both possibilities

and obstacles. AI technologies are being developed growing in use to improve the effectiveness, precision, and accessibility of legal processes specified in the CrPC.

Artificial Intelligence (AI) has arisen as a revolutionary influence across multiple domains, and its incorporation into legal systems is transforming the environment of the criminal legal system. In this framework, the Criminal Procedure Code (CrPC) acts as the foundation of procedural rules. In the Indian legal framework, outlining the procedures and procedures that regulate the inquiry, court proceedings, and resolution of criminal cases. The convergence of AI and the CrPC represents a fundamental change in the approach to legal proceedings take place, providing unparalleled chances for effectiveness, precision, and availability, while also presenting new challenges that demand thoughtful reflection.

The integration of AI into the criminal justice system, along with particular significance to the CrPC is complex and appears in different aspects of legal work. One among the notable fields where AI has shown its usefulness are in research and analysis of legal matters. AI-powered tools can quickly filter via extensive collections of legal documents, precedents, and cases regulations, simplifying the procedure for attorneys who must maneuver through the complex network of legal regulations specified in the Criminal Procedure Code. This not only speeds up the preparation and showcasing cases while also guaranteeing that legal reasoning are knowledgeable and consistent with established practices, promoting a stronger and more reliable legal framework. Predictive analytics, an additional realm of AI, has significant consequences for the CrPC. Utilizing past instances information, AI models can forecast case results and recognize patterns that might escape human examination.

Criminal Procedure Code (CrPC) in India is a crucial legal framework that outlines the procedures and guidelines for the conduct of criminal cases within the Indian legal system. AI can be closely related to the CrPC in several ways:

1. Predictive Policing:

AI can support law enforcement agencies in detecting possible crime hotspots and trends, which may assist in the allocation of resources and staff in accordance with CrPC regulations. Through examination historical crime statistics and additional pertinent factors, AI can assist in preventive measures against crime and inquiries.

2. Case Management:

Systems powered by AI can enhance efficiency. case management procedures by automating appointment planning, reminders and management of documents. This may assist make certain that criminal cases move forward in line with CrPC deadlines and specifications.

3. Evidence Analysis:

AI can aid in the examination of proof, such as fingerprint identification, facial acknowledgment, and speech evaluation. This innovation is capable of accelerate the procedure of evidence analysis, which is essential for complying with the CrPC's requirements for just and effective experiments.

4. Legal Research:

AI-driven legal research tools can assist attorneys and judges in finding pertinent case law, legal precedents and statutes rapidly, assisting in the understanding and utilization of CrPC regulations throughout proceedings and testimonies.

5. Sentencing and Parole:
AI is capable of delivering insights based on data. analyses to help judges reach well-informed conclusions concerning sentencing and parole. These systems are capable of take into account different elements, including the intensity of the offense, the criminal's background, and reintegration potential outcomes, while following the sentencing standards of the Criminal Procedure Code.

6. Data Management:
AI can assist in handling large amounts of information and proof, guaranteeing that it is safely kept and readily available, in accordance with CrPC standards. It is possible also help in removing sensitive information to safeguard the rights and privacy of individuals participating in cases involving crime.

7. Legal Aid and Assistance:
Chatbots powered by AI and virtual assistants are capable of offering legal information and support for people who might lack access to legal advice, assisting them in comprehending their rights and duties outlined in the CrPC.

In the criminal justice system, challenges and ethical issues must be confronted. Maintaining transparency, accountability, and fairness in the implementation of AI technologies is crucial to uphold the integrity of the CrPC and safeguard the rights of individuals involved in legal actions.

Artificial intelligence in relation with Indian Penal Code,1860:

The Indian Penal Code (IPC), created in 1860, constitutes the foundation of criminal law in India, offering a thorough system for establishing and penalizing crimes. As we find ourselves at the brink of the fourth industrial revolution, the incorporation of AI combined with the IPC signifies an important progress in the management of justice. This coming together of conventional legal doctrines with advanced technology carries significant consequences for the understanding, implementation, and development of the IPC.

The role of AI within the framework of the IPC is diverse, tackling different facets of the criminal justice system. A key overlap exists in legal research and examination. The IPC, along with its complex network of divisions and clauses frequently present a difficulty for legal experts to steer. AI-driven tools can analyse extensive legal databases, quickly retrieving pertinent legal cases, historical rulings, and legal regulations. This not only accelerates the process of legal research while also guarantees that professionals are furnished with extensive and current data for understanding and utilizing the IPC in modern circumstances.

The forecasting abilities of AI also come to the leading position in the field of legal examination. Through examination trends in past cases and rulings, AI models can provide understanding of possible results, supporting legal experts in planning their tactics for cases based on the example established by the IPC. Nonetheless, the moral aspects of depending on predictive analytics in law decision-making requires thorough thought to guarantee that justice is delivered with careful consideration and regard for personal liberties.

Artificial intelligence (AI) within the criminal justice system can be connected to the Indian Penal Code (IPC) in multiple ways. The IPC serves as a fundamental legal framework in India that describes different criminal acts and their corresponding punishments. AI technology may be

utilized within the criminal justice system to improve its efficiency, effectiveness, and equity while also guaranteeing adherence to the IPC.

Here are some key points of relation:

1. Predictive Policing:
AI can analyse historical crime data to forecast potential crime hotspots or trends. Utilizing AI algorithms allows law enforcement agencies to allocate resources more efficiently to avert crimes that breach the IPC.

2. Case Assessment:
AI tools aid in case evaluation, enabling legal experts to pinpoint pertinent sections of the IPC, precedents, and legal reasoning. This can simplify the legal procedure and guarantee that cases are established on a strong basis.

3. Criminal Profiling:
AI can aid in criminal profiling by helping to pinpoint possible suspects through analysis of behaviour patterns and evidence. This can be relevant to cases involving IPC violations such as murder, sexual assault, or theft.

4. Sentencing Recommendations:
AI algorithms assist judges in deciding suitable sentences by analyzing case details, the defendant's criminal record, and pertinent sections of the IPC. This may result in more uniform and equitable sentencing.

5. Legal Research:
AI assists legal experts in exploring case law and precedents, enabling them to comprehend how the IPC has been utilized in earlier cases and enhancing the efficiency of legal processes.

6. Evidence Analysis:
AI technologies, including image and audio recognition, can aid in examining evidence, which is essential in criminal cases, including those involving.

7. Risk Assessment:
AI can evaluate the threat posed by people who have been accused or found guilty of offenses under the IPC. This data may be helpful for choices concerning bail, parole, or probation.

8. Case Backlog Management:
Through the automation of repetitive tasks and document handling, AI can assist in diminishing the backlog of cases within the criminal justice system, guaranteeing that justice is served promptly as stipulated by the IPC.

It is crucial to recognize that utilizing AI in the criminal justice system must be done meticulously to prevent biases and discrimination. It must also be consistent with the principles and rights established in the Indian Constitution and the IPC, guaranteeing that AI usage aids in the quest for justice while honouring the rule of law.

Artificial intelligence in relation with Indian Evidence Act, 1872:

The convergence of the Evidence Act and Artificial Intelligence (AI) represents a multifaceted and advancing domain within the legal framework deliberation. The Evidence Act, a legislative structure that regulates the acceptance and application of evidence in legal proceedings have been greatly influenced by the arrival of artificial intelligence technologies. This connection brings up significant inquiries regarding the acceptability, dependability, and moral aspects consequences of data produced or supported by AI systems.

A primary challenge is verifying that proof AI-generated content is permissible in legal proceedings. Conventional guidelines of evidence usually necessitates that it be pertinent, trustworthy, and verified. With evidence generated by AI, queries concern regarding the trustworthiness of the algorithms, the information utilized to educate them, along with the clarity of the decision-making operation. Courts must confront challenges like the interpretability of AI systems, the possibility of bias in data for training, along with the necessity of expert opinions for interpretation and authenticate evidence generated by AI. The verification of evidence is another essential element affected by AI. Verifying the legitimacy of digital evidence has consistently been a worry, yet AI brings forth novel strata of intricacy. Judges might have to take into account the trustworthiness of the methods employed to produce or evaluate digital proof, guaranteeing that the AI system itself has not been altered and that the outcomes can be relied upon.

The Indian Evidence Act, established in 1872, regulates the acceptability of evidence in Indian judiciary. It describes the guidelines concerning what proof can be shown, the manner it must be shown, and the importance that must be assigned to various forms of evidence.

As technology, including AI, has evolved, it has brought new challenges and opportunities to the realm of evidence.

1. Authentication of Electronic Evidence:

emergence of AI, the legitimacy of digital evidence turns into an essential concern. The Evidence Act of India could must adjust to tackle issues associated with the verification and acceptability of produced evidence or handled by AI systems. Establishing the dependability and reliability of AI-produced evidence would be essential in judicial processes.

2. Expert Opinion Evidence:

AI systems, especially those that entail machine learning algorithms, can provide professional insights across different domains. The Evidence in India.The Act already acknowledges the acceptability of expert viewpoints. Nevertheless, there could be a requirement for particular rules regarding how courts ought to handle opinions given by AI technologies and the criteria needed for an AI system to be viewed as an authority.

3. Hearsay and Machine-Generated Information:

The Act presently includes provisions concerning hearsay proof. Since AI systems can analyse data from multiple sources, such as rumours, there might be a requirement for explanation on how courts ought to handle information generated by machines and assertions provided by AI systems, particularly when the data is sourced from secondary sources.

4. Data Privacy and Admissibility:

The application of AI frequently entails the examination of substantial data collections. Concerns associated with data confidentiality and the acceptability of evidence collected through AI methods may require additional explanation inside the legal structure. This is particularly significant taking into account the growing significance of safeguarding personal privacy entitlements.

5. Criminal Profiling and Bias:

AI technologies employed in criminal profiling might trigger worries regarding prejudice and equity. The Indian Evidence Act may require reconsideration include clauses that tackle the possible biases in AI algorithms and guaranteeing that any proof obtained from AI systems is equitable and unbiased.

6. Chain of Custody for AI-Generated Evidence:

The Act presently deals with the chain of custody for tangible proof. Adjusting these concepts to the digital landscape, especially concerning AI-created proof, may be essential for preserving the integrity of the proof submitted in court.

7. Educating Legal Professionals:

Given the technical nature of AI, there might be a need for educating legal professionals, including judges and lawyers, about the functioning and limitations of AI. This knowledge would be essential for effective cross-examination and evaluation of AI-generated evidence.

In conclusion, although the Indian Evidence Act might not directly discuss AI as of my most recent update, the developing the characteristics of technology indicate that legal structures might must adjust. This might include modifications or the creation of additional guidelines to guarantee that the principles of the Act continue to be pertinent and functional in the setting of AI-produced proof. It is recommended to seek advice. The newest legal materials and information to acquire the most precise details regarding any advancements in this field.

Conclusion:

In conclusion, the integration of artificial intelligence (AI) into the criminal justice system in India reflects a transformative shift aimed at enhancing efficiency, improving decision-making processes, and addressing challenges associated with case backlogs. The application of AI, ranging from predictive policing and case management to forensic analysis and risk assessment, holds the promise of bolstering investigative capabilities and ensuring a more streamlined legal process. However, this technological integration is not without its complexities and ethical considerations. The potential for biases in algorithms, concerns about data privacy, and the need for transparency and accountability underscore the importance of careful implementation and continuous oversight. Striking a balance between leveraging the benefits of AI and safeguarding individual rights is an ongoing challenge that demands robust legal frameworks, ethical guidelines, and public awareness. As AI continues to evolve and become more ingrained in the criminal justice system, it is imperative for policymakers, legal professionals, and technologists to work collaboratively. This collaboration should focus on ensuring that AI applications align with constitutional principles, human rights standards, and the overarching goal of delivering justice fairly and equitably. The journey toward a technologically advanced criminal justice system in India requires a nuanced understanding of both the capabilities and limitations of AI, along with a commitment to ethical, transparent, and accountable practices.

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CHAPTER- 14

THE IMPACT OF ARTIFICIAL INTELLIGENCE ON PATENTABILITY IN INDIA

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Abstract:

Artificial intelligence is rapidly reshaping the contours of innovation and patent law in India, presenting novel challenges in determining inventorship, evaluating technical contributions, and establishing clear criteria for patent eligibility. The Indian Patents Act, 1970 does not yet provide definitive provisions for AI-generated inventions, resulting in legal uncertainties regarding ownership and protection. Recent updates—including the 2025 Computer Related Inventions Guidelines—clarify that inventions autonomously created by AI currently lack patentability due to the legal requirement for a human inventor, but AI-assisted inventions may qualify if they meet established standards of novelty, inventive step, industrial applicability, and proper disclosure. The emergence of approaches such as "Innovation Oversight" highlights the need for reforms that balance the encouragement of AI-driven innovation with safeguarding public interest and fair technology access. As AI continues to evolve, Indian patent law and regulatory frameworks must adapt to address the distinctive challenges posed by autonomous and AI-assisted inventive activity.

This paper analyses underscores the imperative for an "**innovative oversight**" approach to harmonize AI's disruptive potential with India's evolving patent ecosystem.

Key challenges include the non-recognition of AI as an inventor, as affirmed in global precedents like the DABUS case, which India has yet to formally address, potentially stifling autonomous AI-generated inventions.

Keywords:- Patentability, Novelty, Non-obviousness, Patent Law, Legal Precedents, Policy Reform, Artificial Intelligence (AI).

Introduction:

Artificial Intelligence (AI) is revolutionizing innovation across the globe. In India, the advent of AI has introduced both opportunities and challenges in the realm of patent eligibility. As industries increasingly rely on AI-generated inventions, from pharmaceutical discoveries to automated

industrial processes the traditional pillars of patentability are being critically examined. India's patent system, anchored in the Patents Act of 1970, defines an invention by its novelty, inventive step, and industrial applicability.[73] However, with the emergence of AI innovations where the invention process is often autonomous, questions arise regarding inventorship, ownership, and the very definition of a genuine invention. This article provides an in-depth analysis of how AI impacts patent eligibility in India, reviewing the legal framework, examining contemporary challenges, comparing global practices, and offering recommendations for future policy adjustments. The discussion is supported by data and insights drawn from multiple sources, ensuring that every aspect is substantiated and rigorously researched.

Legal Framework for Patent Eligibility in India:

The core of India's patent regime is, **the Patents Act 1970,** which sets forth the necessary conditions for an invention to be granted patent protection.[74] In particular, an invention must demonstrate novelty, an inventive step, and industrial applicability.[75] In the context of AI, these conditions are scrutinized against a backdrop of rapidly evolving technology.

Definition of an Invention:

Under the Patents Act, 1970, an "**invention"** is defined as a new product or process that results in a tangible technical advance and is capable of industrial application.[76] A key aspect is that the invention must be novel and not anticipated by prior art, whether by publication or prior use.[77] However, the Act also lists exclusions, notably **in Sections 3(k) and 3(m),** which bar patents on mathematical methods, business methods, computer programs per se, and mere schemes or rules for performing mental acts or playing a game.[78] These exclusions are significant in the context of AI, where much of the innovation may involve complex algorithms that border on abstract ideas.

The Three Pillars of Patentability:

The three essential criteria that any patent application must satisfy in India are:

Novelty:

[73] *The Patents Act*, No. 39 of 1970, INDIA CODE (1970), §§ 2, 3.
[74] Id. § 2(1)(j).
[75] Id. § 2(1)(ac).
[76] Id. § 2(1)(j).
[77] Id. § 13(1)(b).
[78] Id. §§ 3(k), 3(m).

The invention must be new, offering a solution that has not been previously disclosed in the public domain.[79] This criterion challenges AI inventions, as algorithmic methods might be seen as direct extensions of existing knowledge unless they are significantly innovative.

Inventive Step (Non – Obviousness):

The invention should involve a discernible (visible) step beyond what a person with ordinary skill in the field would consider obvious. AI systems that generate inventions independently force evaluators to reconsider what constitutes a "non – obvious" step, particularly when the system uses complex datasets and learning models.[80]

Industrial Applicability:

Beyond just being new and non – obvious, the invention must be practically applicable in an industry. In the case of AI, this often translates to tangible technical improvements and demonstrable industrial benefits.[81]

Section 3(k) & Section 3(m): Exclusions under the Patents Act.

Section 3(k) of the Indian Patents Act specifically excludes mathematical or business methods, computer programs per se, and algorithms from patentability unless these elements contribute to a technical solution.[82] Section 3(m) further excludes mere schemes, rules, or methods of performing mental acts or playing a game.[83] The intent behind these exclusions is to prevent patents from being granted for abstract ideas that do not provide a genuine technical solution. However, the challenge lies in differentiating between an abstract algorithm and a practical AI innovation that incorporates algorithmic principles to achieve a new technical effect.

Applications of the CRI Guidelines:

For computer-related inventions, India follows the Computer-Related Inventions (CRI) Guidelines 2017, which clarify the examination process for inventions involving computer programs.[84] According to these guidelines, if the contribution of the invention is solely on the computer program, algorithm, or business method, it is ineligible. However, if the invention integrates these elements with a tangible device or process that imparts a technical contribution

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[79] Id. § 2(1)(l).
[80] *Biswanath Prasad Radhey Shyam v. Hindustan Metal Indus.*, (1979) 2 SCC 511 (India).
[81] *Novartis AG v. Union of India*, (2013) 6 SCC 1 (India).
[82] *The Patents Act*, No. 39 of 1970, § 3(k), INDIA CODE (1970).
[83] Id. § 3(m).
[84] Controller General of Patents, Designs & Trade Marks, *Guidelines for Examination of Computer-Related Inventions (CRIs)* (2017), available at https://ipindia.gov.in.

for an example, innovations affecting energy efficiency or data processing speed, then the invention may be considered patentable.[85]

AI's Impact on Patent Eligibility Criteria in India:

The emergence of AI-generated inventions has put traditional patent criteria under scrutiny. AI not only automates processes previously driven by human creativity but also introduces the possibility that an invention might be generated without direct human intervention. How do the criteria of novelty, inventive step, and industrial applicability apply in such cases.

Novelty in AI – Generated Inventions:

Novelty requires that an invention is new and not anticipated by any prior publication or use.[86] AI systems are capable of processing vast amounts of data to identify patterns and generate novel solutions that may not be immediately obvious to human inventors. This creates a potential conflict: while an invention might be technically novel in its presentation or performance, the underlying method (for instance, a machine learning algorithm) might be considered a known approach.

Example:

AI generated designs in Pharmaceutical research or industrial processes may use known algorithms but apply them in novel combinations or unprecedented contexts. The subject matter must be analysed as a whole, & if the AI's contribution leads to a unique technical outcome, the invention may meet the novelty requirement.

Inventive Step and the Role of AI:

The inventive step, akin to non-obviousness, mandates that the invention is not an evident solution to someone with ordinary skill in the field.[87] With AI, the process of generating an inventive step becomes complicated. AI systems, through deep learning and neural networks, can synthesise information and produce outcomes that are not directly predictable by human reasoning. The challenge is to determine whether such AI-generated solutions would have been non-obvious if a human were to pursue them, considering historical data and existing literature.

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[85] Id. ¶ 4.5.
[86] *The Patents Act*, No. 39 of 1970, § 13, INDIA CODE (1970).
[87] *Biswanath Prasad Radhey Shyam*, (1979) 2 SCC 511.

Several court cases and technical commentaries stress the importance of "technical contribution" and "technical effect".[88] Leading opinions suggest that if an invention driven by AI results in a tangible benefit – such as reducing power consumption in hardware or improving data processing efficiency – this quantitative improvement may qualify as an inventive step. Nevertheless, the presumption that inventorship is exclusively a human attribute remains embedded in patent law, creating a legal vacuum when an AI independently contributes to an invention.

Industrial Applicability and Tangibility of AI Inventions:

Industrial applicability requires that an invention must be capable of being used in some form of industry or practical application. AI-generated inventions often present high levels of abstraction, for instance, software algorithms that lack a physical representation.[89] To fulfil the industrial applicability criterion, the invention must demonstrate real-world functionality, such as an AI system integrated into a manufacturing process or employed to optimize logistics in real-time.

The emphasis on "structural" or "hardware-based" improvements is particularly significant here. An AI-derived invention that results in a new type of sensor, or an improvement in an existing device's operational efficiency, clearly maps to an industrial application. Conversely, inventions that remain confined to theoretical algorithms may not meet this threshold unless accompanied by demonstrable technical implementations.

Current Challenges in Patenting AI Inventions:

As India grapples with the rapid evolution of AI technology, several profound legal and regulatory challenges arise in the context of patent eligibility. These challenges primarily revolve around the issues of inventorship, ownership, the treatment of algorithms, ethical dilemmas, and the broader economic ramifications.[90]

Inventorship: Who Qualifies?

One of the most controversial and debated challenges is the question of inventorship. Traditionally, patent law mandates that the applicant or the inventor must be a natural person.[91] AI systems like DABUS, which have demonstrated the capability to autonomously generate inventions, disrupt this

[88] *Ferid Allani v. Union of India*, W.P. (C) 7, 2014 (Del. HC Dec. 12, 2019).
[89] Id.
[90] World Intellectual Property Organization (WIPO), *WIPO Technology Trends 2023: Artificial Intelligence and Intellectual Property* (2023).
[91] The Patents Act, No. 39 of 1970, § 6, India Code (1970).

traditional understanding.[92] The Indian patent framework does not currently recognize AI as an inventor.[93] This rigid human-centric view, where the applicant must be a human, risks excluding a significant class of AI-generated inventions from protection.

In the DABUS case, for example, while the AI system produced novel solutions, the application process was hindered because an AI cannot legally represent itself as an inventor.[94] This creates practical concerns about the rights to an invention and challenges the fundamental meaning of inventorship in a modern technological context.

Ownership Rights: Developers Versus AI:

A related challenge is determining ownership. If an AI system independently creates an invention, questions arise regarding who holds the rights. Is it the developer or the operator of the AI, the owner of the data set that drove the invention, or should the AI itself hold a form of ownership?[95] The complexity of establishing ownership rights in these cases can lead to potential litigation and commercialization issues.[96] Without clear legal guidelines, this may discourage investment in AI-based innovation, particularly among startups and small and medium-sized enterprises (SMEs).

Subject Matter Eligibility: Algorithms and Abstract Ideas.

The exclusion of "computer programs per se" and abstract ideas from patent protection, as dictated by Section 3(k), poses a significant hurdle.[97] Many AI inventions are rooted in algorithmic logic that can be considered as "mere computer programs" if not correctly integrated with a technical application.[98] This raises the bar for patent examiners, who must decide whether the AI system renders a genuine technical contribution beyond a mere algorithmic abstraction.[99]

Ethical and Economic Concerns:

An additional layer of complexity is added by ethical and economic considerations. Recognizing AI-generated inventions solely through the lens of human inventorship may promote innovation predominantly among large corporations that have access to advanced AI systems.[100] This could

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[92] *Thaler v. Comptroller-General of Patents, Designs and Trade Marks*, [2021] EWHC 2412 (Pat) (U.K.).
[93] Controller General of Patents, Designs and Trademarks (CGPDTM), *Guidelines for Examination of Computer-Related Inventions (CRI)* (2017).
[94] *Thaler v. Commissioner of Patents*, [2022] FCAFC 62 (Austl.).
[95] WIPO, *Artificial Intelligence and Intellectual Property Policy Considerations* (2020).
[96] NITI Aayog, *National Strategy for Artificial Intelligence* (2018).
[97] The Patents Act, No. 39 of 1970, § 3(k), India Code (1970).
[98] CGPDTM, *CRI Guidelines* (2017).
[99] *IBM/Computer Program Product*, T 1173/97 (Eur. Pat. Off. 1998).
[100] OECD, *AI, Innovation, and Policy Frameworks* (2021).

bias the innovation landscape against independent inventors and smaller firms, impacting economic diversity and competitiveness. Moreover, ethical implications such as accountability and liability in cases of inadvertent harm caused by AI-generated inventions remain bodies of contentious debate that need to be resolved through legislative action.[101]

The Impact on Investor Confidence and Innovation Ecosystem:

For India's innovation ecosystem, especially for startups and SMEs, clear and consistent legal frameworks are essential.[102] Ambiguities surrounding the patentability of AI-generated inventions can lead to a climate of uncertainty, dampening investor confidence and ultimately stifling the growth of AI-driven industries. This uncertainty not only undermines local innovation but also affects India's global standing in the race for technological supremacy.[103]

Global Practices and Comparative Analysis:

As nations around the world confront the challenges posed by AI, global practices offer a rich source of insights for India. Different jurisdictions, including South Africa, Australia, the United Kingdom, the European Union, and the United States, have adopted varying stances on the patent eligibility of AI-generated inventions.[104] A comparative analysis highlights key differences and areas where India might learn or adapt its approach.

South Africa's Progressive Stance:

South Africa became one of the first countries to issue a patent listing an AI system, DABUS, as the inventor.[105] This decision was path-breaking as it not only recognized the role of AI in innovation but also opened the door to re-valuating what constitutes inventorship. However, this ruling did not fully address ownership rights or lay out comprehensive guidelines for future AI-generated inventions, leaving some ambiguity in shadow of ethical and legal concerns.[106]

Australia and the Human Inventorship Requirement:

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[101] IEEE, *Ethically Aligned Design: A Vision for Prioritizing Human Well-being with AI and Autonomous Systems* (2022).
[102] Ministry of Commerce & Industry, *Economic Survey of India 2021–22: Innovation Chapter* (2022).
[103] World Intellectual Property Organization, *Global Innovation Index 2024* (2024).
[104] WIPO, *Comparative Study on AI and IP Policy Responses* (2021).
[105] South African Patent No. 2021/03242 (granted July 28, 2021).
[106] Ryan Abbott, *I Think, Therefore I Invent: Creative Computers and the Future of Patent Law*, 57 B.C. L. Rev. 1079 (2016).

In Australia, initial judgments permitted the recognition of AI as an inventor, as exemplified by the DABUS-related patent application. Nevertheless, this position was later overturned by the Federal Court, reinforcing the stance that inventorship under current legal frameworks must be attributed to natural persons.[107] This reversal highlights the tension between emerging AI capabilities and traditional legal definitions of invention, a challenge that resonates strongly with the Indian context.

The United Kingdom and European Union: A Conservative Approach.

Both the UK Intellectual Property Office and the European Patent Office maintain that only human beings qualify as inventors.[108] In these jurisdictions, AI-related patent applications require that the human contributors involved in the development or deployment of the AI system assert inventorship. This approach underscores a technology-neutral yet human-centric interpretation of patent law. This conservative perspective, similar to that of India, emphasizes the need for human intervention to demonstrate the inventive step.[109]

The United States Perspective:

In the United States, the patent office and the courts have taken a similarly conservative approach. According to prevailing U.S. patent law, the term "**inventor**" is reserved for natural persons.[110] While the U.S. perspective is shaped by its own statutory provisions (e.g., 35 U.S.C. Sec.101 on subject matter eligibility), many of the underlying conceptual challenges mirror those faced by the Indian patent system. AI-generated inventions must show a significant technical improvement to avoid being dismissed as abstract ideas.[111] Given that many AI applications in the U.S. also straddle the line between software and practical application, the U.S. experience serves as a cautionary parallel for Indian policymakers.

Case Studies and Precedents:

Historical and contemporary case studies offer valuable insights into the practical challenges and judicial interpretations of AI-generated inventions. In India, several high-profile cases and granted patents provide a framework for understanding the current legal landscape.

The DABUS Case and Its Implications:

[107] *Thaler v. Commissioner of Patents*, [2022] FCAFC 62 (Austl.).
[108] *UKIPO Decision on DABUS Applications*, BL O/741/19 (Dec. 4, 2019).
[109] *EPO Decision J 8/20*, Legal Board of Appeal (Dec. 21, 2021).
[110] *Thaler v. Vidal*, 43 F.4th 1207 (Fed. Cir. 2022) (U.S.).
[111] *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014).

The DABUS case represents perhaps the most provocative example in recent years. DABUS, an AI system developed to autonomously generate inventive solutions, sparked international debate when patent applications listing it as the sole inventor were submitted in various jurisdictions.[112] In India, the current legal framework does not recognize AI as an inventor, leading to a cascade of objections rooted in the presumption that inventorship requires a natural person.[113] The DABUS case ultimately underscores the tension between technological innovation and outdated legal definitions, with the Indian approach remaining conservative to protect the human-centric nature of patent law.

Granted AI – Related Patents in India:

Despite the challenges surrounding inventorship, a number of AI-related inventions have successfully secured patent rights in India by demonstrating clear technical contributions.[114] For instance.

- **AI – Based Assessment and Tutoring System:**

One patent application focused on providing contextual audio and video assistance as a means of enforcing learning. This application differentiated itself by linking a computer program with tangible educational outcomes, thereby demonstrating industrial applicability and technical contribution.[115]

- **Automated System for Targeted Content Display:**

This invention capitalized on deep learning architectures, including convolutional neural networks, to solve technical issues related to conventional content display systems. The integration of blockchain modules to record information in an immutable manner further bolstered the patent's claim to technical advancement.[116]

- **AI Processor for Neural Network Operations:**

Another granted patent highlighted the reduction in resource consumption and power consumption in hardware devices during image processing. This patent underscored that an

[112] *Thaler v. Comptroller-General of Patents*, [2021] EWHC 2412 (Pat) (U.K.).
[113] Indian Patent Office, *Order on AI-Generated Inventions*, (2021) (internal communication).
[114] Indian Patent Office Journal, Vol. 26 (2023).
[115] Indian Patent No. 367937 (2021).
[116] Indian Patent No. 380346 (2022).

invention integrated with AI technologies can indeed show measurable improvements in industrial efficiency.[117]

Recommendations for an Enhanced AI Patent Framework in India:

Given the complexities outlined above, several incremental and holistic policy changes could enable India to better address the challenges of AI-generated inventions. A robust framework must encompass not only adjustments to the patent laws themselves but also clear guidelines on applying these laws in a manner that fosters innovation without compromising on ethical and legal standards.[118]

Legislative Amendments to the Patents Act, 1970:

To remain at the forefront of technological innovation, India could consider amending the Patents Act to broaden the definition of "inventor" to include AI systems under certain controlled conditions[119]:

➢ Inclusion of Collaborative Inventorship:

One potential amendment could provide a mechanism whereby an AI system's contribution is recognized through the designation of one or more human collaborators who supervised and directed the AI.[120] This approach would harmonize the need to protect AI-generated inventions with the current legal requirement for natural person inventorship.[121]

➢ Revisiting Subject Matter Exclusions:

The strict application of Sections 3(k) and 3(m) could be revisited to accommodate the fact that certain AI algorithms, when integrated with substantial structural, hardware-based features or practical applications, yield significant technical effects.[122] Establishing clearer benchmarks that

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[117] Indian Patent No. 403937 (2023).
[118] World Intellectual Property Organization (WIPO), *WIPO Conversation on Intellectual Property and Artificial Intelligence: Third Session* (2022).
[119] NITI Aayog, *AI for All – India's Strategy for Artificial Intelligence* (2018).
[120] Ryan Abbott, *I Think, Therefore I Invent: Creative Computers and the Future of Patent Law*, 57 B.C. L. Rev. 1079 (2016).
[121] *Thaler v. Comptroller-General of Patents, Designs and Trade Marks*, [2021] EWHC 2412 (Pat) (U.K.).
[122] The Patents Act, No. 39 of 1970, §§ 3(k), 3(m), India Code (1970).

delineate when an AI algorithm moves beyond "per se" abstractness would improve the fairness and predictability of patent examinations.[123]

Key recommendations for policymakers include:

i. Legislative Amendments:

Expanding the definition of inventorship to accomadate human – AI collaborations while revising subject matter exclusions.

ii. Clear Ownership Guidelines:

Establishing a legal framework that addresses rights distribution among AI developers, operators & data providers.

iii. Enhanced Examination Guidelines:

Developing robust evaluation criteria that accurately measure technical contributions and tangible industrial benefits.

iv. International Harmonization:

Engaging in global standardization efforts to align India's patent practices with international norms.

v. Supportive Measures for Innovation:

Promoting initiatives that encourage startup participation, financial incentives and robust public – private partnerships.

Such reforms are not only essential for fostering an innovation – friendly environment in India but also for protecting the rights of inventors and ensuring that AI – driven advancements contribute effectively to national economic growth and societal welfare.[124]

Conclusion:

In conclusion, the intersection of artificial intelligence and patent law in India represents a critical juncture where traditional legal frameworks meet emergent technologies.[125] The Patents Act, 1970,

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[123] Controller General of Patents, Designs and Trademarks (CGPDTM), *Guidelines for Examination of Computer-Related Inventions (CRI)* (2017).
[124] UN ESCAP, *AI for Sustainable Development in Asia-Pacific* (2022).
[125] Indian Patent Office, *Manual of Patent Office Practice and Procedure* (2020).

with its three pivotal pillars of novelty, inventive step, and industrial applicability, provides a robust yet inflexible framework when confronted with AI-generated inventions.[126] Current practices, largely anchored in the need for human inventorship and a cautious interpretation of subject matter exclusions, necessitate thoughtful reform.[127]

Adapting the patent framework in India to account for the disruptive potential of AI is essential. A reformed legal structure that better accommodates AI-driven innovations will likely accelerate investment in research and development, stimulate global competitiveness, and ensure a balanced, ethical approach to technological advancement.[128]

[126] The Patents Act, No. 39 of 1970, India Code (1970).
[127] OECD, *Artificial Intelligence, Ethics, and Innovation Governance* (2021).
[128] WIPO, *Global Innovation Index 2024* (2024).

CHAPTER-15

JUVENILE DELINQUENCY: AN INTROSPECTIVE STUDY

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Abstract

It is saddening to note that as per the data available, this decade has witnessed a shocking rise in all Crimes, especially the juvenile crimes. However, the question is about the correctional facilities and the moral values parents and society are inculcating in young minds, whether it is a boon or a bane? Where are they lagging? The molding part of a child rests in the hands of parents and educational institutions as they spend most of the time either with the educational institution or with the family. Are they doing their molding part properly? And correctional institutions that are supposed to protect, rehabilitate, and restore the life of a juvenile delinquent sometimes are becoming a nightmare for them. Juveniles are the ones who are being victimized in all walks of life. Many are subjected to physical and sexual exploitation and mental trauma and the prime intention behind the creation of such correctional facilities are defeated. Considering a country where the young ones form part of 1/3rd of its total population, one would wonder whether they are capable enough to deal with juvenile delinquents. With this question starts the blaming game where parents, educational institutions and correctional institutions try to shift the baton to one another for the increased crime rate. The plight of juveniles is that in spite of these many facilities, they still are the victims of anomalies. It is a shame they are directly victimized because of the faulty system. As the juvenile crime rate rises, it alarms the society to foresee the future nation and it is time for action instead of reaction. This paper here is an introspection of the flaws of family, society and institutions and suggestions to improve the conditions in existence.

Key words: Victimization, Juvenile Delinquency, Rehabilitation, Protection, Institutional flaws, Child in need of care & protection.

Introduction:

"Child is the incarnation of divinity. Its innocence and smile are its greatest and enchanted virtues which can dazzle and hypnotize even a person endowed with a heart of stone" [1]. Statistics show that about 19% of the world's children live in India [2]. In a country that views children as future workers, juvenile delinquency is a major concern. This issue, affecting societies globally, highlights the need for extensive care. Despite protective measures, children's vulnerability can still lead to deviant behavior [3].

Juvenile Crime Rate In Tamilnadu:

According to NCRB's CRIME IN INDIA 2020 report, there were 5,974 cases registered /filed against juveniles for which 7,475 juveniles were detained. Among those 7,475 juveniles detained, 6,774 were detained under IPC and 701 under SLL cases in 2020 and totally 5,644 juveniles which means 75.5% belong to the age group of 16-18. When we consider the states in India that has highest charge sheeting rate under IPC crimes, Tamil Nadu is in third place with 91.7% and in metropolitan cities Coimbatore is in the second place with 96.6% [4].

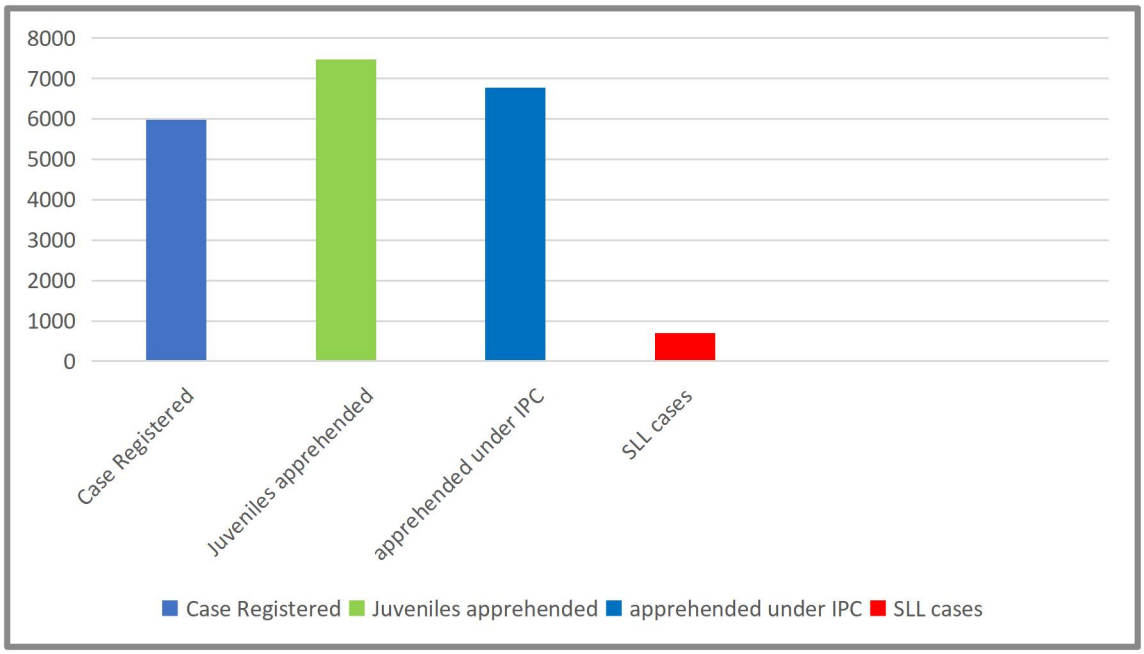

Figure 1: Juveniles of age group 16-18 yrs detained in 2020

Literacy Rate Of Children In Conflict With Law:

In TamilNadu of 3,843 juveniles detained only 60 are illiterates, whereas 712 juveniles had up to primary education, 2339 juveniles had up to matric education, 487 had education above matric and 245 studied above higher secondary. This statistics clearly shows that almost 99% of juveniles had at least up to matric level education that questions the moral and value education being taught in the schools [4].

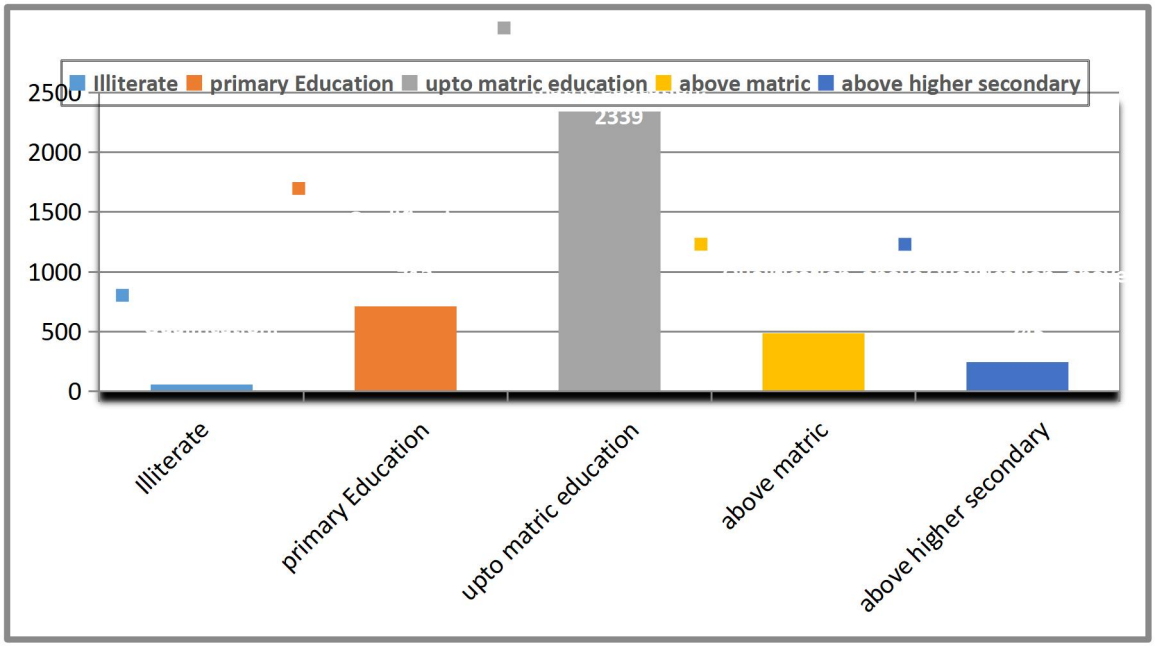

Figure 2 : Literacy rate of Juvenile delinquents

Family Background Of Juvenile Delinquents:

Again if we take into consideration the family background of those 3,843 juveniles, 3,588 were living with their parents, 170 were living with their guardian and only 85 were homeless. These data depicts the listlessness of parents towards their off springs [4].

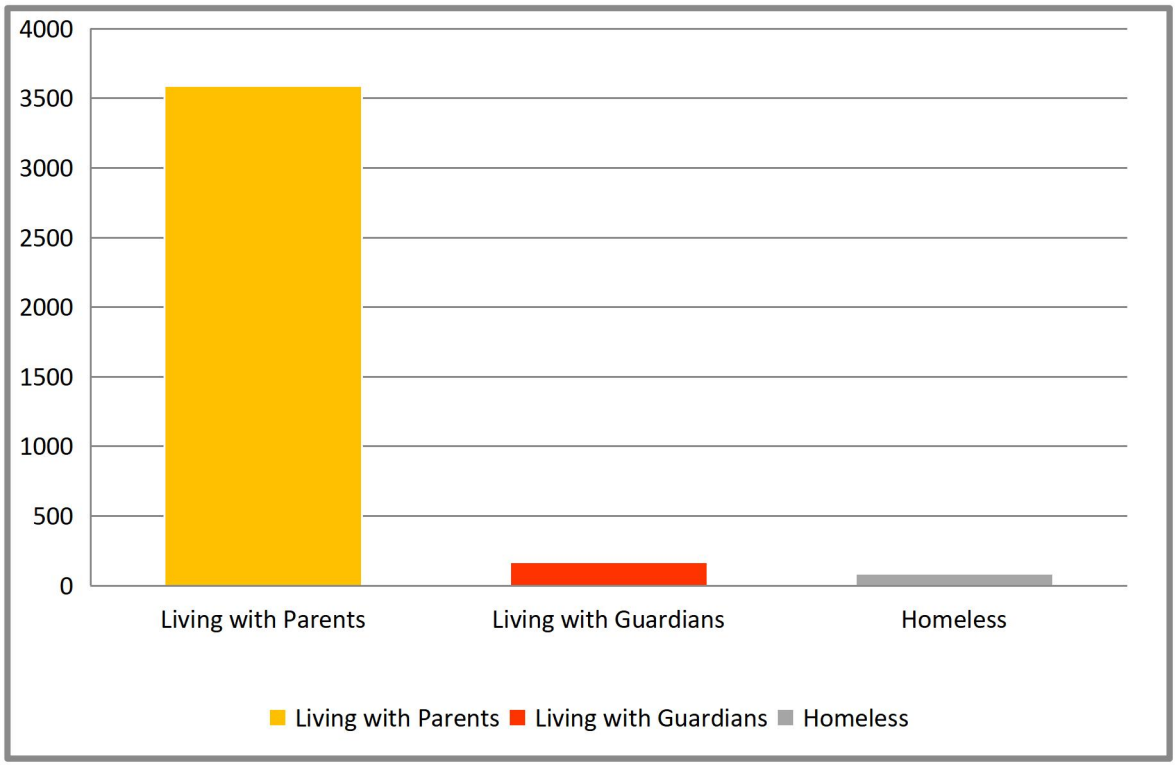

Figure 3 : Family Background of Juvenile delinquents

Review Of Literature:

1) A Hindustan Times article from December 19, 2023, notes that about 40% of young offenders live in conditions as harsh as, or worse than, adult prisons. A committee led by Judge Madan B Lokur, appointed by the Supreme Court, found similar poor conditions in government facilities, highlighting inadequate resources and accountability. [5].

2) Pushpender & Sabharwal.D (2023) [6] in their study titled, "Juvenile Delinquency in India : A Sociological study" discusses about the hike in rate of juvenile delinquency in India where they furthermore opines that providing education alone cannot reduce crime rate among juveniles as most of the young ones detained were educated [6].

3) Dr. Bhardwaj, Ramesh kumar &Neeraj (2021) in their study "Juvenile Delinquency in India- a study", aims at studying the prevalence and the incidence of juvenile delinquency, the family background of those juveniles and their literacy rate in the states of India, especially in Haryana[7].

4) This piece of article in the swaddle dated December 14, 2021 discusses the flaws in India's juvenile system where children are criminalized for their circumstances[8].

5) This article in Bharat Times dated September 27, 2021 talks about the double the rate of murder with minors in 5 years in Tamil Nadu [9].

6) One of the news article in Times of India dated 15-03-2021 reports about the escape of six juvenile offenders from the observation home, Coimbatore [10].

7) J.Jayabharath & Mrs. V.Udayavani (2018) in their study, "Case study on juvenile homes", focuses on the impact of media, peer pressure, financial profile and the lack of socialization on the behaviour of 50 juveniles in the government observation home at Rourkela sub jail, Odisha through case study method [11].

8) Feroze ahmed (2016) in his study, “To study the juveniles of observation homes in Chennai – a case study”, explains about the impact of observation homes in the lives of juvenile delinquents, the administrative challenges faced by them and the role of society in educating and controlling them [12].

9) Devarmani (2016) in his research work “Institutional treatment for juveniles in India” discusses the prominence and the availability of institutional and non institutional correctional forums for juveniles as the need of the hour [13]

10) In this piece of article in The Hindustan Times dated July 11, 2016 was published the incident of escape of 33 juvenile inmates from Chennai observation home [14].

11) One of the news article in India.com dated September 16, 2016 talks about the instances where harassment took place in juvenile shelter homes in India [15].

12) Kunjana Mittal (2015) In Her Study “Juvenile Delinquency In India”, Discusses About The Hike In Juvenile Crime Rate In India, The Laws Pertaining To Juvenile Justice And Also The Changes In The Juvenile Justice (Care And Protection) Act 2000 [16].

Evolution Of Juvenile Justice Law In India

Historically, there was no specific age limit for juvenile delinquents. However, significant changes occurred when India faced widespread destruction and industry collapse due to British administrative failures. This turmoil led to a sharp rise in juvenile crime, prompting urgent reform. In response to petitions from Jai Krishna Chandra Goshal and Jai Narayan Ghoshal, the Governor-General of India established a juvenile home in Kolkata in 1843. Seven years later, the Apprentices Act of 1850 was amended to include children aged 10-18 in the legal system, mandating correctional facilities that provided vocational training and moral guidance for convicted juveniles.

Further advancements came with the Reformatory School Acts of 1876 and 1897, which allowed courts to confine juvenile delinquents, under 18 years old, in correctional facilities for 2-7 years. The laws were later updated to include separate legal procedures for those under 15. Significant improvements in correctional facilities began with The Bombay Children Act of 1924, and the

establishment of the Children's Aid Society the same year.

In 1986, the Juvenile Justice Act reformed existing laws, though its implementation faced delays due to infrastructure issues. The Juvenile Justice (Care and Protection of Children) Act, 2000, and its 2001 amendment raised the age limit for juveniles from 16 to 18 and introduced a National Level Advisory Board for better guidance.

By 2015, recognizing the evolving nature of juvenile crime, the Juvenile Justice (Care and Protection of Children) Act, 2015, was enacted, allowing 16-18-year-olds to be tried as adults for severe crimes **[17].**

Juvenile Justice Act, 2015

The Juvenile Justice Act of 2000 (Care and Protection) **[17]** is distinctive in clearly delineating between vulnerable children and those in conflict with the law. This differentiation was specifically introduced to address the growing number of violent children. Contrary to labeling them as offenders, the act characterizes these children as individuals struggling to adhere to the law. Consequently, the Juvenile Justice Board, rather than a Juvenile Court, is established under this act. Additionally, the legislation introduces a juvenile police unit, mandating each police station to designate at least one child-friendly officer capable of handling children in conflict with the law.

Previously overlooked, the act now includes children who are victims of armed conflict, civil unrest, and natural disasters in the category of those in need of care and protection.

The act classifies offenses into three categories: petty, serious, and heinous. Petty offenses are those punishable with imprisonment of up to three years, serious offenses involve punishments of 3 to 7 years, and heinous offenses encompass crimes punishable with seven or more years.

In essence, the act pertains to the apprehension, detention, prosecution, penalty, rehabilitation, and social reintegration of children facing challenges in complying with the law.

Notable Amendment To The Juvenile Justice Act 2015

- Heinous crimes will be called serious crimes if it’s done by juveniles. The new amendment to the **Juvenile Justice Act, 2015** also stated that the district child protection unit will be under the power of district magistrates. CINOCAP is further defined into juveniles who are subjected to drug abuse, trafficking, desertion by guardians, and those

who are rescued from child labor. Eligibility criteria of the Child Welfare Committee are also further defined in the new inclusion.

- Union Minister for Women and Child Development Smriti Irani put forward a bill to increase the role of District Magistrates and Additional District Magistrates. The amendment will increase their power to authorize the adoption and the appeal towards it can be directed towards a divisional commissioner. This bill also eradicates difficulties regarding the categorization of offenses.

Challenges Of Juvenile Justice Act 2015

Nirbhaya's case was a shock to the Indian society as well as a wakeup call to the judicial system in India. As a result, the justice system of India implemented new laws to tackle heinous crimes done by juveniles in India. If you examine the crime, the most dreadful act to Nirbhaya was done by a 17 year old juvenile who later on was set free after a few years of imprisonment which sparked fury among people across the country.

- The power of the Juvenile justice board is still confusing. The JJ Act does not clearly specify the types of cases that have to be dealt in an adult court. In short, the Juvenile justice board uses their discretion inpassing orders.
- The power of the Juvenile Justice Act 2015 is asserted by special authorities who might not have knowledge about the psychological aspects of a juvenile delinquent
- The presence of social workers in courts has to be done mandatorily.
- The juvenile justice board has sole authority over those under 16, seeking expert help to assess their mental state and crime context. After evaluation, the board decides if the individual qualifies as a juvenile, though issues arise if reassessed in court.
- A legislative flaw is the lack of fixed imprisonment duration. If a child turns 21 during their sentence, they are assessed and may be transferred to an adult prison if deemed unsuccessful. **[18].**

Juvenile Justice Act- A Boon

The Juvenile Justice Act of 1986 was devised to offer care, rehabilitation, protection, mental health treatment, and cognitive skill development for juvenile delinquents. In line with these goals, both

government and private NGOs have established correctional facilities. Juveniles arrested for crimes are typically placed in these centers following a legal review. However, these facilities often fail to address the root causes of delinquency, focusing instead on the crime itself and applying a generic approach common worldwide for punitive measures.

In India, juveniles are categorized as either "Child In Need Of Care And Protection" or "Children In Conflict With Law," both under 18 years old. Those in conflict with the law require correctional interventions to ensure a safer future. These facilities aim to hold youth accountable, meet court verdicts, and provide rehabilitative support to prevent reoffending. **[19]**

Despite robust laws, there is a lack of necessary infrastructure and effective action plans. Even with well-trained counselors and psychiatrists, both government and private facilities struggle to achieve optimal results due to various challenges. This paper evaluates current practices, methods, and laws related to juvenile delinquents.

Juvenile Delinquency:

Being a part of society has become a mandatory thing to exist in the modern era. Apart from the oneness and warmth it provides there are certain unwritten laws that have to be abided by the people who are a part of it. Any obstruction in the confined set of rules can cause tension, discomfort, trauma to the people who dwell. When a child is the main reason for such issues they are called delinquent. Delinquents often try to mimic adults in doing crime and they commit themselves to ill doing. Hormonal and influential factors play a cardinal role in driving them to crime. It's not possible or even practical to keep a child away from such factors. However, righteousness can be imparted to them by parents or people who are close to them. Lack of such factors is the main issue of juvenile delinquency **[21].**

What Causes Juvenile Delinquency?

Juveniles are now indulging in heinous crimes like rape, murder, dacoity, theft, robbery.There can be numerous reasons for them to think and later act twisted. However, we can broadly classify them as biological and environmental causes. If we go into details the reason can be explained as follows:

Individual Factors:

Lower intelligence, mental health issues, physical disabilities, inadequate education, parental problems, and past trauma can lead to violent, impulsive behaviors in individuals. Studies show that delinquents generally have lower intelligence, academic performance, and school attendance, with poor early cognitive development linked to delinquency and potential uncontrollable aggression **[22][23].**

Family Factors:

Neglect is a primary factor in juvenile delinquency. Issues like parental neglect, abuse, divorce, and a dysfunctional environment can lead to frustration, which delinquents often express through their behavior. Offenses result from various individual and external factors, including parental neglect, peer pressure, and poor financial conditions **[10]**.

Economical Factor:

Be it any sort of crime, money acquires the major share as a motivation factor and same isthe story of Juvenile Delinquents. And also, there is a flip side to the issue: Many Indian parents do not have time to care for their children as they are equipped in running behind money. Children often feel left behind and they seek attention from outside which lands them in trouble **[24].**

Environmental Factors:

Environmental factors, including a child's surroundings and peer pressure, significantly influence juvenile delinquency. Studies show that family structure and the child's environment play crucial roles in delinquency, emphasizing the need for community attention to prevent such issues. **[25, 26, and 27]**

Drug Abuse:

Children today are trapped by the drug mafia, becoming addicted to harmful drugs at a young age. Substance abuse is closely linked to criminal behavior, with increased drug use leading to more severe violence and crime. Rising juvenile offenses like rape, murder, and burglary are often associated with drug use, such as cannabis with murder, inhalants with rape, and opioids with snatching crimes. **[28]**.

Cultural Conflicts:

Urbanization and its spread are beyond imagination. Even though the merits are in plenty, there are demerits that can't be avoided. The conflict of being pushed away has brought in cultural conflicts in the youngling and they mainly express it through aggression

Types Of Correctional Facilities In India

- **Juvenile courts:** Juvenile courts are designed to handle young offenders separately from adults, with specialized facilities and judges. Juveniles are not tried in regular courts but in these dedicated courts, or alternative courts at different times. Officers must not bring them in uniform, and they do not need legal representation. This approach aims to positively influence young offenders.
- **Remand Homes / observation Homes :** When a child is arrested under the Act, they must be brought before a magistrate within 24 hours and placed in a remand home until the case is resolved. Convicted individuals may also be briefly held in these homes before release. These homes are usually managed by private welfare agencies with government support.
- **Special training schools:** Specialized training institutions are essential for reforming juvenile delinquents, offering basic education and technical training. They are supported financially by government, public, and local authorities.
- **Foster Homes:** Voluntary organizations operate foster homes to provide care for individuals under the age of 19 who are convicts and cannot be sent to certified schools. The government acknowledges and supports their commendable efforts by providing annual or monthly grants.
- **Auxiliary Homes** - Auxiliary Homes, similar to remand homes, are affiliated with Certified Schools. Such homes serve as environments where social workers can assess juvenile delinquents. Following the evaluation, the authorities make a decision on whether to send the young offenders to a regular school based on their behavior and attitude.
- **Reformatory Schools** - In states lacking well-defined juvenile justice systems, they often turn to schools that offer vocational training for juvenile delinquents, aiming to facilitate their reintegration into regular life.

- **Shelter Homes** - Children experiencing distress due to parental issues, trauma, drug, and sexual abuse will be directed to these facilities, where they will receive the necessary support to transition back to a normal life.

A recent study by Asian Centre for Human Rights (ACHR) **[29]** has revealed that 11 out of 39 juvenile cases are reported from government-run juvenile justice homes and the restfrom NGO-run private organizations. So something is fundamentally wrong with these correctional facilities.

Issues With Juvenile Correctional Facilities:

- Many state juvenile correctional facilities are in poor condition, with reports of sexual abuse. Instead of addressing issues emotionally or mentally, physical abuse is used to control juveniles.
- Juveniles have to interact with many people in these correctional facilities which itself is a daunting task. Since victims and perpetrators have to interact with the same people the shadow of one can surpass another and can affect the interaction gravely.
- The police are the initial point of contact for any juvenile. Police are not trained tohandle such situations. We have often heard about abuses that juveniles had to face at the hands of police. They treat juveniles as adults after weighing the crime using their conscience.
- Juvenile correctional facilities are often overcrowded. Lack of proper resources, trained staff, and lack of a goal and vision is plaguing these correctional facilities.
- Even though psychological care was prescribed in the juvenile justice act, many institutions do not provide it.
- Many places lack mandatory vocational training owing to the corruption of easiness of the officials.
- Juveniles, usually nearing 18 years of age are often subjected to physical torture in the police station. Police often treat juveniles like adult criminals owing to their inexperience and lack of proper training.
- Despite having a clear distinction between CINOCAP and CICWL both have to mingle with each other owing to issues in space.
- Most of the time crime becomes the centre of focus rather than the juvenile. So often children are subjected to harsh treatments.

- Even Though funds are allocated every year infrastructures of many institutions are beyond apprehension. Strict monitoring and budget implementation has to take place.
- Officials are equally petrified by the nature of juveniles at some places. So, there should be professional intervention at all times.
- Vocational training subjects are often outdated and they do not help them at all in leading a normal outside life.
- Outburst is a daily routine in such institutions. Instead of replying with physical force there should be people present all the time who can address this situation in a peaceful manner. However, certain scenarios require physical apprehension.

Suggestions To Improve Conditions Of This Home:

- Most of the issues with juveniles in these facilities can be sorted out if there is regular visit to these facilities and strict periodical mental evaluation.
- With the help of experts, schools should redesign their entire framework in a way that inhabitants should feel their importance and worth as human beings.
- Percentage of children dropping out of schools is alarmingly high. Policies such as the mid-day meal program should be strictly implemented across the country.
- Influential people must be brought-in to share inspirational stories and it has tobe used as a content that can be used as a tool for their transformation.
- Proper drug abuse awareness should be spread among the local community tocurb the juvenile delinquent issues in the budding stage itself.
- Inhabitants of juvenile correctional facilities should be allowed to express themselves about their circumstances confidentially. There should always be a person available in these facilities with whom they can communicate and interact openly.
- The idea of getting through a trial in a normal court in front of a crowd itself is devastating and daunting. Special child-friendly courts should replace the existing ones.

- All the people associated with juvenile justice have to be trained as per JJ Act. Even though provisions are still there it's still in papers strict implementation oftraining has to be assured.
- Though strict action is needed for heinous juvenile crimes, a welfare model focusing on rehabilitation could significantly reduce future crime rates.
- Case records should be digitally stored for future analysis.
- Social workers associated with juvenile justice must possess appropriate education and experience.
- Not only social workers but psychiatrists, NGOs, government officials and advocates should be present there in every district to ensure transparency and implementation.
- Once all the possible data about the juvenile is collected and arranged appropriately a background investigation must take place to know the real troublehe/she is going through.
- Frequent family visits should be allowed and mandatory advice should be given to parents to talk about incidents that incite the child's interest.
- Games offer excellent mental and physical relaxation. Indoor games should be promoted extensively across juvenile homes in the country.
- Colours are motivation to live. Make their life colourful with celebrations.
- Competition that does not have vengeance as aftermath has to be introduced tojuvenile life. Healthy competition can give them another perspective about competition.
- Once released from these institutions must carry out proper follow-up programsto make sure that the juvenile is on the right track.
- English has become a mandatory skill in acquiring a job. So extensive spoken english training must be given to the wards to fill confidence in them
- Weekly cultural gathering will create a sense of oneness among the children
- As per sec.39 of JJ Act every juvenile must be given independent care for better rehabilitation and social integration. Individual care is always effective in betterment.
- Since money is one of the reason for creating juvenile delinquents, professionalcourses will equip them to earn job better

- Juveniles are often vulnerable to sexual attacks even in juvenile homes. Weekly/monthly intervention by the officials and routine psychological evaluationmust be made mandatory.
- Routine medical checkup must be performed on juveniles to assure good health.

Suggestions To Improve Conditions In Family And Institutions:

- Positive and negative reinforcements should be properly done whenever needed.
- Positive environmental conditions to live and grow should be ensured.
- Over exposure to things such as violence and immoral things should be avoided.
- Parents should be a role model as the children will be in the psycho sexual stages of development and will be learning from them.
- In schools and educational institutions children with deviant behavior should be identified and should be given proper counseling at the early stage itself.
- School drop outs, absenteeism, late coming should be taken as a serious note by educational institutions as these indicators may end up in juvenile crime.
- A counselor should be appointed full time in schools so that their psychological and behavioral issues may be addressed properly.
- Children should be encouraged to indulge in book reading, indoor and outdoor games and hobbies to engage themselves which in turn prevents them from deviance.
- Children should be taught goal setting right from the childhood so that they will not have identity issues which many a time leads to crime.

Conclusion:

Prevention Is Better Than Cure:

Even after establishing these many correctional setups there is something lagging in these facilities that contribute to the increased crime rate as well as recidivism rate among juveniles. If we take into consideration the crime rate of juvenile according to the report of NCRB "CRIME IN INDIA 2020", **[4]** it shows that as of December 31, 2020, the largest proportion of inmates (215,418 individuals, accounting for 44.1%) fell within the age range of 18-30 years. The next significant

age group was 30-50 years, comprising 209,400 inmates (42.9%), while 63,687 individuals (13.0%) were above the age of 50. The age group of 16-18 years had only six inmates. Out of the 82,353 convicts admitted in the year 2020, 3,908 (constituting 4.7% of the admitted convicts) were identified as habitual offenders.

It is startling that juveniles living with their parents (3,588) commit more crimes than homeless children (85). Additionally, many juvenile offenders have at least a basic education. This questions the standard of family and educational systems in fostering positive moral development. These statistics suggest that correctional facilities mainly address recidivism rather than preventing crime. Effective prevention of juvenile delinquency can safeguard young lives, avoid future criminal behavior, and reduce societal crime burdens. Thus, a comprehensive approach involving family and education is crucial for effective correction. There is a saying, 'WHAT YOU SOW, SO YOU REAP' and **it is much true in case of juveniles where we as a family, society and institutions are responsible for sowing morality and good things in young minds.**

Change doesn't happen over a fortnight! It's a slow process however, if it creates a better tomorrow for children of India. It has to be given utmost importance since they are the future of any country. Necessary intervention by government and NGOs should be facilitated so that reformedjuveniles can adapt better into society

Formal and informal social networks must work hand-to-hand to make it happen. Most importantly, after care should be innovative and should not be in a way that would make the juvenile feel that they are being constricted.

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CHAPTER-16

CRIMINAL JUSTICE REFORMS IN INDIA

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ABSTRACT

The Criminal Justice System (CJS) in India, a foundational pillar of democracy, currently operates under immense pressure, suffering from systemic issues that impede its fundamental goal of delivering timely, fair, and equitable justice. Tracing its origins largely to colonial-era statutes such as the Indian Penal Code (IPC) and the Code of Criminal Procedure (CrPC)—recently replaced by the Bharatiya Nyaya Sanhita (BNS) and Bharatiya Nagarik Suraksha Sanhita (BNSS)—the CJS structure involves a complex interplay between the police, prosecution, judiciary, and prisons. Despite the recent legislative overhaul aimed at modernization, the core challenges of massive case pendency, low conviction rates, and protracted delays continue to erode public confidence and often transform justice into an elusive privilege rather than an assured right. This abstract critically examines the contemporary state of the Indian CJS, synthesizes the core recommendations for its comprehensive reform, and outlines the imperative for a paradigm shift toward a system that is both efficient and people-centric. The first critical area demanding urgent attention is the police system. The force is often criticized for its dual function of maintaining law and order alongside criminal investigation, leading to overburdening and a compromise on the quality of probes. Key reform suggestions, frequently reiterated by bodies like the Malimath Committee and the Supreme Court, advocate for the statutory separation of investigation and law-and-order duties. This separation, combined with a necessity for enhanced police accountability, professionalization, and insulating the force from political interference through mechanisms like fixed tenures and transparent appointments, is crucial.

Moreover, the integration of modern forensic science and mandatory videography of critical investigative steps is essential to shift from coercion-based methods to scientifically validated evidence collection, thereby strengthening the prosecution's case and safeguarding human rights.

The Judiciary is grappling with an overwhelming backlog, largely due to a severe shortage of judges relative to the population and insufficient court infrastructure. Suggested reforms focus on immediate capacity augmentation—by increasing judicial strength and establishing specialized courts—and introducing mechanisms for faster case disposal. This includes reducing court vacations, streamlining trial procedures, and leveraging Information Technology for e-filing, virtual hearings, and robust case management systems, a process accelerated by the COVID-19 pandemic. Furthermore, a critical reform area involves the public prosecution wing, which must be made independent and professional, with proposals suggesting merit-based appointments and better coordination with the investigating agencies to enhance the effectiveness of trials.

Crucially, the Indian CJS needs to fundamentally pivot towards a victim-centric and human rights-based approach. Traditionally, victims have been marginalized in the adversarial process. Reform demands grant them greater participatory rights in trials, access to legal aid, and a guaranteed framework for timely compensation. Alongside this, the plight of the accused, particularly the vast number of undertrials, necessitates prison reform. The focus must shift from a purely custodial model to a correctional and rehabilitative one, addressing chronic jail overcrowding, improving prison conditions, and systematically utilizing provisions for bail, plea bargaining, and community service for petty offenses. Introducing a robust, standardized Witness Protection Programme is also paramount to ensure that the search for truth in courtrooms is not compromised by intimidation.

Key Words – Criminal Justice system, Malimath Committee, Human rights

INTRODUCTION

India is one of the world's most populous democratic country. But regrettably, as time passes, its brilliance is waning due to the flawed criminal Justice system. We are therefore at a pivotal moment in history, and the justice system needs to be rethought and reformulated to meet the

difficulties of the modern world because of the tremendous push for justice. There are some gaps that call for the creation of different methods and approaches that can be successfully included into the framework of the policy. It is worthwhile to investigate the criminal justice system's purpose in order to gain a deeper comprehension of it.

Object Of the Criminal Justice System

The goal of the criminal justice system is to punish the offender, provide public justice, and ensure that the trail is completely quickly so that the witness's memory is not lost. In the criminal trial, justice is not only served for the accused but also for the victim and the community to ensure the preservation of law and order. A judge does not preside over a criminal trial merely to see that no innocent man is punished, but also to see that the guilty man does not escape. Both are the public duty which the judge has to perform[129]. Therefore, by upholding the idea of human rights in the administration of justice, the courts should constantly work to preserve the public's trust in the legal system.

Need For the Criminal Justice System

In the current era, change is a constant; however, the criminal justice system in India has yet to see significant improvements. The reasons for this include a lack of accountability, ineffective law enforcement, delays in case resolution, insufficiently trained police personnel, an overloaded court system, and poor prison conditions. These issues represent major challenges within the criminal justice system. In India, the administration of the criminal justice system adheres to the Anglo-Saxon adversarial model, which consists of three essential components:

a) Police (Law Enforcement)
b) Prosecution
c) Judiciary
d) Corrections

COMPONENTS OF CRIMINAL JUSTICE SYSTEM

The Criminal Justice System (CJS) comprises the agencies and processes established by governments to enforce laws, prosecute individuals accused of crimes, and manage convicted

[129] Justice Palok Basu, Law relating to protection of Human Rights under the Indian Constitution and allied laws, Allahabad: Modern Law publication, 2011.

offenders. It operates as an interconnected series of steps, with four key components working sequentially to achieve justice, maintain public order, and deter crime.

1. Law Enforcement (Police)

This component is the initial interface between the state and the criminal act. Its primary duty is to keep public peace and security. Law enforcement agencies are responsible for discovering and investigating crimes, collecting evidence, and apprehending suspects. Once an investigation is complete, the police formally accuse the individual by filing a report that initiates the judicial process.

Accountability of Law Enforcement - Under Article 246 The Constitution of India places the police, public order, courts, prisons, reformatories, and other allied institutions in the State List[130]. The Indian Police Act of 1861 is an antiquated law established during the colonial era with the purpose of oppressing the populace. Regrettably, despite the ongoing calls from The National Police Commission, the Indian government shows no willingness to amend this colonial legislation. Moreover, the Police Act of 1861 lacks any provisions for police accountability, in contrast to the UK, where the Independent Police Complaints Commission (IPCC) oversees and investigates public grievances against the police and has the authority to take over the supervision or investigation of any complaint case. The Indian Police Act is deficient in this regard. This is clearly demonstrated by the cases involving police misconduct that frequently appear in court, where some individuals are victims rather than lawbreakers. If those who are meant to protect the public become the aggressors, a civilized society will no longer be sustainable.

Mehboob Batcha and Others v. State represented by superintendent of police Judges Markandey Katju and Gyan Sudha Mishra[131]

In instant case Supreme Court held that, as murder by policemen in police custody is rarest of rare case. They deserve for death penalty and we give a warning to all country that this will not be tolerated. Further, court upheld that custodial violence in police custody is in violation of this court's directive issued in D. K. Basu v. State

[130] Chenthilkumar Paramasivam, Police organization of India, Common Wealth Human Rights Initiative
[131] (2011) 7 SCC 46.

of WB, A.S. Mohammed Rafi v. state of the Tamil Nadu[132]

In instant case court granted 1.5 lakhs compensation to the victim for police custodial death. However, apart from the above cases, one of the most engrossing and passionately debate is the illegal and arbitrary arrest by police person. Therefore, it is, important to document, study and analyse some case laws in this regard.

Central Bureau of Investigation v. Kishore Singh and Ors[133].

In instant case Hon'ble Justice Markandey Katju stated that, what should be done to policemen who "Bobbitt" a person in police station and think that they can get away it? That is the question decided in the case. Court held that in our opinion, policeman who commit criminal act deserve harsher punishment that other person who commit such act, because it is duty of the policemen to protect the salted?" Or as the ancient Roman used to say "who will guard the praetorian guards?" Hence, the police are supposed to protect the people and uphold the law, but if they themselves become criminals, then it's a difficult task to ensure the protection of the human rights.

Judicial View on Arbitrariness of arrest and illegal detention

There are numbers of the cases where Apex Court directed various guidelines regarding the arrest for example in D.K Basu v. State of West Bengal in instant case court streamlined the procedure relating to the arrest. Court reit
State of the U.P.[134] has put clear restrictions on the powers of police to make arbitrary arrests.

2. Prosecution

The prosecution represents the interests of the public and the state throughout the court process. Prosecutors review the evidence provided by law enforcement to determine whether there is sufficient cause to proceed with charges. Their role is to present the state's case against the accused in an impartial manner, aiming to prove guilt to the court beyond a reasonable doubt.

[132] (2011) 1 SCC 688
[133] (2011) 6 SCC 371
[134] (1994) 4 SCC 260

Role of Prosecution in Criminal Justice System - The prosecution plays a vital and multifaceted role in the Criminal Justice System (CJS), acting primarily as the state's representative to pursue legal action against individuals accused of a crime. Often referred to as the "gatekeepers" of criminal justice, prosecutors are responsible for initiating and conducting criminal proceedings, which involves scrutinizing investigations, deciding whether to file formal charges, and presenting the case in court to prove the accused's guilt beyond a reasonable doubt. Importantly, their duty extends beyond securing a conviction; they are also ministers of justice, obligated to act objectively and fairly, ensure that the rights of all involved parties (including the accused and victims) are protected, uphold the rule of law, and contribute to the court's effort to determine the truth

Adjudication (Judiciary/Courts)

The judicial arm is tasked with ensuring a fair and lawful determination of guilt or innocence. This involves conducting trials in accordance with established procedural and evidentiary laws. Judges preside over the proceedings, interpret legal statutes, and, upon a conviction, are responsible for imposing a sentence that is proportionate to the crime committed. This component also acts as a crucial check on the power of the police and prosecution.

The crucial part of upholding the rule of law is played by the judiciary. In addition to providing victim redress, the courts' first and most significant responsibility is to uphold and defend human rights. A democratic nation cannot exist without such a duty and commitment. The goal of the current criminal justice system in Indian courts is to safegauard the accused's rights, including the presumption of innocence, the right to be free from arrest, and the prohibition against double jeopardy. Although the accused are undoubtedly entitled to all of these rights, in the current dynamic, it is also expected that the courts will give equal weight to the victim and the witness.

Role of Judiciary in Criminal Justice System - The judiciary serves as the impartial arbiter and ultimate decision-maker within the Criminal Justice System (CJS). Its fundamental role is to administer justice by interpreting and applying the law, thereby ensuring that criminal proceedings are conducted fairly and in accordance with constitutional principles. As the central stage for criminal trials, judges preside over hearings, managing the courtroom process, ruling on the admissibility of evidence, and instructing juries on the law.

The judiciary is responsible for determining the guilt or innocence of the accused. In an adversarial system, judges act as neutral referees, evaluating the evidence and arguments presented by both the prosecution and the defense. This function is critical for upholding the presumption of innocence

and guaranteeing the right to a fair trial. If a defendant is found guilty, the judiciary then takes on the crucial responsibility of sentencing, deciding on the appropriate punishment based on the law, the severity of the crime, and the offender's specific circumstances.

Beyond the trial, the courts provide a mechanism for legal redress by hearing appeals and reviews of lower court decisions, correcting any errors in law or procedure. This appellate function is essential for maintaining consistency and accuracy across the justice system. Ultimately, the independence of the judiciary is a cornerstone of a democratic society, safeguarding citizens' fundamental rights and acting as a check on the powers of the police and the executive branch of government. By ensuring adherence to due process, the judiciary legitimizes the entire criminal justice process and maintains public confidence in the rule of law.

Corrections

The final component deals with individuals who have been formally convicted and sentenced. The primary functions of the correctional system—which includes prisons, jails, and community supervision (parole and probation)—have evolved beyond simple punishment. Modern corrections focus on custody, rehabilitation, and reformation, aiming to provide offenders with the resources and programs needed for a successful and law-abiding reintegration into society upon release.

The correctional process represents the final stage of the Criminal Justice System (CJS), commencing after a defendant has been found guilty and sentenced. Its overarching mission is to manage, supervise, and treat convicted offenders to achieve multiple, often competing, goals: punishment, public safety, and offender rehabilitation and reintegration. It is a dynamic network of agencies and programs that administers the sanction imposed by the courts.

Role of Corrections in the CJS

The correctional system’s role is defined by several core objectives:

Retribution and Accountability: A fundamental purpose is to ensure that offenders are held accountable for their crimes by experiencing punishment. This may involve the ultimate sanction of capital punishment, or more commonly, the loss of liberty, property (fines), or autonomy. This function is essential for societal justice, satisfying the public's demand that a wrongdoer "pays" for their offense.

Deterrence: Corrections seek to prevent future criminal behaviour through both general deterrence (dissuading the public by demonstrating the consequences of crime) and specific deterrence (discouraging the convicted offender from reoffending after release).

Incapacitation and Public Safety: A crucial role is to maintain public safety by physically incapacitating dangerous offenders, primarily through incarceration in prisons or jails. This segregates them from the community, ensuring they cannot commit new crimes against the general population for the duration of their sentence.

Rehabilitation and Reintegration: Driven by the philosophy that many offenders can be reformed, corrections work to address the root causes of criminal behaviour. This function involves offering extensive rehabilitative programs such as vocational training, educational opportunities (like earning a GED), substance abuse treatment, and psychological counselling. The ultimate goal is reintegration—preparing offenders to transition from a controlled environment back into the community as productive, law-abiding citizens and reducing the likelihood of recidivism (reoffending).

The Correctional Process: Institutional and Community Supervision

The correctional process is broadly divided into two main categories:

Institutional Corrections: This involves the confinement of offenders in secure facilities.

1. Jails typically hold people awaiting trial or serving short misdemeanour sentences.
2. Prisons are for individuals serving longer felony sentences and are classified by security level (minimum, medium, maximum). During this phase, offenders are assessed, classified, and provided with programs and services aimed at addressing criminogenic needs.

Community Corrections: This involves supervising offenders in the general population, which serves as a less costly and often more effective path to reintegration.

1. Probation is an alternative to incarceration, where a sentence is suspended in Favor of community supervision under strict conditions.
2. Parole is the conditional, supervised release of a prisoner before the completion of their full sentence.

Supervision in the community involves a parole or probation officer who monitors the offender, ensures they comply with conditions (like attending therapy or maintaining employment), and acts as a resource for navigating life outside of the correctional institution. Should an offender violate the terms of their supervised release, the correctional process includes the mechanism to revoke parole or probation and return them to incarceration, thereby ensuring accountability and compliance with the court-mandated sanction

Comparison Of Criminal Justice System Among Countries

The criminal justice system (CJS) of India, being a legacy of British rule, fundamentally operates on an adversarial model, which draws significant contrasts when compared to legal systems globally, particularly the inquisitorial systems of continental Europe. In the Indian model, like those in the UK, USA, and other common law nations, the trial is viewed as a contest between two opposing parties—the prosecution (representing the state) and the defence—who present evidence before a largely passive and impartial judge acting as an umpire. This structure strictly adheres to the principle that the accused is presumed innocent until the prosecution proves guilt beyond a reasonable doubt, and the accused cannot be compelled to testify, a right protected by the Constitution. This approach contrasts sharply with the inquisitorial system prevalent in countries like France and Germany, where the trial is primarily a judicial inquiry; the judge or an investigating magistrate actively investigates the case, questions witnesses, and collects evidence, taking a far more proactive role in seeking the truth.

Furthermore, the Indian CJS exhibits both similarities and notable differences with other common law nations. For instance, both India and the US follow the adversarial tradition and utilize concepts like plea bargaining, yet the implementation differs significantly: in India, plea bargaining is more restricted, primarily limited to first-time offenders for offenses with a maximum punishment of seven years, and involves the victim as an equal stakeholder in the negotiation process, which is often not the case in the American system. Moreover, while the US federal and state courts operate under a dual judicial system, India maintains a single, integrated judicial hierarchy with the Supreme Court at the apex, presiding over all courts across the country. Procedurally, India’s core laws—the Indian Penal Code (IPC), Code of Criminal Procedure (CrPC), and Evidence Act—are exhaustive codifications inherited from the 19th-century British framework, providing a foundational legal unity that differs from systems where law is derived more heavily from case precedent (pure common law) or where state-level codes have more variation.

In terms of correctional philosophy, India, like many developed nations, emphasizes reformation and rehabilitation over purely punitive measures, yet it faces unique challenges due to its immense population, resulting in severe issues like prison overcrowding and inordinate trial delays, which are arguably more pronounced than in smaller, higher-income countries like Norway, whose focus on rehabilitation has yielded lower recidivism rates. The overall effectiveness of India's system, as measured by global indices, often indicates lower scores in areas such as the timeliness of judicial adjudication and the effectiveness of criminal investigations when compared to global averages, highlighting the systemic challenges—including the sheer volume of cases and infrastructural limitations—that complicate the process of delivering justice efficiently, despite the strong constitutional commitment to due process and the rights of the accused.

Criticism Of Criminal Justice System Of India

Critics widely regard the Indian Criminal Justice System (CJS) as plagued by fundamental, systemic flaws that collectively undermine its core objective: delivering timely and equitable justice. The most significant concern is the extreme judicial and case pendency, with millions of cases backlogged across courts, a situation worsened by a severe shortage of judges and inadequate court infrastructure. This chronic delay not only violates the constitutional right to a speedy trial but also causes immense suffering, effectively making the process itself a punishment for the accused, a large majority of whom are undertrials confined in overcrowded prisons for periods often exceeding the maximum possible sentence for their alleged crime.

Furthermore, the investigative and enforcement arms of the CJS face intense scrutiny, particularly the Police. Critics argue the police force operates with a colonial-era mindset, leading to widespread allegations of abuse of power, custodial violence, corruption, and political interference. This institutional lack of accountability and public distrust is compounded by inefficient investigations due to a shortage of resources, poor forensic training, and an over-reliance on coercive methods rather than scientific evidence. This investigative inadequacy often results in a low conviction rate, leading to the acquittal of the guilty and a subsequent erosion of public confidence in the system's deterrent capacity.

Finally, the CJS is criticized for its inaccessibility and systemic bias against the marginalized. The complicated, expensive, and time-consuming legal procedures effectively put justice beyond the

reach of the poor and vulnerable, despite constitutional guarantees of legal aid. Moreover, the weak prosecution system, often lacking independence from the government and suffering from poor case preparation, is frequently cited as a failure point. Overall, critics contend that the CJS, with its outdated procedural laws and deeply rooted structural issues, consistently fails to prioritize justice for victims and instead remains a lumbering machine that is far too slow and often biased against those without social or financial capital.

Recommendations:

Recommendations for reforming the Criminal Justice System (CJS) of India generally advocate for comprehensive changes across the police, judiciary, prosecution, and prison wings to ensure swift, fair, and victim-centric justice. A major thrust of suggested reforms, notably by the Malimath Committee and subsequent developments like the new criminal codes (Bhartiya Nyaya Sanhita, etc.), is on modernization and efficiency. This includes the separation of the police investigation wing from law-and-order duties to enhance probe quality, the increased use of technology for mandatory videography of statements and court proceedings, and the infusion of scientific methods and forensics into investigations.

Key Areas for CJS Reform

A critical component of reform centres on judicial efficiency and expedited trials, suggesting measures like increasing the number of judges and courts, establishing specialized courts, and reducing court vacations to tackle the huge pendency of cases. Furthermore, there's a strong call to make the CJS more victim-centric, proposing greater victim participation and legal rights in serious crime proceedings, and ensuring adequate and timely compensation from a dedicated fund. For the accused, a crucial suggestion involves a clear 'Charter of Rights' translated into regional languages, while also introducing stronger witness protection mechanisms to encourage testimony without fear.

Procedural and Structural Changes

Structural and procedural overhauls are also vital, with suggestions to professionalize the public prosecution and police through transparent appointments and fixed tenures to curb political interference. Some proposals, like those from the Malimath Committee, even suggest borrowing certain features of the inquisitorial system—where a judicial magistrate oversees the investigation—and re-examining concepts like the standard of proof and the right to silence to better establish the truth. Finally, prison reforms are essential to address overcrowding and focus on

rehabilitation and correctional services through vocational training and mental health support, recognizing that the CJS should aim for societal reintegration of offender

CONCLUSION:

The fundamental challenge remains the inordinate delay in the judicial process, stemming from a severe shortage of judicial personnel and outdated court infrastructure, which undermines public faith and violates the right to a speedy trial. The police force is constrained by a need for greater professionalization, insulation from political interference, and a complete separation of law-and-order duties from investigation to enhance the quality of evidence collection. Furthermore, a shift to a more victim-centric approach is still needed, ensuring victims are granted greater rights to participate in proceedings, receive adequate legal aid, and secure timely compensation. Finally, the overcrowded and under-reformed prison system requires a greater focus on correction, rehabilitation, and addressing the high number of undertrials. Ultimately, the successful implementation of new laws, coupled with adequate financial and technological investments, and a commitment to protecting the rights of both the accused and the victim, is essential for transforming the Indian CJS from a sluggish, punitive mechanism into an effective, truth-seeking instrument of justice and social welfare.

CHAPTER-17

HUMANIZING JUSTICE: THE SHIFT FROM INCARCERATION TO REHABILITATION IN INDIA'S PENAL PHILOSOPHY

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Abstract

The historical evolution of the criminal justice system in India underscores an urgent need to transition from retributive punishment and confinement toward a holistic model of justice reform. This transformation calls for a re-examination of the prevailing punitive approach, which primarily relies on incarceration as a means of deterrence, yet often fails to rehabilitate offenders or prevent recidivism. Traditional prison structures, rooted in colonial frameworks, have perpetuated cycles of exclusion, social stigma, and institutional neglect. Against this backdrop, the present study explores the gradual paradigm shift toward rehabilitative and restorative justice models that seek to humanize the administration of criminal law. By analyzing judicial pronouncements, legislative policies, and comparative international practices, this research identifies essential reforms necessary for constructing a humane, equitable, and effective justice framework. It particularly emphasizes the integration of psychological counselling, skill development, and community-based reintegration initiatives as vital components of post-conviction management. The study further evaluates the significance of the Model Prison Manual, 2016, the Supreme Court's progressive jurisprudence under Articles 21 and 39A of the Constitution, and the participatory role of non-governmental organizations in improving correctional systems. Persistent challenges—such as overcrowded prisons, prolonged undertrial detention, insufficient infrastructure, and the absence of gender-sensitive or juvenile-specific mechanisms—are critically examined to highlight the structural deficiencies within the penal system. Employing an interdisciplinary and policy-oriented approach, the research proposes actionable reforms that align criminal justice with constitutional morality and human rights obligations. It concludes that justice in India must evolve beyond the physical confines of prison walls to embrace restoration, education, and rehabilitation as its foundational pillars. Only through such inclusive and reformative measures can the justice system secure both societal protection and the dignity of the individual.

List Of Keywords : *Justice Reforms, Restorative Justice, Prison Administration, Rehabilitation, Human Rights, Criminal Justice System.*

Introduction

Justice, in its purest sense, embodies fairness, equity, and the restoration of human dignity — extending far beyond the confines of punishment. The concept of *"Beyond the Cell"* symbolizes a progressive reimagining of India's criminal justice philosophy, shifting its emphasis from mere retribution to meaningful restoration. The traditional Indian penal framework, deeply rooted in colonial legacies, has long relied on deterrence and incarceration as central tools of correction. While such measures were historically intended to maintain social order, they have often failed to address the deeper socio-economic and psychological dimensions of crime. Contemporary criminological thought and evolving human rights jurisprudence challenge this punitive paradigm, advocating instead for rehabilitation, reformation, and reintegration as the true objectives of justice. The Indian judiciary, through its dynamic interpretation of **Article 21** of the Constitution, has gradually broadened the scope of personal liberty to include humane treatment, legal aid, and

dignity for prisoners. This transformation reflects a growing acknowledgment that justice must not only punish wrongdoing but also create pathways for redemption and societal reintegration. This paper seeks to analyze the evolution, structural challenges, and emerging trends within India's criminal justice reforms. It emphasizes the urgent need to transcend incarceration as the sole measure of justice and to envision a system that balances accountability with compassion. Drawing upon comparative international practices, judicial precedents, and policy frameworks, the study underscores the importance of humanizing the penal process. The goal is to craft a justice mechanism that restores both the offender and the victim to their rightful place within society, thereby fulfilling the constitutional promise of dignity, equality, and restorative fairness.

Research Objectives

The objectives of this research paper are as follows:

1. To analyze the evolution of legal reforms in India with particular emphasis on criminal justice.
2. To examine the role of institutional strengthening in improving justice deliveryf.
3. To evaluate recent legislative changes such as the BNS, BNSS, and BSA, and their likely impact on judicial efficiency.
4. To identify persistent challenges in reform implementation and suggest policy recommendations.

Hypothesis

This research is guided by the hypothesis that effective legal reforms coupled with institutional strengthening can significantly enhance judicial efficiency, improve access to justice, and reinforce public trust in the legal system. However, without adequate infrastructural and human resource investment, reforms risk remaining on paper, creating only symbolic change.

Structure of the Paper

The paper is organized into multiple sections. Following this introduction, the **literature review** surveys academic works and comparative studies on legal reforms. The **methodology** outlines the doctrinal and qualitative approach adopted. The **discussion and analysis** section delves into criminal justice reforms, with special attention to procedural laws, case backlog, technological integration, and institutional challenges. The **findings and policy recommendations** summarize key insights and propose a roadmap for strengthening justice delivery. Finally, the **conclusion** reflects on the broader significance of reforms in fostering democracy and good governance.

Literature Review

Legal reforms in India have long been a subject of inquiry for scholars, policymakers, and commissions. The Law Commission of India has consistently emphasized the importance of modernization in criminal procedures. The 14th Law Commission Report (1958) recognized the need to strengthen the judiciary through infrastructural development and improved judge-to-population ratios. Later reports, such as the 230th Report (2009), underscored case management and alternative dispute resolution (ADR) as crucial strategies for reducing pendency.

Scholars such as Baxi (1982) and Galanter (1974) have highlighted structural barriers that prevent access to justice for marginalized communities. They argue that unless reforms address socio-economic disparities, procedural amendments alone cannot ensure equity. Further, Marc Galanter's theory of "the repeat players" demonstrates how institutional biases favor resource-rich litigants, reinforcing the need for institutional strengthening.

The Malimath Committee Report (2003) on criminal justice reform proposed a victim-centric approach and recommended expanding plea bargaining, improving witness protection, and ensuring

forensic support. Similarly, the Justice Verma Committee (2013), constituted in the aftermath of the Delhi gang rape case, recommended sweeping reforms in sexual offence laws, leading to the Criminal Law (Amendment) Act, 2013. These scholarly and committee insights underscore the cyclical relationship between legislative reform and institutional performance.
Recent scholarship has also engaged with the role of technology in justice delivery. Studies by Vidhi Centre for Legal Policy (2021) emphasize the transformative potential of e-courts and digitization while cautioning against the digital divide that risks excluding vulnerable litigants. Comparative literature indicates that while Western jurisdictions focus on efficiency, India must balance efficiency with inclusivity, given its diverse socio-economic landscape.

Research Methodology

This study adopts a qualitative research methodology, relying primarily on doctrinal analysis of statutes, judicial precedents, and committee reports. The paper is supplemented by secondary data sourced from peer-reviewed journals, government reports, and policy think-tank publications. Case studies and comparative perspectives have been used to contextualize reforms in India against global trends. The research design follows a descriptive hypothesis, aiming to understand how legal reforms and institutional strengthening can improve justice delivery in criminal matters. Analytical tools include content analysis of legislative texts (such as BNS, BNSS, and BSA 2023), thematic analysis of judicial pronouncements, and review of scholarly commentary. This combination allows for a multi-dimensional understanding of both substantive and procedural aspects of justice reform.

Challenges in Reforms

Overcrowding of Prisons: According to NCRB (2023), India's prison occupancy rate exceeds 130%, with nearly 77% of inmates being undertrials. Lack of Rehabilitation Programs: Only a few states have functional education, skill, or therapy programs for inmates. Gender and Juvenile Issues: Women and juveniles face neglect in access to legal aid, sanitation, and counselling services. Mental Health Neglect: Prisoners often suffer untreated trauma, anxiety, and depression. Institutional Corruption and Delays: Bureaucratic hurdles hinder parole, remission, and reformation programs.

Discussion and Analysis

Criminal Justice Reforms

The criminal justice system in India is often described as the most visible face of the state, directly engaging with questions of liberty, security, and social order. However, it has also been one of the most criticized segments of governance. Delays in investigation and trial, large numbers of undertrial prisoners, inadequate policing infrastructure, and ineffective prosecution have weakened public trust. According to the National Crime Records Bureau (NCRB, 2023), over 70% of India's prison population consists of undertrials—an indicator of systemic inefficiency. The Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA), enacted in 2023, seek to modernize India's criminal law framework. The BNS replaces the Indian Penal Code, 1860, updating definitions and deleting colonial offences such as sedition. The BNSS emphasizes time-bound investigations, plea bargaining, forensic evidence, and victim protection. The BSA modernizes evidentiary rules by recognizing electronic records and strengthening digital admissibility. Together, these reforms aim to balance efficiency with safeguards, though concerns about over-empowerment of police remain.

International Analysis

Countries such as **Norway** and **Sweden** have successfully redefined the very philosophy of incarceration, transforming prisons from punitive spaces into environments of personal growth and social reintegration. Their justice systems emphasize that punishment alone cannot yield lasting reform; rather, rehabilitation, education, and psychological healing must lie at the heart of correctional policy. In these nations, prisons function more like **learning and rehabilitation centers**, where inmates engage in vocational training, counselling, and structured social reintegration programs. This model seeks not to stigmatize offenders but to equip them with the skills and mindset necessary to rejoin society as responsible citizens.

The **Norwegian Correctional Service**, guided by the principle of "normality," ensures that life inside prison mirrors life outside as closely as possible, thereby reducing the alienation and institutional dependency that often accompany long-term imprisonment. Similarly, Sweden's correctional philosophy centers on *restorative justice* — focusing on repairing harm, fostering accountability, and rebuilding community ties. These systems consistently report **lower recidivism rates**, highlighting the tangible benefits of treating inmates with dignity and purpose rather than deprivation.

Internationally, the **United Nations Standard Minimum Rules for the Treatment of Prisoners**, also known as the **Nelson Mandela Rules (2015)**, serve as a comprehensive framework for humane and reform-oriented correctional practices. They emphasize the need for education, medical care, rehabilitation programs, and respect for inherent human dignity within detention facilities. India, while adopting parts of these standards through instruments such as the **Model Prison Manual (2016)** and judicial interventions under **Article 21**, continues to struggle with their consistent implementation across states.

Drawing lessons from Scandinavian models, India's justice reform efforts must focus on transforming prisons into centers of reformation rather than retribution, aligning its penal philosophy with both global standards and constitutional morality.

Technology and E-Courts in Justice Reform

Technology has emerged as a transformative tool in India's justice delivery system. The E-Courts Mission Mode Project (2005–ongoing) seeks to digitize records, enable e-filing, and introduce AI-based case management. The Supreme Court in Swapnil Tripathi v. Supreme Court of India (2018) permitted live streaming of constitutional bench hearings, enhancing transparency. While virtual hearings during COVID-19 showcased potential benefits, challenges such as the digital divide, lack of digital literacy, and cybersecurity risks persist. Comparative models, such as Singapore's AI-enabled courts and Estonia's e-justice platforms, highlight pathways India can adapt. Digitalization offers immense scope for reform. E-prisons, virtual trials, and online counselling sessions reduce delays and enhance monitoring. Community participation through NGOs and academic partnerships can also provide social support for reintegrating released prisoners. The success of projects like the Open Prison System in Rajasthan demonstrates that trust-based correctional approaches can ensure security with dignity.

Institutional Strengthening and Governance Mechanisms

Legal reform requires robust institutions. Judicial capacity remains low, with only 21 judges per million people in India compared to global benchmarks. Police reforms ordered in Prakash Singh v. Union of India (2006) remain weakly implemented, while prosecution lacks autonomy and resources. Legal aid under Article 39A of the Constitution is inadequately funded, limiting access for marginalized groups. Prison reforms remain neglected, with overcrowding and custodial violence persisting despite committee recommendations. Institutional strengthening therefore requires a holistic approach—expanding judicial strength, empowering prosecutors, modernizing prisons, and investing in ADR and legal aid.

Findings

The research identifies persistent challenges such as backlog, undertrial detention, inadequate infrastructure, and weak institutional accountability. Criminal justice reforms under the new codes mark a paradigm shift but risk misuse without safeguards. Technology integration has improved transparency but is uneven due to the digital divide. Comparative perspectives highlight that balance between efficiency, fairness, and inclusivity is key.

Recommendation

A comprehensive transformation of India's criminal justice and correctional framework requires a multidimensional approach that addresses both structural and human aspects of incarceration. The foremost step is to **modernize prison infrastructure** by replacing outdated, colonial-era jail models with modern **correctional and rehabilitation centers** designed to promote dignity, safety, and reintegration. These facilities must prioritize humane living conditions, access to healthcare, and spaces for education and skill development.

Equally vital is the **uniform training of prison staff** in psychology, criminology, and counselling, enabling them to serve not merely as custodians but as facilitators of behavioral and social reform. Regular capacity-building programs should instill empathy, professionalism, and respect for human rights. The **introduction of restorative justice practices** — including pilot mediation and victim-offender reconciliation programs — can foster accountability, healing, and community reintegration while reducing adversarial tendencies in criminal processes.

Promoting **legal aid awareness** among undertrials and marginalized inmates is essential to ensure access to fair representation and procedural justice. Strengthening **judicial oversight mechanisms** can guarantee compliance with constitutional safeguards and international norms such as the **United Nations Nelson Mandela Rules (2015)**. Judicial visits, periodic reviews, and independent monitoring bodies can play a crucial role in ensuring transparency and accountability.

Furthermore, expanding **vocational and educational programs** will enhance inmates' employability and self-sufficiency upon release, mitigating the social stigma that often hinders reintegration. Finally, strengthening **community-based alternatives** such as probation, parole, and open prisons can reduce overcrowding, cut costs, and promote restorative reintegration. These reforms collectively aim to shift India's penal philosophy from punishment to transformation — cultivating a justice system that upholds constitutional morality, human dignity, and societal harmony.

Conclusion

In conclusion, legal reforms in India are at a crossroads. The enactment of BNS, BNSS, and BSA (2023) represents a historic moment of modernization. Yet, true transformation depends not only on statutory changes but also on institutional strengthening, technological integration, and cultural shifts in the delivery of justice. The pursuit of a transparent, equitable, and efficient system must remain guided by constitutional values and public trust, ensuring that justice is not only done but also seen to be done.

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1. Government of India. (2019). *Economic Survey 2018–19*. Ministry of Finance. https://www.indiabudget.gov.in/economicsurvey/,

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3. https://legislative.gov.in/act/commercial-courts-commercial-division-and-commercial-appellate-division-high-courts-act-2015.

4. Parliament of India. (2023). *The Mediation Bill, 2023*. Government of India. https://legislative.gov.in/bill/mediation-bill-2023.
5. World Bank. (2020). *Ease of Doing Business 2020: Comparing Business Regulation in 190 Economies*. World Bank Group. https://www.worldbank.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2020-report_web-version.pdf.
6. Singapore Judiciary. (2022). *Technology and Courts: The Singapore Experience*. https://www.judiciary.gov.sg/welcome/singapore-courts/technology-in-courts
7. UK Ministry of Justice. (2021). *Case Management and Efficiency in the Courts*. Government of the United Kingdom. https://www.gov.uk/government/publications/case-management-and-efficiency-in-the-courts.

CHAPTER-18

BREAKING THE BARS: RETHINKING PUNISHMENT IN THE AGE OF JUSTICE REFORMS

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Abstract

In a justice system where imprisonment is often seen as the default response to crime, the need for a paradigm shift has become increasingly urgent. This paper critically engages with the growing global and domestic discourse on criminal justice reforms, focusing on the need to move beyond retributive punishment and toward models rooted in rehabilitation, reintegration, and human dignity.

The study explores the limitations of incarceration as a means of deterrence and public safety, and examines alternative approaches including restorative justice, community-based sentencing, and open prison systems. It also explores the wider social and psychological repercussions of mass incarceration, with a particular focus on its disproportionate effects on marginalised communities, while analysing the ways in which current reform initiatives attempt to confront and mitigate these enduring challenges. Employing a doctrinal and policy-based methodology, the paper analyses emerging legislative trends and judicial attitudes that reflect a reformative outlook. It further draws on international human rights standards and comparative practices to assess how justice can be delivered without resorting to excessive incarceration.

Ultimately, the paper argues that justice must not only be done but must restore. Breaking the bars means rethinking punishment itself, to build a legal system that does not merely isolate the offender but also transforms the conditions that breed crime.

Keywords*: Justice Reform, Rehabilitation, Restorative Justice, Alternatives to Incarceration, Indian Criminal System*

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1. *Michel Foucault, Discipline and Punish: The Birth of the Prison*
2. *Radhika Singha, A Despotism of Law: Crime and Justice in Early Colonial India (OUP 1998).*
3. *National Crime Records Bureau (NCRB), Prison Statistics India 2021 (Ministry of Home Affairs, Government of India 2022).*

Introduction:

When Justice Wears Chains

The story of punishment is, at its core, the story of how societies understand justice. For centuries, imprisonment has been treated as the natural response to crime, with courts and legislatures turning to the prison cell as the most visible expression of accountability.

In India, this trend has deep roots, reinforced by colonial legacies and post-independence policies that built upon custodial models rather than transforming them[1]. Today, with over four lakh prisoners crowding Indian jails, the system is stretched beyond its limits, raising critical questions about whether confinement delivers justice or simply perpetuates cycles of harm[2].

This chapter begins from a simple yet unsettling premise: justice, when chained to the idea of retribution, loses its power to heal. The default reliance on incarceration has created not just an overburdened prison system but also a society where punishment is mistaken for resolution.[3] Crime victims often remain unhealed, offenders return to communities stigmatized and unrehabilitated, and structural causes of crime which is poverty, marginalization, systemic inequality that are remain untouched.

Therefore, is not merely to reform prisons but to reform the very philosophy of punishment. Across the globe, reformative and restorative frameworks are challenging the dominance of retributive systems. In India too, a gradual shift is visible in legislative experiments, judicial pronouncements, and civil society movements that push for alternatives to incarceration.[4] Yet these shifts remain uneven, and the larger criminal justice framework still relies heavily on confinement as its central mechanism.

Against this backdrop, this chapter critically re-examines the role of incarceration in contemporary justice systems. It explores whether justice can be imagined without cells, through approaches rooted in dignity, rehabilitation, and reintegration.[5] Employing a doctrinal and policy-based methodology, it analyses statutory frameworks, judicial attitudes, and comparative practices to trace both the possibilities and limitations of reform.[6]

Ultimately, the introduction sets the stage for a larger inquiry:[7] if justice is truly about restoring balance in society, can a system built on cages and chains ever be sufficient? Or must we, in breaking the bars, reimagine justice itself?

4. Shailesh Rai, 'Prison Conditions in India: A Human Rights Perspective' (2019) 61(3) JILI 412.
5. John Braithwaite, Restorative Justice and Responsive Regulation (OUP 2002).
6. Mohd. Giasuddin v State of Andhra Pradesh AIR 1977 SC 1926.
7. United Nations Office on Drugs and Crime (UNODC), The Handbook on Strategies to Reduce Overcrowding in Prisons (2013).

From Gallows To Cells*:*
The Long Road of the Punishment

Punishment has never remained fixed; it has continually evolved under the influence of philosophy, politics, and social authority. In its earliest manifestations, it was overwhelmingly physical and performed in public not merely to inflict harm, but to stage a spectacle meant to deter future offenders. Instruments such as gallows, stocks, lashes, and scaffolds were imbued with a ritualistic force, standing as stark symbols that equated justice with visible suffering.[8]

By the nineteenth century, a significant reorientation took shape worldwide: the focus of punishment shifted from the body to the inner self.[9] Prisons became the central mechanism of justice, substituting executions in the square with confinement behind bars.

What was once displayed openly before the community was now concealed within institutional walls, where constant discipline and surveillance served as the dominant strategies of control.[10] Though often celebrated as a mark of progress, this change did not undo the underlying power dynamics, it merely masked them in the language of reform.

Colonial Legacies in India

In India, the modern prison system was less a native development and more a colonial transplant. Under British rule, prisons were deliberately built not only to administer punishment but also to suppress political opposition and facilitate economic dominance.[11]

The 1837 Prison Discipline Committee firmly emphasised deterrence and strict discipline over any notion of rehabilitation, weaving hard labour, solitary confinement, and rigid routines into the fabric of penal policy.[12] In this way, colonial prisons functioned as extensions of imperial power, intended to silence resistance and cultivate fear among both inmates and society at large.

Following independence, India retained much of this framework without significant overhaul. The Indian Prisons Act of 1894 still largely operative illustrates this persistence, upholding a system concerned more with confinement and security than with genuine correction.[13] Though various committees and commissions have, in later years, urged reform, the inherited colonial model of incarceration as the primary response to crime has remained deeply entrenched.

Pieter Spierenburg, The Spectacle of Suffering: Executions and the Evolution of Repression (CUP 1984).

9. *David Garland, Punishment and Modern Society: A Study in Social Theory (OUP 1990).*
10. *Michel Foucault, Discipline and Punish: The Birth of the Prison (Vintage Books 1995) 195–22*
11. *Radhika Singha, A Despotism of Law: Crime and Justice in Early Colonial India (OUP 1998) 223–245.*
12. *Report of the Prison Discipline Committee (Government of India 1838).*
13. *The Prisons Act 1894, Act IX of 1894.*

Why Prisons Became the "Easy Answer"

Several factors contributed to the persistence of prisons as the dominant punishment model. First, imprisonment presented itself as a visible, standardised response that seemed fairer than arbitrary corporal punishment.[14] It offered courts and states a convenient formula: one crime, one term of years, one confined body. The very simplicity of imprisonment made it politically attractive, even if socially ineffective.

Second, prisons carried the aura of modernity.[15] Towards the close of the nineteenth and the dawn of the twentieth centuries, nations aimed to separate themselves from the barbarity of public executions and physical mutilation.

Locking people away behind walls appeared more humane, even when conditions inside those walls remained brutal. Colonial administrators in India, for example, proudly pointed to prisons as evidence of civilisational progress, while ignoring the overcrowding, disease, and inhuman labour within them.

Third, incarceration created an illusion of security.[16] By removing offenders from society, the state signalled its control over crime, even if such removal did little to address root causes. This illusion proved powerful: it reassured victims, calmed communities, and bolstered state authority, all while leaving systemic inequalities untouched.

Finally, prisons endured because alternatives were rarely invested in.[17] Reformative approaches such as probation, community service, or restorative conferencing demanded both resources and political will, neither of which were forthcoming in a system more comfortable with punitive symbolism. The prison thus became the "easy answer" which is simple to administer, easy to justify, and deeply entrenched in legal and cultural imagination.

This legacy continues to shape Indian criminal justice today, where imprisonment remains the default punishment despite repeated recognition of its failures. As the next section explores, the faith in deterrence with that fear of prison will prevent crime which is perhaps the greatest myth sustaining the system.

14. Markus Dirk Dubber, The Police Power: Patriarchy and the Foundations of American Government (Columbia University Press 2005) 167.

15. Randall McGowen, 'The Well-Ordered Prison: England, 1780–1865' in Norval Morris and David Rothman (eds), The Oxford History of the Prison (OUP 1995).

3. THE MYTH OF DETERRENCE: *Why Prisons Fail Us*

The prison system rests heavily on the idea that fear prevents crime. Legislators and judges have long assumed that the threat of confinement will deter individuals from offending. Yet empirical research across jurisdictions has consistently undermined this assumption.[18] Studies show that increasing the severity of punishment does not correspond with a reduction in crime rates; in fact, societies with harsh sentencing often face the highest levels of recidivism.[19]

In India, overcrowded and under-resourced prisons further weaken any deterrent effect. Instead of rehabilitation, prisoners frequently experience trauma, violence, and social alienation, conditions that push them deeper into cycles of crime.[20] When they return to their communities, they often carry the stigma of imprisonment, struggling to secure employment, rebuild family ties, or access housing which are the factors closely linked to reoffending.[21]

Deterrence also fails because it presumes rational decision-making.[22] Many crimes arise not from calculated risk-benefit analysis but from poverty, addiction, desperation, or mental illness. For those at society's margins, the threat of prison is distant compared to the immediacy of hunger, debt, or exploitation. Criminalisation without social reform, therefore, punishes the vulnerable without addressing their circumstances.

Further, incarceration disproportionately impacts the poor, minorities, and marginalised groups.[23] In India, undertrial prisoners were the majority of the prison population they are overwhelmingly from economically weaker and socially disadvantaged backgrounds.[24] Their prolonged detention for petty offences illustrates how deterrence translates into systemic inequality, not justice.

The persistence of deterrence as a penal philosophy thus reveals less about its effectiveness and more about its political utility. By invoking prisons as deterrents, states project strength and authority, even as crime rates remain unaffected. The myth of deterrence endures because it legitimises punitive governance while obscuring the need for structural change.

16. Lucia Zedner, Criminal Justice (OUP 2004) 62–64.

17. Andrew Ashworth and Lucia Zedner, Preventive Justice (OUP 2014) 88.

18. Daniel S Nagin, 'Deterrence in the Twenty-First Century' (2013) 42 Crime and Justice 199.

19. Michael Tonry, Punishment and Politics: Evidence and Emulation in the Making of English Crime Control Policy (Willan 2004).

20. Justice Amitava Roy Committee, Report on Prison Reforms (Ministry of Home Affairs, Government of India 2018).

21. Shadd Maruna, Making Good: How Ex-Convicts Reform and Rebuild Their Lives (American Psychological Association 2001).

Recidivism rates highlight the most telling flaw in the deterrence model.[25] In India, around 8–10% of prisoners are repeat offenders, while in countries like the United States the percentage is far higher.[26] These figures underscore that imprisonment alone fails to transform behaviour. Instead, prisons often constitute as "schools of crime," Placing minor offenders in close contact with habitual offenders exposes them to corrupting influences, deepening their criminal identity rather than dissolving it.[27]

The United Nations Office on Drugs and Crime (**UNODC**) recognises this cycle, urging states to reduce reliance on incarceration and invest in rehabilitative measures.[28] Yet, India continues to prioritise incarceration, even for non-violent offences, clogging the system and reinforcing the myth that harsher penalties translate to safer societies.

The failure of deterrence also has intergenerational effects. Families of prisoners suffer economic hardship and social ostracism, producing conditions where children are more vulnerable to delinquency.[29] Thus, prisons do not just fail the individual offender; they destabilise entire communities.

BREAKING WALLS, BUILDING BRIDGES: *Alternatives That Work*

The inadequacy of deterrence demands a pivot to alternatives that humanise justice and restore communities. Across the world, restorative justice programmes, community sentencing, and decriminalisation initiatives have shown promise.[30]

Restorative justice, for instance, emphasises dialogue between victim and offender, focusing on accountability and healing rather than punishment.[31] Community service sentences have also proven effective in addressing minor offences while allowing offenders to remain integrated with their families and workplaces.[32]

In India, experiments with open prisons such as those in Rajasthan which are demonstrate how freedom, responsibility, and community reintegration can drastically reduce recidivism.[33] Similarly,

22. Cesare Beccaria, On Crimes and Punishments (first published 1764, CUP 2009 edn).
23. Marc Mauer, Race to Incarcerate (New Press 2006).
24. National Crime Records Bureau (NCRB), Prison Statistics India 2021 (Ministry of Home Affairs 2022).
9

the decriminalisation of minor offences like begging or certain traffic violations reflects a shift towards proportionate justice.[34] These alternatives highlight that justice does not have to be equated with confinement; it can be participatory, inclusive, and reformative.

The idea of restorative justice is not merely theoretical; it has been institutionalised with measurable success. In New Zealand, for example, restorative conferencing with juvenile offenders reduced reoffending rates and restored community confidence in the justice process.[35] South Africa also integrated restorative practices within its Truth and Reconciliation Commission, emphasising healing over punishment in the aftermath of apartheid.[36]

In India, restorative approaches are gradually being acknowledged, most notably within the sphere of juvenile justice.[37] The Juvenile Justice (Care and Protection of Children) Act, 2015, specifically emphasises rehabilitation and reintegration, reflecting a move away from punitive measures toward reformative objectives.[38] Although their reach remains limited, such statutory initiatives point to the potential for wider acceptance of non-custodial alternatives to imprisonment.

Open prison models provide a noteworthy innovation in penal reform. Rajasthan's Sanganer Open Prison, for instance, allows inmates to reside with their families, engage in employment outside during the day, and return to the facility at night, thereby redefining the very concept of "incarceration."[39] and isolation.

At the international level, the movement toward decriminalisation also offers important insights for India. Portugal's decision in 2001 to decriminalise drug possession reframed addiction as a health challenge rather than a criminal act, resulting in measurable declines in drug-related fatalities and HIV transmission.[41] Introducing similar strategies in India — especially for offences linked to poverty or structural disadvantage — could not only ease prison overcrowding but also promote dignity and long-term rehabilitation.

25. Arvind Tiwari, 'Prisoner Recidivism in India: A Study of Reconviction' (2017) 54(2) Indian Journal of Criminology 95.
26. Bureau of Justice Statistics, 2018 Update on Prisoner Recidivism: A 9-Year Follow-Up Period (US Department of Justice 2021).
27. Donald Clemmer, The Prison Community (Holt, Rinehart and Winston 1940).
28. United Nations Office on Drugs and Crime, Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment (UNODC 2007).
29. Joseph Murray and David Farrington, 'The Effects of Parental Imprisonment on Children' (2008) 37 Crime and Justice 133.

Community Sentencing and Transitional Justice

Community sentencing is another reform that challenges the prison-centric mindset. By assigning offenders to unpaid community service, courts ensure accountability while simultaneously benefiting society.[42] Unlike imprisonment, which isolates and stigmatises, community sentencing embeds offenders within their social fabric, allowing them to make amends in visible, constructive ways. The UK, Canada, and parts of the EU have successfully adopted such approaches, reporting lower recidivism and higher victim satisfaction.[43]

Such an environment has been shown to reduce stress, increase productivity, and substantially lower recidivism rates.[40] This experiment highlights that trust and responsibility can often achieve more in deterring crime than physical confinement
In the Global South, transitional justice movements offer additional lessons. Countries emerging from conflict which are Rwanda after the genocide, South Africa after apartheid, and Sierra Leone post–civil war that have all experimented with non-carceral justice.[44]

The Gacaca courts in Rwanda, though imperfect, enabled communities to confront atrocities collectively rather than through prisons alone.[45] Such models reveal that justice can be delivered in ways that prioritise truth-telling, reconciliation, and reintegration rather than incarceration.

For India, incorporating community sentencing and restorative frameworks could ease prison overcrowding while aligning justice with constitutional values of dignity and equality.[46] Yet, these alternatives face challenges which is lack of infrastructure, social stigma, and political hesitation often limit their expansion. Nonetheless, they represent a critical step toward breaking the prison cycle and imagining justice beyond bars.

THE COURTROOM'S CHANGING VOICE: *Laws and Judges Leaning Toward Reform*

The judiciary and legislature in India have played an active role in shaping the philosophy of punishment. Over the years, statutes and case law have increasingly embraced reformative principles, though inconsistencies remain. A significant milestone was the enactment of the Probation of Offenders Act, 1958, which empowered courts to release certain offenders on probation rather than sending them to prison.[47] This recognised that rehabilitation could, in some cases, prove more constructive than incarceration, particularly for young or first-time offenders.

30. John Braithwaite, Restorative Justice and Responsive Regulation (OUP 2002).
31. Howard Zehr, The Little Book of Restorative Justice (Good Books 2002).
32. Andrew Ashworth, Sentencing and Criminal Justice (6th edn, CUP 2015).
33. Justice Mulla Committee, All India Jail Reforms Committee Report (Government of India 1983).
34. Indian Penal Code (Amendment) Act 2021 (select provisions decriminalising minor offences).
11

Parallel developments occurred in juvenile justice, where the system shifted from punitive

approaches toward a framework centred on care, protection, and reintegration.[48] These legislative steps indicated an openness to reconceptualising justice beyond confinement, even though their implementation has been uneven.

Judicial interpretations have also reinforced this reform-oriented stance. In Mohd. Giasuddin v State of Andhra Pradesh, the Supreme Court stressed that the objective of punishment should be reformation rather than retribution.[49] Likewise, in State of Gujarat v Hon'ble High Court of Gujarat, the Court underlined the obligation of the state to preserve the dignity and fundamental rights of prisoners.[50] Together, these rulings highlight a gradual shift away from a purely deterrent view, recognising offenders as human beings rather than as mere case numbers.

Yet this trajectory is not without contradiction. Courts sometimes oscillate between imposing severe retributive sentences in serious crimes and adopting reformative measures in others.[51] This inconsistency reflects a deeper social dilemma: while reform is desirable in principle, public opinion and political pressure often pull the judiciary back toward punitive traditions.

Human Rights Standards and Judicial Trends

Modern jurisprudence increasingly situates prisons within a human rights framework. The Supreme Court has consistently affirmed that prisoners retain fundamental rights, including the right to life, dignity, and healthcare.[52] In Sunil Batra v Delhi Administration, the Court declared that inmates are entitled to humane treatment, setting a landmark precedent in Indian penology.[53] Such decisions underscore the idea that justice is not limited to punishment but also encompasses respect for the rights of the incarcerated.

Judicial trends also reveal greater attention to fairness and proportionality in sentencing. Courts often consider the offender's background, mitigating circumstances, and potential for rehabilitation before resorting to imprisonment.[54] In some cases, they have directed governments to adopt non-custodial measures such as probation, counselling, or community service, signalling a broader approach to justice that combines accountability with social reintegration.

35. Gabrielle Maxwell and Allison Morris, 'Restorative Justice in New Zealand' (1993) Australian Institute of Criminology Trends & Issues in Crime and Criminal Justice 46.
36. Desmond Tutu, No Future Without Forgiveness (Random House 1999).
37. Nandini Sahni, 'Restorative Justice in the Indian Juvenile Justice System: A New Dawn or a False Hope?' (2018) 4(2) Indian Journal of Juvenile Justice 57.
38. Juvenile Justice (Care and Protection of Children) Act 2015, s 3.
39. B. P. Bhardwaj, 'Open Prisons in India: A Critical Study' (2012) 49(1) Indian Journal of Criminology 23.

International human rights instruments further shape judicial thinking. The UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and treaties like the International

Covenant on Civil and Political Rights (ICCPR) serve as reference points in domestic jurisprudence.[55]

By invoking such standards, courts reinforce the idea that incarceration must align with human dignity rather than serve as an end in itself. Still, the reality of overcrowding, inadequate funding, and administrative inertia often prevents these ideals from being fully realised.[56] Even so, judicial pronouncements continue to push the system toward a vision of justice that is humane, balanced, and reform-centred.

LESSONS BEYOND BORDERS: *Global Paths to Justice*

While India struggles with systemic challenges like prison overcrowding, international experiences provide useful insights. The Nordic countries including Norway, Sweden, and Finland illustrate the success of rehabilitation-driven systems that prioritise humane treatment, education, and reintegration.[57] Norwegian prisons, for instance, promote normalcy by offering private rooms, access to vocational training, and opportunities for work, which foster responsibility and reduce reoffending.[58]

South Africa, in contrast, highlights how justice can be adapted to heal historical wounds. The Truth and Reconciliation Commission prioritised acknowledgment, restorative dialogue, and national healing rather than solely relying on punitive detention.[59]

Similarly, in Latin America, alternatives such as Brazil's community service and conditional release programs have reduced overcrowding and enhanced reintegration.[60] Uruguay's open prison initiatives also demonstrate that trust and structured responsibility can deliver outcomes more effective than coercion alone.

For India, three core lessons emerge from these comparative practices: rehabilitation and dignity must be central to justice; community participation strengthens reintegration; and proportional, flexible sentencing ensures a balance between deterrence and reform.[61]

40. Rajasthan Prisons Department, Annual Report 2020–21.
41. Caitlin Elizabeth Hughes and Alex Stevens, 'What Can We Learn from the Portuguese Decriminalisation of Illicit Drugs?' (2010) 50 British Journal of Criminology 999.
42. Anthony Bottoms, 'Community Penalties: A Comparative Perspective' in Anthony Duff and David Garland (eds), A Reader on Punishment (OUP 1994).
43. Fergus McNeill, Community Sanctions and European Penology (Routledge 2013).

Comparative Lens: India and the Global South

Insights from other countries in the Global South also resonate with India's challenges. Nations such as South Africa, Brazil, and Colombia grapple with colonial legacies, social inequalities, and

significant undertrial populations.[62] Their experiments with alternative sentencing, restorative mechanisms, and community-based programs provide valuable models for India.

South Africa's post-apartheid justice reforms demonstrate how contextualised approaches including Gacaca courts and reconciliation forums that is prioritised healing and accountability over mass imprisonment.[63] Brazil's conditional release schemes for non-violent offenders, meanwhile, eased overcrowding and supported reintegration.[64] For India, such experiences suggest the potential of hybrid frameworks that blend restorative justice, open prisons, and community sentencing with statutory reform to create a more humane and effective penal system.

For India, these lessons highlight the potential of hybrid approaches: blending restorative justice, open prisons, and community sentencing with statutory reform. While India has experimented with open prisons in Rajasthan and Bihar, broader implementation remains limited.[65] Learning from these global initiatives can help India design culturally and socially responsive justice policies, reducing overcrowding while promoting rehabilitation and dignity.

Moreover, comparative studies across nations highlight the importance of investing in human capital. Programmes focused on education, vocational skills, and psychological care within prisons have repeatedly demonstrated success in lowering recidivism rates.[66] Drawing from these experiences, India has the opportunity to shift its penal framework from one centred on punishment to one rooted in reform, thereby aligning with both constitutional principles and global human rights commitments.

8. **JUSTICE THAT HEALS:** ***The Road Ahead***

If justice is to genuinely serve society, it must go beyond retribution and move towards healing.[67] At its heart, the principle is both simple and transformative: punishment should aim to restore balance, repair the harm caused, and facilitate the offender's reintegration into society. This perspective acknowledges that crime disrupts not only the direct victim but also families, communities, and wider social structures.[68]

44. Ruti Teitel, Transitional Justice (OUP 2000).
45. Phil Clark, The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda (CUP 2010).
46. Justice A. P. Shah, 'Humanising Justice: Alternatives to Incarceration in India' (2020) NLUJ Law Review 112.

Accordingly, India's policy priorities must centre on three interconnected objectives. First, rehabilitation: prison systems should emphasise education, vocational training, psychological support, and treatment for addiction.[69] Second, community engagement: alternatives such as restorative justice, mediation, and community service can lessen the dependence on incarceration

while still ensuring responsibility.[70] Third, structural reform: tackling socio-economic disparities, addressing marginalisation, and improving pretrial detention processes are vital to reducing crime and limiting unnecessary imprisonment.[71]

Global experiences strengthen these arguments. In the Nordic region, prisons that prioritise dignity, skill development, and rehabilitation have recorded notably lower rates of reoffending.[72] Meanwhile, transitional justice initiatives across the Global South illustrate that processes rooted in reconciliation, truth-telling, and collective healing often achieve more enduring outcomes than incarceration alone.[73] Drawing from these models, Indian policymakers can design hybrid frameworks that uphold human rights while safeguarding public security.

In the end, what lies ahead is nothing less than a paradigm shift: a move from seeing punishment as the ultimate goal to envisioning justice as a process of restoration. Realising this vision requires political resolve, social imagination, and judicial leadership — ensuring that offenders are transformed rather than merely confined, that victims find genuine recognition, and that communities emerge stronger and safer.[74]

CONCLUSION:

Beyond the Cell, Toward Freedom

In reflecting on India's penal system and global experiences, one truth emerges: justice cannot be confined to walls and chains.[75] Over-reliance on incarceration perpetuates harm, fails to deter crime effectively, and undermines human dignity.[76] Reform is not merely about building better prisons, but about reimagining justice itself. A forward-looking framework emphasises restoration over retribution, rehabilitation over punishment, and reintegration over isolation.[77] By adopting restorative justice models, expanding open and community-based sentencing, and learning from international examples, India can transform its criminal justice landscape.[78] Judicial pronouncements, legislative reforms, and civil society initiatives have begun to pave this path, yet much work remains.[79]

47. Probation of Offenders Act 1958, section 3.
48. Juvenile Justice (Care and Protection of Children) Act 2015, Preamble.
49. Mohd. Giasuddin v State of Andhra Pradesh AIR 1977 SC 1926.
50. State of Gujarat v Hon'ble High Court of Gujarat (1998) 7 SCC 392.
51. Justice V. R. Krishna Iyer, 'Humanising Penology: A Judicial Perspective' (1980) 22(1) Journal of the Indian Law Institute 1.

Ultimately, justice must heal. It must repair relationships between offender, victim, and society, recognising the structural inequalities that foster crime while promoting social cohesion.[80] Only by breaking the bars of tradition and embracing a reformative, human-centred philosophy can India move toward a justice system that truly protects, rehabilitates, and restores.
This vision is ambitious, but necessary: a society where prisons are the exception, not the rule, and

where the law functions not to punish, but to heal and empower.[81]

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CHAPTER-19

JUSTICE BEYOND THE CELL : ENDING LOCK-UP DEATHS

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Abstract :

Custodial deaths, often termed lock-up deaths, represented one of the gravest violations of human rights in a constitutional democracy. Despite progressive legal frameworks and institutional mechanisms, India continues to witness an alarming rise in deaths occurring within police and judicial custody. This study critically examines the structural, legal, and procedural lapses that perpetuate this crisis, with particular emphasis on the transition to the Bharatiya Nyaya Sanhita (BNS), 2023 and the Bharatiya Sakshya Adhiniyam (BSA), 2023. Through an analytical lens, the research explores the disconnect between statutory mandates and ground-level enforcement, revealing how gaps in accountability, documentation, and oversight undermine the promise of justice. The paper also revisits the National Human Rights Commission (NHRC) guidelines, assessing their adequacy and implementation within custodial settings. Anchored on the hypothesis that the incidence of lock-up deaths is escalating despite the evolution of new criminal laws, the article argues that legislative reforms alone are insufficient without systemic transformation in policing culture, institutional transparency, and judicial monitoring. Ultimately, the study proposes a multi-dimensional reform framework aimed at ensuring justice that transcends mere incarceration, one that upholds the dignity, rights, and life of every individual within the custodial system and objective of this study is to critically examine the causes, legal dimensions, and institutional failures that contribute to lock-up deaths in India and to propose comprehensive reforms to ensure justice beyond incarceration.

Keywords : Custodial deaths, Justice reform and Human rights

Introduction

The concept of justice, in its truest essence, extends far beyond the pronouncement of punishment or the walls of incarceration. It embodies fairness, dignity, and accountability principles enshrined in the Constitution of India. Yet, the phenomenon of custodial deaths, often euphemistically termed lock-up deaths, stands as a grim reminder of the failure to uphold these foundational values. In a democracy committed to the rule of law, the occurrence of deaths within police or judicial custody signals not merely a lapse in discipline or procedure, but a fundamental erosion of human rights and institutional integrity. Across decades, India has witnessed an unsettling continuity in the pattern of custodial violence. Reports from the National Human Rights Commission (NHRC), media investigations, and independent studies reveal that a significant number of individuals die annually while in custody, many under suspicious or unaccounted-for circumstances. These deaths expose the darker dimensions of policing practices: coercive interrogations, absence of medical care, prolonged detentions, and systemic impunity. Despite numerous judicial pronouncements and statutory safeguards, the machinery of accountability often falters when confronted with the might of institutional power.The recent introduction of the Bharatiya Nyaya Sanhita (BNS), 2023, and the Bharatiya Sakshya Adhiniyam (BSA), 2023, replacing the colonial-era Indian Penal Code (IPC) and Indian Evidence Act respectively, has been projected as a transformative shift in India's criminal justice landscape. The NHRC guidelines on custodial deaths, formulated in 1993 and

periodically revised, mandate immediate reporting of deaths in custody, judicial magisterial inquiries, post-mortem examinations, and compensation to victim's families. Yet, these procedural safeguards are often undermined by delayed reporting, tampering with evidence, and institutional collusion. The disconnect between the legal framework and ground realities has resulted in a culture of impunity, where custodial violence becomes normalized rather than condemned. This article, therefore, argues that true justice extends beyond the cell, it is not merely about punishing offenders but about preserving the sanctity of human dignity, even within confinement. Ending lock-up deaths requires a holistic transformation: transparent investigations, institutional accountability, robust witness protection, technological integration in custody management, and sensitization of law enforcement officers toward human rights ethics. By situating custodial deaths within the framework of India's new criminal laws and human rights obligations, this research contributes to the growing discourse on justice reform and police accountability. It calls for a paradigm shift from reactive justice delivered after violations occur to proactive justice that prevents abuse and upholds the fundamental right to life.

Literature Review

1. Kumar, R. (2020). "Custodial Violence and State Accountability in India." Indian Journal of Criminology, Vol. 48(2), pp. 112–128.
Kumar's study examines the structural and procedural roots of custodial violence in India, arguing that lock-up deaths reflect institutional decay rather than isolated misconduct. Using NCRB data and case studies from 2015–2019, the paper reveals that 72% of custodial deaths occur during police interrogation, often due to torture and medical negligence. The author identifies the lack of independent investigation mechanisms and the prevalence of informal interrogation methods as core contributors. While legislative provisions under the Indian Penal Code and the Criminal Procedure Code exist, Kumar asserts that enforcement remains weak due to political interference and internal police protectionism. The study concludes that custodial violence persists because existing laws fail to transform the authoritarian culture embedded in Indian policing, thereby calling for external oversight and judicial supervision.

2. Menon, A. (2019). "Human Rights and Custodial Deaths: A Constitutional Perspective." Journal of Human Rights and Law Review, Vol. 6(1), pp. 56–72.
Menon situated custodial deaths within the framework of constitutional jurisprudence, emphasizing the inviolability of the right to life under Article 21. Through a doctrinal analysis of D.K. Basu v. State of West Bengal and Nilabati Behera v. State of Orissa, the paper articulates that custodial deaths constitute direct violations of fundamental rights. The author critiques the state's reliance on ex gratia compensation as an inadequate form of justice, arguing that it normalizes impunity. Menon also examines India's partial compliance with international norms, notably the UN Convention Against Torture (UNCAT), which remains unratified. The paper concludes that without integrating human rights education into police training and creating independent custodian monitoring bodies, constitutional guarantees remain rhetorical.

3. Verma, P. (2021). "Policing Culture and Accountability in Custodial Contexts." Indian Journal of Criminology and Police Studies, Vol. 9(3), pp. 88–104.
Verma's research explores the socio-institutional culture of policing in India and its role in perpetuating custodial violence. Through field interviews with retired officers and analysis of police manuals, the study highlights how performance pressure and hierarchical obedience encourage coercive practices. Verma argues that despite reforms proposed in Prakash Singh v. Union of India (2006), most states have not operationalized independent Police Complaints Authorities, undermining accountability. The author recommends technological surveillance

including CCTV and biometric monitoring as deterrents, provided transparency mechanisms are instituted. The paper concludes that systemic change requires not just legal reform but also an ethical reorientation in police behaviour and institutional norms.

4. Rajagopal, S. (2024). "Evaluating the Bharatiya Nyaya Sanhita and Sakshya Adhiniyam: New Laws, Old Challenges." National Law Review Quarterly, Vol. 12(1), pp. 33–49.
Rajagopal's article critically assesses the Bharatiya Nyaya Sanhita (BNS), 2023 and Bharatiya Sakshya Adhiniyam (BSA), 2023 in the context of custodial justice. The author notes that while the BNS introduces updated sections addressing custodial torture and digital record-keeping, the legislation lacks robust enforcement mechanisms. The paper compares the provisions with global standards such as the UK Police and Criminal Evidence Act (PACE) and finds Indian laws relatively underdeveloped in terms of oversight. The author further argues that the BSA's enhanced admissibility of electronic evidence (e.g., CCTV footage) could strengthen prosecutions if chain-of-custody protocols are rigorously applied. Rajagopal concludes that legislative modernization without systemic integrity will not end lock-up deaths,institutional accountability and independent monitoring are essential.

5. Madhav, N. (2021). "Revisiting NHRC Guidelines on Custodial Deaths: Efficacy and Enforcement." Journal of Human Rights Studies, Vol. 8(4), pp. 102–118.
Madhav's article evaluates the National Human Rights Commission (NHRC) guidelines on custodial deaths and their practical enforcement across Indian states. Using NHRC data from 2015–2020, the study identifies inconsistencies in reporting, delay in magisterial inquiries, and minimal conviction rates in custodial death cases. The author contends that while NHRC guidelines mandating post-mortem photography and timely intimation are well-structured, they lack binding legal authority. The article emphasizes the need to grant NHRC quasi-judicial powers and to establish state-level human rights ombudsman for faster redressal. Madhav concludes that without enforceability, the NHRC's preventive and corrective potential remains symbolic, perpetuating a gap between policy and practice.

Research Methodology

1. Research design - This study adopts a qualitative research design, focusing on doctrinal and analytical examination rather than empirical measurement.
2. Data source - The study relies exclusively on secondary data obtained from credible, peer-reviewed, and institutional sources.

Objectives

1. To critically examine the causes, legal dimensions, and institutional failures that contribute to lock-up deaths in India
2. To propose comprehensive reforms to ensure justice beyond incarceration.

Statement of the Problem

Despite being a constitutional democracy founded on the ideals of justice, equality, and human dignity, India continues to record an alarming rise in custodial or lock-up deaths, exposing persistent failures in its criminal justice system. The issue represents not only a breach of legal safeguards but also a profound violation of human rights enshrined under Article 21 of the Constitution of India, which guarantees the right to life and personal liberty.

Numerous commissions, judicial pronouncements, and NHRC reports have repeatedly highlighted the brutality, torture, and negligence leading to deaths in custody. Yet, accountability for such

incidents remains minimal, and convictions of erring officials are exceedingly rare. This institutional impunity fosters a culture where custodial violence becomes normalized rather than condemned.

While the introduction of the Bharatiya Nyaya Sanhita (BNS), 2023 and Bharatiya Sakshya Adhiniyam (BSA), 2023 represents a significant legislative transition from colonial criminal codes, it remains uncertain whether these reforms can effectively address the deep-rooted causes of custodial deaths. The problem is not merely the absence of law but the failure of enforcement, supervision, and ethical policing.

The National Human Rights Commission (NHRC) has issued comprehensive guidelines mandating timely investigation, post-mortem videography, and reporting of custodial deaths. However, data reveal recurring lapses in compliance, delayed inquiries, and limited redressal to victim's families. The gap between the existence of these procedural safeguards and their practical application underscores a systemic breakdown in police accountability and human rights protection.

Relevant Indian Cases on Custodial Deaths and Police Accountability

1. D.K. Basu v. State of West Bengal (1997) 1 SCC 416
The Supreme Court declared that "custodial torture is a naked violation of human dignity" and cannot be justified under any circumstance. It emphasized that every individual under arrest has a right to life under Article 21 of the Constitution, which cannot be suspended even during custody. The Court issued 11 mandatory guidelines, including immediate medical examination after arrest, preparation of arrest memos, and informing a relative or friend. It also warned that failure to comply would invite departmental action and contempt of court proceedings.

2. Nilabati Behera v. State of Orissa (1993) 2 SCC 746
The Court ruled that the State is strictly liable for custodial deaths under the principle of constitutional tort. It held that the right to life cannot be denied to any person, even a prisoner or detainee. Justice J.S. Verma observed: "There is no question of immunity when the State violates the fundamental right to life." The Court ordered monetary compensation to the petitioner's family, thereby recognizing compensation as a public law remedy for human rights violations.

3. Joginder Kumar v. State of Uttar Pradesh (1994) 4 SCC 260
The Court observed that "no arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing, the justification for exercising it is quite another." It ruled that every arrest must be backed by reasonable justification and must not be used as a tool of harassment. The Court directed that police officers must inform relatives of the arrested person and maintain transparency in all arrest procedures.

4. Prakash Singh v. Union of India (2006) 8 SCC 1
The Supreme Court emphasized that police accountability and independence are essential to prevent abuse of power. It directed all states to establish State Security Commissions, Police Establishment Boards, and Police Complaints Authorities. The Court observed: "Committees and commissions have repeatedly recommended reforms; the time has come for their implementation."

5. People's Union for Civil Liberties (PUCL) v. State of Maharashtra (2014) 10 SCC 635
The Court held that no police officer can claim immunity in cases of fake encounters or custodial killings. It issued 16 guidelines to be followed in every police encounter resulting in death, including mandatory registration of FIRs, independent CID investigation, magisterial inquiry, and

reporting to the NHRC. It stated: “The law does not permit the State to take life without following due process.”

6. Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble (2003) 7 SCC 749
The Court condemned custodial violence as “one of the worst crimes in a civilized society governed by the rule of law.” It warned that police officers must not misuse their position under the guise of maintaining order. The Court reiterated that every case of custodial violence must be investigated promptly and transparently and that officers found guilty must face stringent punishment.

7. State of M.P. v. Shyamsunder Trivedi (1995) 4 SCC 262
The Supreme Court criticized the lower courts for showing undue leniency to police officers accused of custodial deaths. It held: “The crime of custodial death must be viewed seriously, for it erodes the credibility of the rule of law.” The Court stated that circumstantial evidence and medical testimony are sufficient to convict police personnel where direct evidence is hard to obtain.

8. Sube Singh v. State of Haryana (2006) 3 SCC 178
The Court reaffirmed that compensation is a constitutional remedy in cases of custodial torture. It stated that the right to compensation flows from Article 21, independent of criminal prosecution. However, it cautioned that false claims should not be encouraged and inquiries must be fair. “The majesty of law suffers when the rights of individuals are violated by those who are supposed to protect them”.

Status of custodial death in India

National Human Rights Commission (NHRC)-monitored outcomes: For the period April to September 2024, the NHRC recommended relief of over ₹4.5 crore for 89 victims of deaths in judicial custody.

In the state of Rajasthan between August 2023 and August 2025, there were 20 custodial deaths in police lock-ups six suicides, twelve linked to health-issues (including six heart attacks), one escape-attempt death.

According to the National Crime Records Bureau (NCRB) 2023 report as cited in news, Maharashtra recorded the highest number of custodial deaths in 2023: 17 cases.

In Gujarat, it was reported that zero convictions were recorded in 97 custodial-death cases since 2016, per NCRB-related data.

In Tamil Nadu, a current high-profile case (custodial death of B. Ajith Kumar) is under investigation by the Central Bureau of Investigation (CBI).

Even where death in custody is recorded, convictions of responsible officers are extremely rare (e.g., Gujarat’s zero conviction record).

The reasons for many deaths are reported as health-issues or suicide rather than external violence or torture raising questions about transparency and cause attribution.

Many investigations remain pending; for example, in Rajasthan 13 out of 20 cases remain under inquiry.

The national data appear fragmented, and many custodial deaths may go unreported or mis-classified thus the true incidence may be significantly higher than official counts.
Despite the passage of new legislation (e.g., Bharatiya Nyaya Sanhita 2023, Bharatiya Sakshya Adhiniyam 2023) and institutional guidelines (NHRC), implementation at ground level remains weak in many states.

Suggestion and precautions

1. Strengthening Legal Accountability under the Bharatiya Nyaya Sanhita (BNS), 2023
Invoke Section 117 (offence by public servant disobeying law with intent to cause injury) in every custodial death case.Make judicial inquiry mandatory for all custodial deaths, not limited to internal departmental review.Create Custodial Death Prosecution Units under the Director of Prosecution in each state.Ensure time-bound filing of charge sheets and regular court monitoring of such cases.Amend procedural laws to impose strict penal sanctions on officers who suppress or alter evidence.

2. Enhancing Transparency through Bharatiya Sakshya Adhiniyam (BSA), 2023
Mandate continuous CCTV surveillance and audio-video recording of all interrogations and lock-ups.Ensure electronic evidence (Section 65 BSA) is automatically admissible in custodial cases.Make medical examinations and injury reports digitally time stamped and stored in official custody databases.Introduce a reverse burden of proof in custodial death cases requiring police to justify lawful conduct once death is proven.Direct forensic experts to submit independent digital post-mortem reports to the judiciary within 48 hours.

3. Mandatory Compliance with NHRC Guidelines
Enforce 24-hour reporting of every custodial death to the NHRC and State Human Rights Commissions.Create independent investigation wings under NHRC and SHRC to reduce police influence.Publish annual custodial death audit reports at state and national levels.NHRC should maintain a publicly accessible online tracker of all pending custodial death investigations.Conduct surprise inspections of police stations and prisons by NHRC-appointed observers.

4. Judicial Oversight and Speedy Redressal
Direct High Courts to maintain Custodial Death Registers with quarterly review hearings.Establish Special Custodial Courts for fast-track prosecution of police officials.Mandate state-funded legal representation for victims' families through NALSA.Implement victim compensation schemes within 90 days of confirmed custodial death.Authorize judicial commissions to monitor compliance of custodial safety norms across states.

5. Legislative and Policy Recommendations
Enact a Comprehensive Custodial Justice Act, consolidating NHRC, BNS, and BSA protections.
Ratify and domesticate the UN Convention Against Torture (CAT) without further delay.Form a National Custodial Death Prevention Bureau (NCDPB) for central data management and policy oversight.Integrate custodial justice metrics into the national police performance evaluation system.Include custodial safety standards as part of India's Universal Periodic Review (UPR) commitments at the UNHRC.

Conclusion

The qualitative and comparative analysis undertaken in this study reaffirms the central hypothesis custodial deaths in India are increasing, and existing laws have not effectively prevented them. Despite legislative modernization through the Bharatiya Nyaya Sanhita (BNS), 2023 and Bharatiya Sakshya Adhiniyam (BSA), 2023, the persistent pattern of lock-up deaths exposes deep structural and institutional failures within the criminal justice system.The findings reveal that the issue lies not in the absence of legal provisions but in their deficient implementation, institutional apathy, and lack of police accountability. While the NHRC and judiciary have issued progressive guidelines and precedents, compliance remains inconsistent, and justice for victims is often delayed or denied. This continuing crisis underscores a dangerous normalization of custodial violence a violation of the fundamental right to life under Article 21 of the Constitution.Therefore, the study concludes that the hypothesis stands validated India continues to witness a rise in custodial deaths due to inadequate enforcement, weak oversight, and absence of systemic accountability. The promise of "justice beyond the cell" remains unfulfilled until custodial spaces are redefined through transparent policing, technological oversight, and human rights centered reforms.True justice will emerge not when new laws are enacted, but when the spirit of those laws is upheld within every interrogation room, every police station, and every cell. Ending lock-up deaths requires more than punishment it demands a moral and institutional awakening that restores the dignity and humanity of those in custody.

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CHAPTER-20

AN EMPIRICAL ANALYSIS OF PROBATION AS A TOOL FOR REINTEGRATION: CHALLENGES AND OPPORTUNITIES WITH REFERENCE TO CHENNAI

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Abstract

Probation has emerged as a significant non-custodial alternative to incarceration, designed to promote offender rehabilitation while maintaining community ties. In India, the Probation of Offenders Act, 1958 provides the legal framework for its implementation. This study aims to provide an empirical analysis of probation as a tool for reintegration, examining both its challenges and opportunities. The research methodology followed here is empirical research. A total of 200 samples have been collected out of which all samples have been collected through convenience sampling methods. The sample frame is taken from family, friends and through online modes in and around Chennai. The independent variables are age, gender, educational qualification, occupation, income level. The dependent variables are related to opportunities and challenges faced due to reintegration. The Statistical tools used in analyzing the data is SPSS. Preliminary findings indicate that effective supervision, family support, and access to vocational and social services significantly enhance rehabilitation outcomes, whereas systemic challenges including resource constraints, social stigma, and inconsistent program implementation impede reintegration. The study highlights the critical role of community-based support structures and emphasizes the need for policy interventions that strengthen the probation framework in Chennai. The study reveals that probation serves as a crucial mechanism for promoting rehabilitation and reducing recidivism among offenders. Findings indicate that while probation provides an opportunity for offenders to reintegrate into society without incarceration, challenges such as social stigma, inadequate institutional support, and lack of vocational training persist. Most respondents identified social stigma as a major barrier, emphasizing the need for community awareness and acceptance.

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Keywords: Probation, Offender Reintegration, Recidivism, Community Supervision, Non-Custodial Sentences, Chennai, Criminal Justice Reform.

Introduction

The criminal justice system has increasingly recognized the limitations of incarceration in achieving offender rehabilitation and social reintegration. Probation, as a non-custodial alternative under the Probation of Offenders Act, 1958, allows offenders to remain in the community under supervision, aiming to reduce recidivism and promote constructive societal participation. Despite its legal framework, the implementation of probation in India faces challenges such as inadequate resources, inconsistent monitoring, and social stigma against offenders. Urban centers like Chennai present unique opportunities to study probation's effectiveness due to the concentration of judicial institutions, probation officers, and community support networks. Understanding how probation facilitates reintegration requires examining not only recidivism rates but also employment, housing, and social support outcomes. Additionally, the perspectives of probation officers, NGOs, and the community play a critical role in shaping successful rehabilitation. This study seeks to empirically analyze probation as a tool for reintegration in Chennai, identifying both structural and individual barriers as well as best practices.

The **aim of the study** is to empirically examine how probation facilitates offender reintegration, identify challenges in implementation, and explore opportunities to strengthen the system.

The **concept of probation has evolved** globally as a humane alternative to incarceration, shifting the focus from punishment to rehabilitation and social reintegration. Originating in the 19th century with John Augustus in the United States, probation gradually gained recognition as a means to supervise offenders in the community while providing guidance, education, and support services. In India, the Probation of Offenders Act, 1958 formally institutionalized probation, allowing courts to suspend sentences for eligible offenders and place them under the supervision of probation officers. Over the decades, the system has incorporated reforms such as community service, vocational training, and counseling to enhance rehabilitative outcomes. Despite these advancements, the practical implementation of probation has remained uneven across states due to resource constraints, limited officer training, and societal stigma against offenders. Urban centers like Chennai have witnessed incremental improvements, including stronger coordination with NGOs and local institutions, yet challenges in monitoring, offender engagement, and post-probation support persist. The evolution of probation thus reflects a gradual shift toward restorative and community-based

justice while highlighting the need for empirical evidence to guide policy, optimize practices, and strengthen offender reintegration.

The **Indian government has undertaken several initiatives** to strengthen probation and community-based rehabilitation of offenders, recognizing the limitations of incarceration in reducing recidivism. The Probation of Offenders Act, 1958, provides the statutory framework for courts to release eligible offenders under supervision, emphasizing rehabilitation, social reintegration, and skill development. Various state-level programs complement this, including vocational training, counseling, and halfway homes to support offenders during and after probation. The National Crime Records Bureau (NCRB) monitors probation outcomes and collects data on recidivism, while collaboration with NGOs and civil society organizations enhances community engagement. Recent efforts also include awareness campaigns to reduce stigma against probationers, digital monitoring tools for better supervision, and training programs for probation officers to improve case management. These initiatives aim to provide a structured, supportive environment for reintegration, aligning with broader criminal justice reforms focused on restorative and rehabilitative approaches rather than purely punitive measures.

Current trends in probation and offender reintegration in India reflect a gradual shift towards restorative and evidence-based practices, emphasizing rehabilitation over punitive measures. Urban centers like Chennai are increasingly adopting community-based supervision, halfway homes, and vocational training programs to support offenders during and after probation. There is growing use of technology, such as digital monitoring and case management systems, to enhance accountability and track compliance. Collaboration with NGOs, social workers, and local institutions is becoming more common, facilitating social support, employment, and skill development for probationers. International best practices, including risk-needs-responsivity frameworks and individualized rehabilitation plans, are being explored to improve effectiveness. Research and policy discussions now emphasize evaluating probation outcomes through indicators like recidivism rates, employment, housing stability, and social integration rather than merely compliance with supervision. Despite these positive trends, challenges such as limited resources, insufficient officer training, and social stigma continue to constrain the full potential of probation as a reintegration tool.

When **comparing probation and offender reintegration practices**, India exhibits both similarities and contrasts with other countries. While India's Probation of Offenders Act, 1958 provides a legal framework, implementation remains uneven due to resource constraints, limited officer training, and social stigma. In contrast, countries like Norway and Sweden prioritize rehabilitation through structured probation programs, vocational training, and strong community

support, resulting in lower recidivism rates. The United States and the United Kingdom employ risk-needs-responsivity models and use data-driven supervision strategies to tailor interventions to individual offenders. Developing countries in Asia and Africa face challenges similar to India, including overcrowded prisons, inconsistent supervision, and limited community engagement. However, India is gradually integrating international best practices, such as halfway homes, NGO partnerships, and digital monitoring, while also navigating unique socio-cultural contexts. Comparative analysis highlights that India can improve probation effectiveness by strengthening institutional capacity, emphasizing community participation, and adopting evidence-based supervision models tailored to local needs.

Objectives

- To examine the effectiveness of probation in facilitating offender reintegration in Chennai.
- To identify the challenges faced by probationers, probation officers, and community stakeholders in the reintegration process.
- To explore opportunities and best practices to strengthen probation as a tool for rehabilitation and social inclusion.

Review Of Literature

Agarwal (2019) explored community sentencing as a reformative approach in India, aiming to assess alternatives to incarceration like community service. The study employed qualitative methods, reviewing legal frameworks, case studies, and international models. Findings revealed that community service fosters societal responsibility, enhances rehabilitation, and reduces prison overcrowding. Challenges included limited institutional support and inconsistent judicial application. The study concluded that community sentencing can strengthen offender reintegration if supported by policy and structured programs. **Santhosh and Mathew (2021)** aimed to empirically examine the socio-economic and relational reintegration outcomes of released prisoners under supervision in Tamil Nadu and Kerala. They surveyed 100 released prisoners and constructed a reintegration index covering income stability, family relations, community ties, and group membership, analyzing correlations with factors like family visits, parole use, vocational orientation, and probation officer supervision. Findings indicated that family support, parole use, and officer visits positively influenced reintegration, whereas longer prison stays negatively affected outcomes. Vocational training and NGO assistance showed limited correlation. The study concluded that probation and supervision facilitate reintegration but highlighted gaps in vocational

and NGO support.**Shah (2021)** aimed to assess the effectiveness of probation in West Bengal from the perspective of ex-probationers. Using interviews and surveys, the study collected both qualitative and quantitative data on supervision quality, social reintegration, and recidivism. Findings indicated that while probation had positive effects, challenges like resource constraints, lack of support, and insufficient officer training limited its effectiveness. The study concluded that strengthening institutional support and probation officer capacity is crucial for improving outcomes. **Bhatt and Singh (2022)** examined the role of probation in juvenile offender reintegration in India. They surveyed 120 juvenile probationers across three states, analyzing recidivism, education continuity, and family support. Findings revealed improvements in educational retention and family engagement but limited impact on recidivism without tailored interventions. The study concluded that individualized rehabilitation plans and active family/community involvement are key to effective juvenile probation outcomes. **Sharma and Kaur (2023)** explored technology-assisted probation supervision in India. They conducted case studies and surveys with probation officers to assess digital tools for monitoring compliance. Findings indicated that digital monitoring improved reporting efficiency and accountability, though challenges such as privacy concerns, digital literacy, and infrastructure gaps remained. The study concluded that technology, if properly integrated with training and safeguards, can enhance probation effectiveness and offender reintegration. **Dutta and Roy (2023)** analyzed community-based alternatives to incarceration in Indian urban centers. Using a mixed-methods approach, they collected administrative data from courts and conducted interviews with probation officers and NGOs in Delhi and Mumbai. Findings suggested that community-based measures, including probation and community service, reduced prison overcrowding and improved skill development but faced monitoring and resource challenges. The study concluded that effective community supervision requires institutional support and active engagement with civil society. **Verma and Rao (2024)** investigated the role of NGOs in supporting probationers' reintegration in Chennai. Using semi-structured interviews with probationers, NGO staff, and officers, they analyzed vocational, counseling, and mentorship services. Findings showed that NGOs significantly contributed to social and economic reintegration, though funding and coordination challenges limited their reach. The study concluded that collaborative efforts between NGOs and government agencies are essential to strengthen probation outcomes. **Mathlin, Freestone, and Jones (2024)** aimed to identify factors associated with successful reintegration of male offenders. They conducted a systematic narrative review of 34 longitudinal studies and developed an implicit causal model. Results revealed that family support, treatment programs, and risk-need-responsivity interventions were strongly linked to successful reintegration, whereas long incarceration and lack of social networks were barriers. The study concluded that reintegration is

multi-dimensional and requires individualized and structural interventions. **Joseph and ML (2025)** analyzed the utilization of probation in India, particularly addressing prison overcrowding and crises like COVID-19. Using a review of Supreme Court and High Court case law, they examined the implementation of the Probation of Offenders Act (1958) and its impact on offender rehabilitation. Findings highlighted the benefits of probation in reducing custodial sentences and promoting social reintegration but noted inconsistent application across states. The study concluded that legislative reforms and adoption of international best practices are essential to optimize probation as a tool for rehabilitation. **Yoldas (2025)** investigated the role of lifelong education programs during probation in enhancing social reintegration. The study reviewed existing literature and case studies, focusing on educational interventions. Findings indicated that educational programs increased skills, self-esteem, and employability, thereby improving probationers' integration into society. The study concluded that integrating structured education into probation frameworks significantly supports rehabilitation and long-term reintegration.

Methodology

The research methodology followed here is empirical research. A total of 200 samples have been collected out of which all samples have been collected through convenience sampling methods. The sample frame is taken from family, friends and through online modes in and around Chennai. The independent variables are age, gender, educational qualification, occupation, income level. The dependent variables are related to opportunities and challenges faced due to reintegration. The Statistical tools used in analyzing the data is SPSS.

Analysis

Figure 1

Result

This figure represents that among the respondents 17.02% have opted difficulty in accessing counselling programs, 21.28% have opted inadequate support from probation officer, 2.13% have opted lack of employment opportunities and 59.57% have opted social stigma for the question (In your opinion,what challenges did you face during probation?)

Discussion

The findings indicate that social stigma remains the most pressing challenge faced by probationers, with nearly 60% identifying it as a major obstacle. This suggests that despite rehabilitation measures, societal attitudes towards offenders continue to be judgmental and exclusionary. Limited institutional and emotional support from probation officers and inadequate access to counseling services further aggravate the reintegration process. Interestingly, only a small portion reported employment-related challenges, implying that psychological and social barriers outweigh economic factors. To address these issues, stronger community awareness campaigns, counseling access, and enhanced probation officer engagement are essential for effective rehabilitation in Chennai.

Figure 2

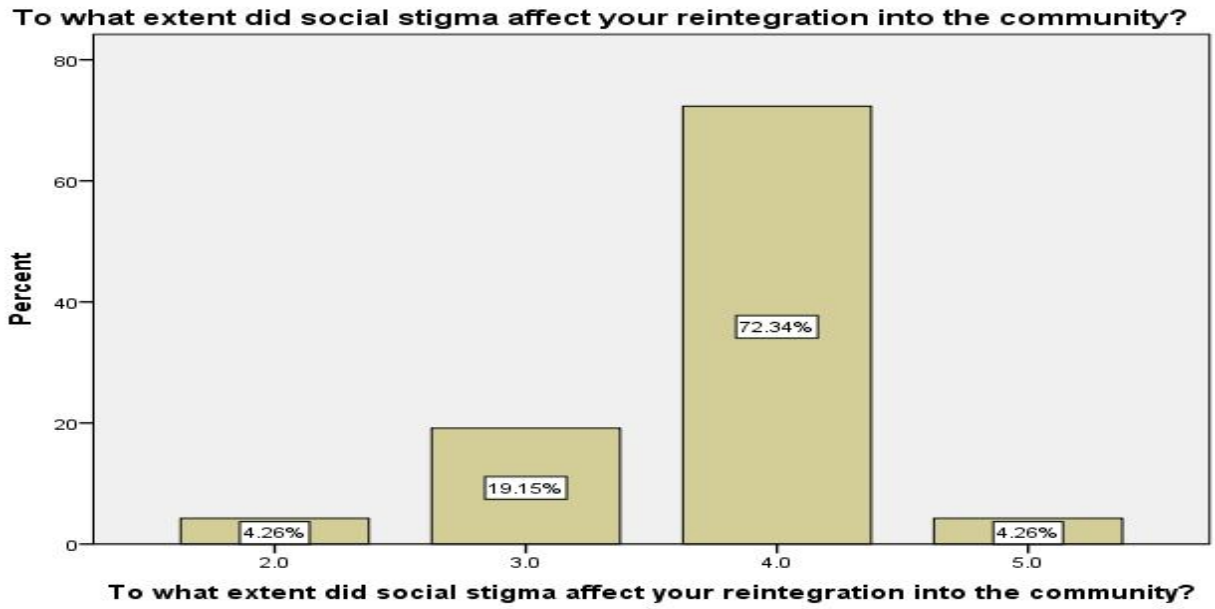
Result

This figure represents that among the respondents 25.53% have said yes and 74.47% have said no for the question (Did you receive any vocational training or skill development during probation?)

Discussion

The data reveals that a majority of respondents did not receive any vocational training or skill development during probation, indicating a serious gap in rehabilitative initiatives. The absence of such programs can limit the ability of probationers to secure employment and rebuild their lives, increasing the risk of recidivism. Vocational and skill-based interventions are crucial for enhancing employability and fostering a sense of self-reliance. This result underlines the need for closer coordination between probation departments, NGOs, and vocational institutions to ensure that training opportunities become an integral part of probation services in Chennai.

FIGURE 3



Result

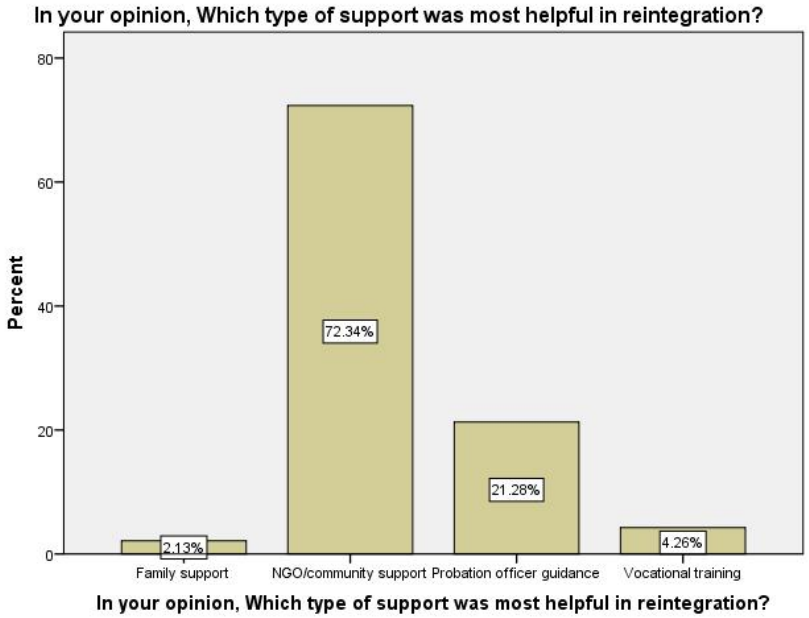
This figure represents that among the respondents 4.26% have rated 2, 19.15% have rated 3, 72.4% have rated 4 and 4.26% have rated 5 for the question (To what extent did social stigma affect your reintegration into the community.)

Discussion

The results clearly show that social stigma significantly impacts the reintegration of probationers, with over 70% rating its effect as high. Such stigma can manifest in the form of community exclusion, discrimination, and reluctance to offer employment opportunities. This highlights that rehabilitation is not solely an administrative function but also a social process requiring collective

acceptance. To mitigate stigma, there is a need for community sensitization programs and public awareness drives aimed at changing negative perceptions. Encouraging community participation and inclusion initiatives can substantially enhance the reintegration experience of probationers.

Figure 4



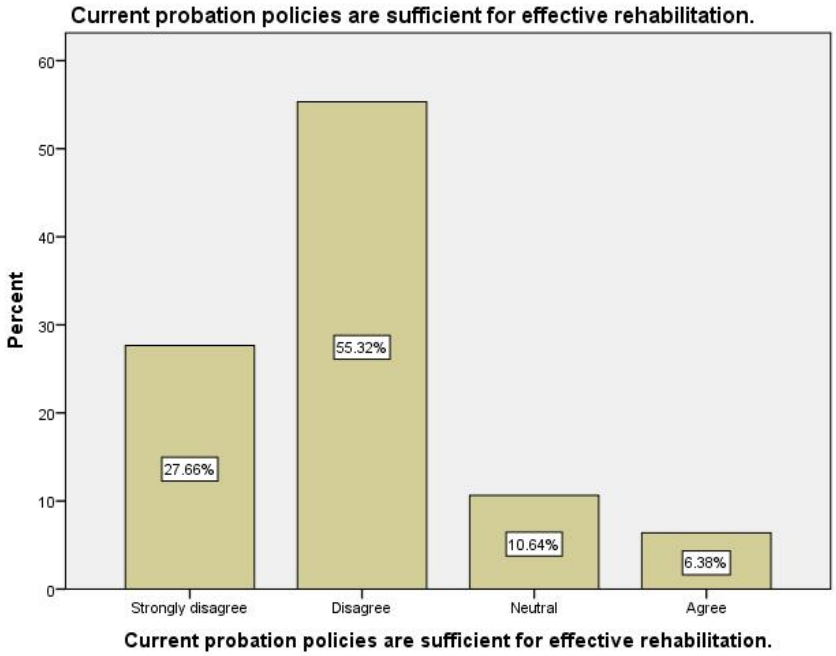
Result

This figure represents that among the respondents 2.13% have opted family support, 72.34% have opted NGO/ community support, 21.28% have opted probation officer guidance and 4.26% have opted vocational training for the question (In your opinion,which type of support was most helpful in reintegration?)

Discussion

The findings demonstrate that a majority of probationers (72.34%) found NGO or community support most helpful in their reintegration process. This suggests that non-governmental and community-based organizations play a pivotal role in bridging the gap left by formal institutions. Probation officer guidance and family support, though valuable, seem less accessible or consistent for many individuals. The relatively low preference for vocational training indicates that such programs are either limited or underutilized. Strengthening collaborations between NGOs, probation departments, and local communities could lead to a more holistic support system for offender reintegration in Chennai.

FIGURE 5



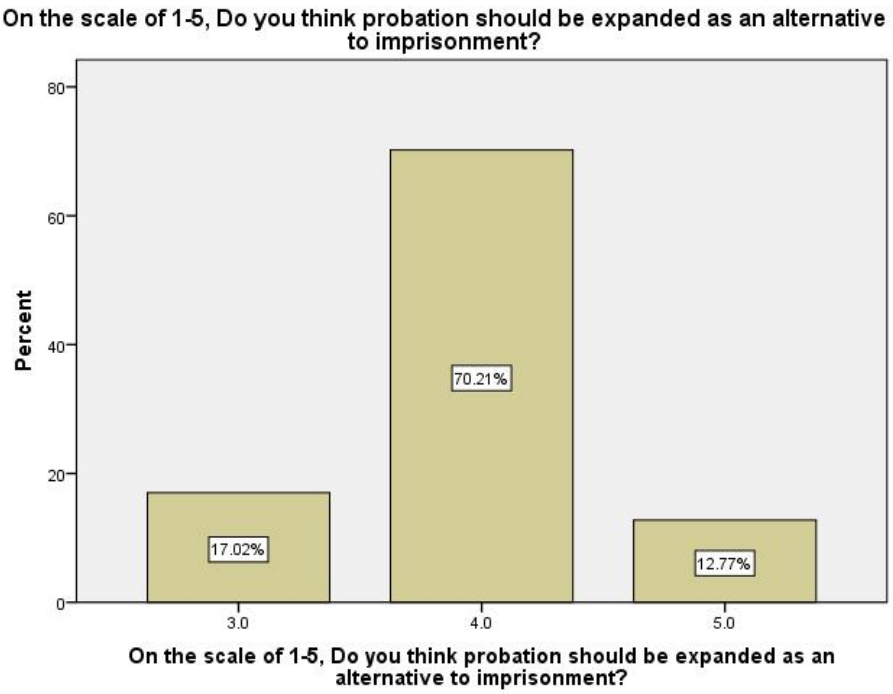
RESULT

This figure represents that among the respondents 6.38% have agreed, 55.32% have disagreed, 10.64% have neutral opinion, 55.32% have strongly disagreed with the question (Current probation policies are sufficient for effective rehabilitation.)

Discussion

The majority of respondents expressed disagreement or strong disagreement with the sufficiency of current probation policies, signaling dissatisfaction with the existing system. This suggests that current frameworks may not be effectively addressing the rehabilitative and reintegrative needs of offenders. Factors such as limited supervision, inadequate counseling, and poor follow-up mechanisms may contribute to this perception. Policymakers should therefore focus on reforming probation laws and implementation strategies to make them more individualized, rehabilitative, and community-oriented. Enhanced training for probation officers and regular evaluation of policies can improve their effectiveness.

FIGURE 6



RESULT

This figure represents that among the respondents 17.02% have rated 3, 70.21% have rated 4 and 12.77% have rated 5 for the question (On the scale of 1-5, do you think probation should be expanded as an alternative to imprisonment?)

Discussion

The findings indicate strong support for expanding probation as an alternative to imprisonment, with more than 80% of respondents rating it between 4 and 5 on the scale. This reflects a positive perception of probation as a reformative and less punitive measure that can reduce overcrowding in prisons while promoting rehabilitation. Such views highlight a growing recognition of probation's potential to balance justice and reintegration. However, for this expansion to be effective, the system must be strengthened through better infrastructure, consistent supervision, and public awareness. The results underscore that probation, when properly implemented, can be a key component of a humane and progressive criminal justice system in Chennai.

Suggestion

The study suggests that to enhance the effectiveness of probation as a reintegrative tool, there should be stronger coordination between the probation department, NGOs, and community

organizations to provide continuous support to probationers. Vocational and skill development programs must be made mandatory to improve employability and self-sufficiency. Regular counseling and mentorship by trained probation officers can help address emotional and behavioral issues. Awareness campaigns should be conducted to reduce social stigma and encourage community acceptance. The government should allocate more resources for training probation officers and strengthening supervision mechanisms. Technology-based monitoring and data management systems can improve efficiency. Lastly, policy reforms should focus on individualized rehabilitation plans and community-based reintegration strategies tailored to local contexts like Chennai.

Limitation

The study is limited to probationers within Chennai, which restricts the generalizability of findings to other regions with different socio-economic conditions. The sample size may not represent all categories of offenders or the diversity of experiences across Tamil Nadu. The data collected is based on self-reported responses, which may involve bias or underreporting of certain issues. Additionally, institutional data from the probation department was limited, constraining the scope of secondary analysis. Time constraints restricted longitudinal tracking of reintegration outcomes. The study also did not explore gender-based or age-specific variations in rehabilitation experiences. Future research should therefore adopt a comparative and longitudinal approach to gain deeper insights into the long-term impact of probation across different contexts.

Conclusion

The study reveals that probation serves as a crucial mechanism for promoting rehabilitation and reducing recidivism among offenders. Findings indicate that while probation provides an opportunity for offenders to reintegrate into society without incarceration, challenges such as social stigma, inadequate institutional support, and lack of vocational training persist. Most respondents identified social stigma as a major barrier, emphasizing the need for community awareness and acceptance. The study also highlights the importance of professional guidance from probation officers and collaboration with NGOs for effective reintegration. Although a majority of participants did not receive skill development training, those who did reported better reintegration outcomes. The research underscores the necessity for policy reforms to strengthen probation frameworks in India. Enhancing resource allocation, officer training, and post-release monitoring can significantly improve rehabilitation success. Overall, probation must evolve from a mere

supervisory mechanism to a holistic rehabilitative process. When implemented effectively, it can serve as a humane and constructive alternative to imprisonment, contributing to safer communities and social justice.

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CHAPTER-21

CRIMINAL LAW IN TRANSITION: LIBERTY, TECHNOLOGY, AND PUNISHMENT IN CONTEMPORARY INDIA

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Abstract
The Indian criminal justice system is undergoing significant transformation, navigating between constitutional ideals and contemporary challenges. This paper examines four interconnected areas: bail reforms, cybercrime enforcement, the death penalty, and system-wide criminal justice reforms in policy, practice, and perception. Bail reforms highlight the tension between the presumption of innocence and mass undertrial incarceration. Cybercrime analysis shows how rapid technological change outpaces enforcement capacity, raising issues of jurisdiction, privacy, and institutional readiness. The death penalty debate engages with constitutional doctrine and global human rights norms, questioning its continued relevance. Finally, broader criminal justice reforms address systemic challenges, including backlogs, police accountability, and prison administration, while recognizing the influence of public perception. Together, these discussions reveal that Indian criminal law is evolving, with its trajectory shaped by the need to safeguard liberty, regulate technology, ensure proportional punishment, and implement institutional reform.
Keywords: Bail Reforms, Cybercrime, Death Penalty, Criminal Justice Reforms, Constitutional Law, Human Rights, India.

Introduction
Criminal law defines the state's authority and its relationship with citizens, reflecting societal values and constitutional commitments. In India, it has evolved through colonial legacies, post-independence constitutionalism, and contemporary human rights and technological influences. Today, the system faces pressures to adapt while upholding liberty, equality, and dignity.

This paper explores four critical dimensions. First, bail reforms reveal the gap between judicial principles favoring liberty and the reality of overcrowded prisons and prolonged undertrial detention. Second, cybercrime law highlights the challenges posed by digitisation, including enforcement gaps, evidentiary issues, and the need for international cooperation. Third, the death penalty, limited to the "rarest of rare" cases, raises questions of arbitrariness and human dignity within both constitutional and global human rights frameworks. Finally, criminal justice reforms examine systemic issues, including legislative updates, judicial backlogs, prison administration, and the role of public perception in shaping policy.

These interwoven themes illustrate that Indian criminal law is in transition. It must balance liberty, emerging crime regulation, proportional punishment, and institutional reform to ensure justice that is both principled and effective.

Bail Reforms in India: Balancing Liberty and Justice
Evolution of Bail in Indian Jurisprudence

The practice of granting bail in India has its origins in the colonial criminal procedure framework. The **Code of Criminal Procedure 1898** gave courts wide discretion but lacked detailed statutory

guidance. Its successor, the **Code of Criminal Procedure 1973 (CrPC)**, codified the principles of bail under Sections 436–439 by distinguishing between bailable and non-bailable offences.[136]
Although the statutory framework remains largely procedural, the constitutional interpretation of bail has elevated it to a question of **personal liberty under Article 21**. In *State of Rajasthan v Balchand* (1978), Justice V.R. Krishna Iyer articulated the enduring principle that "bail is the rule and jail the exception."[137] Soon after, in *Gudikanti Narasimhulu v Public Prosecutor* (1978), the Court underscored that restrictions on liberty must be justified by demonstrable necessity.[138] Together, these cases established bail as a constitutional safeguard rather than a mere procedural concession.

Judicial Expansion of the Right to Bail

The judiciary has consistently linked bail with broader constitutional values. In *Hussainara Khatoon v State of Bihar* (1979), the Supreme Court ordered the release of thousands of undertrials, holding that delayed trials violated Article 21.[139] This series of rulings revealed how systemic delays converted pre-trial detention into an unconstitutional punishment.
In *Sanjay Chandra v Central Bureau of Investigation* (2012), which concerned white-collar offences, the Court reiterated that incarceration before conviction undermines the presumption of innocence.[140] Yet, stringent bail provisions under special legislations such as the **Unlawful Activities (Prevention) Act 1967 (UAPA)** and the **Narcotic Drugs and Psychotropic Substances Act 1985 (NDPS Act)** reflect a contrary approach. These laws often reverse the presumption of innocence by requiring accused persons to prove eligibility for bail.
Thus, Indian bail jurisprudence is marked by an inherent contradiction: while courts invoke constitutional liberty, statutory frameworks often prioritise deterrence and state security.

Structural Challenges in the Bail System

Despite progressive rulings, the bail system is beset with enduring challenges:

1. **Prison Overcrowding** – NCRB statistics reveal that undertrials constitute nearly three-quarters of India's prison population.[141] Many are detained for petty or bailable offences.
2. **Socio-economic Disparities** – Wealthier accused can furnish sureties, whereas poorer individuals remain incarcerated. In *Moti Ram v State of MP* (1978), the Court condemned mechanical use of monetary bail without considering the accused's financial condition.[142]
3. **Judicial Inconsistency** – Discretionary decision-making leads to unpredictability, with similar cases producing different outcomes across jurisdictions.
4. **Implementation Deficits** – Section 436A CrPC, which mandates release of undertrials who have completed half of the maximum prescribed sentence, is underutilised.

These issues illustrate that despite constitutional jurisprudence, liberty remains unevenly accessible.

Recent Developments and Reform Proposals

Judicial interventions continue to shape bail reforms. In *Satender Kumar Antil v Central Bureau of Investigation* (2022), the Supreme Court issued guidelines urging courts to avoid routine denial of bail, stressing proportionality and trial delays.[143]

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[136] Code of Criminal Procedure 1973, ss 436–439.
[137] *State of Rajasthan v Balchand* AIR 1978 SC 1057
[138] *Gudikanti Narasimhulu v Public Prosecutor* (1978) 1 SCC 240.
[139] *Hussainara Khatoon v State of Bihar* AIR 1979 SC 1369.
[140] *Sanjay Chandra v Central Bureau of Investigation* (2012) 1 SCC 40.
[141] National Crime Records Bureau, *Prison Statistics India 2023* (Ministry of Home Affairs 2024).
[142] *Moti Ram v State of MP* (1978) 4 SCC 47.
[143] *Satender Kumar Antil v Central Bureau of Investigation* (2022) 10 SCC 51.

The **Law Commission of India's 268th Report (2017)** recommended introducing statutory criteria for bail decisions, expanding non-monetary bail conditions, and strengthening legal aid.[144]
On the legislative front, the **Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS)**, which replaces the CrPC, retains most bail provisions. Critics argue it fails to address systemic problems such as undertrial incarceration and judicial inconsistency.

Comparative Perspectives

A comparative look reveals useful lessons. The **UK Bail Act 1976** enshrines a presumption in favour of bail, permitting denial only on specified grounds such as risk of absconding.[145] The **United States**, through the Bail Reform Acts of 1966 and 1984, experimented with personal recognisance and preventive detention, though reliance on cash bail has been criticised for disproportionately affecting the poor.[146]
India could adopt hybrid solutions such as risk-assessment mechanisms, statutory recording of reasons for bail denial, and non-monetary bail conditions to reduce arbitrariness.

Liberty and Justice in Equilibrium

The real challenge is balancing the accused's right to liberty with the community's interest in justice and safety. Victims' rights must also be factored in without diluting constitutional protections.

Three guiding principles emerge:

- **Liberty as default:** Bail should be presumed unless compelling reasons dictate otherwise.
- **Equality in access:** Bail decisions must reflect socio-economic realities.
- **Judicial accountability:** Courts should provide reasoned orders to prevent arbitrariness.

Cybercrime and Legal Framework in India: Challenges in Enforcement

Concept and Growth of Cybercrime in India

Cybercrime refers to unlawful activities committed through or against computer systems, digital networks, or online platforms. The rise of internet penetration, digital banking, and e-governance has increased India's vulnerability to such offences. Initially, cybercrime in India was limited to hacking and unauthorised access, but the landscape now includes **identity theft, phishing, ransomware, cyberstalking, online financial frauds, and crimes involving cryptocurrencies**.
The **Information Technology Act 2000 (IT Act)** marked India's first attempt to regulate cyber offences, later strengthened by the 2008 amendment.[147] According to the **National Crime Records Bureau (NCRB)**, over 65,000 cybercrime cases were reported in 2023, a nearly 25% increase from the previous year, highlighting the inadequacy of current enforcement mechanisms.[148]

Legislative Framework

The IT Act 2000 provides the backbone of cybercrime law in India. Important provisions include:

- **Section 43** – Civil liability for unauthorised access, data theft, and spreading malware.
- **Section 66** – Criminalises hacking and dishonest access to computer systems.
- **Section 67** – Prohibits transmission of obscene content online.

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[144] Law Commission of India, *268th Report on Bail Reforms* (2017).
[145] Bail Act 1976 (UK).
[146] Bail Reform Act 1966 (US); Bail Reform Act 1984 (US).
[147] Information Technology Act 2000, ss 43, 66, 67.
[148] National Crime Records Bureau, *Crime in India 2023* (Ministry of Home Affairs 2024).

Cyber offences also intersect with the **Indian Penal Code 1860 (IPC)**: fraud (ss 415–420), forgery (ss 463–471), and defamation (s 499) can all apply to online conduct.
Judicial decisions have refined this framework. In *Shreya Singhal v Union of India* (2015), the Supreme Court struck down **Section 66A IT Act** for criminalising "offensive messages," ruling it unconstitutional under Article 19(1)(a).[149] This decision underscored the tension between state regulation and free expression.
More recently, the **Digital Personal Data Protection Act 2023 (DPDP Act)** has introduced a privacy-centric framework, complementing the IT Act by regulating how digital data is collected, processed, and stored.

Enforcement Challenges

Despite a comprehensive statutory base, enforcement of cybercrime laws in India faces several systemic obstacles:

(a) Jurisdictional Complexities

Cybercrimes often cross borders, involving perpetrators, victims, and servers located in different jurisdictions. Section 75 IT Act allows extraterritorial application, but coordination between states and international agencies is limited.

(b) Lack of Technical Expertise

Police and prosecutors frequently lack specialised knowledge of digital forensics. In *Anvar P.V. v P.K. Basheer* (2014), the Court made certification under Section 65B of the Evidence Act mandatory for admissibility of electronic records.[150]However, prosecutions often collapse due to improper compliance.

(c) Underreporting

Victims are often reluctant to report cyber offences, especially those involving financial fraud, cyberstalking, or sexual harassment, due to stigma and lack of trust in law enforcement.

(d) Technological Barriers

Encrypted messaging apps and the dark web make detection difficult. While lawful surveillance tools exist, their use risks infringing on privacy rights protected under Article 21 and affirmed in *K.S. Puttaswamy v Union of India* (2017).[151]

Judicial and Institutional Responses

Courts have gradually adapted to the complexities of digital evidence. In *Anvar P.V.*, the Supreme Court clarified that oral testimony cannot substitute statutory requirements for electronic evidence.[152] Later, in *Arjun Panditrao Khotkar v Kailash Kushanrao Gorantyal* (2020), the Court reaffirmed strict compliance with Section 65B certification, even where authenticity is undisputed.[153]

Institutional mechanisms have also been created:

- **CERT-In (Indian Computer Emergency Response Team)**, under the IT Act, monitors cyber incidents and issues security advisories.

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[149] *Shreya Singhal v Union of India* (2015) 5 SCC 1.
[150] *Anvar P.V. v P.K. Basheer* (2014) 10 SCC 473
[151] *K.S. Puttaswamy v Union of India* (2017) 10 SCC 1.
[152] *Anvar P.V. v P.K. Basheer* (2014) 10 SCC 473.
[153] *Arjun Panditrao Khotkar v Kailash Kushanrao Gorantyal* (2020) 7 SCC 1.

- **CBI Cyber Crime Cell** and specialised state police units investigate complex cases.
- India participates in **Interpol's Cybercrime Directorate** and other cooperative networks.

Despite these initiatives, lack of coordination and limited resources hinder effective enforcement.

Comparative Perspectives

Other jurisdictions offer useful contrasts.

- **United States**: The **Computer Fraud and Abuse Act 1986 (CFAA)** criminalises unauthorised computer access, while the **CLOUD Act 2018** facilitates cross-border data access agreements with technology companies.[154]
- **European Union**: The **General Data Protection Regulation 2018 (GDPR)** establishes strict privacy protections and penalties for data breaches. The EU also spearheaded the **Budapest Convention on Cybercrime 2001**, ratified by over 65 countries, to standardise global cooperation.[155]

Death Penalty in India: Constitutional Validity and Global Trends

Historical Context of Capital Punishment in India

Capital punishment has been embedded in Indian criminal law since the Indian Penal Code 1860 (IPC), which prescribes the death penalty for offences such as murder (s 302), waging war against the state (s 121), and certain aggravated sexual offences under later amendments.[156] During the Constituent Assembly Debates, members weighed moral and utilitarian justifications for retention. Dr. B.R. Ambedkar observed that while the state should retain the power to impose death sentences, such power must be exercised sparingly.[157]

Despite these early debates, India retained capital punishment at independence, even as many jurisdictions began to abolish or restrict it.

Constitutional Validity of the Death Penalty

The Supreme Court of India has often been asked whether the death penalty is allowed under the Constitution, especially when seen in light of fundamental rights like equality (Article 14), freedom (Article 19), and the right to life (Article 21). Here are the key rulings:

Jagmohan Singh v State of UP (1973): The Court said the death penalty itself is not unconstitutional. As long as judges follow proper procedures and apply well-settled legal principles when deciding on sentencing, it does not violate Articles 14, 19, or 21.[158] In short, it upheld that capital punishment is legally valid in India.

Rajendra Prasad v State of UP (1979): Justice Krishna Iyer took a stricter view. He said the death penalty should not be common; it should be given only in the gravest situations where it is absolutely necessary to protect society. This case narrowed the scope of when capital punishment could be used.[159]

Bachan Singh v State of Punjab (1980): This is the most important case. The Court laid down the

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[154] Computer Fraud and Abuse Act 1986 (US); Clarifying Lawful Overseas Use of Data (CLOUD) Act 2018 (US).

[155] Council of Europe, *Convention on Cybercrime* (Budapest, 23 November 2001).

[156] Indian Penal Code 1860, ss 121, 302, 376A, 376E.

[157] Constituent Assembly Debates, Vol IX (1949).

[158] *Jagmohan Singh v State of UP* AIR 1973 SC 947.

[159] *Rajendra Prasad v State of UP* AIR 1979 SC 916.

"rarest of rare" rule[160]. It said that the death penalty can only be imposed when the crime is so brutal or unusual that life imprisonment would not be enough to deliver justice. This case still forms the basis of capital punishment in India.

Machhi Singh v State of Punjab (1983): The Court explained in more detail what "rarest of rare" means.[161] Judges must look at factors such as how the crime was carried out (its cruelty), why it was committed (motive), and how much it shocked society. Only if the crime is extremely severe in these respects should the death penalty be given.

Together, these rulings mean that the death penalty is constitutional in India, but it cannot be given freely. Courts must use it only in the most exceptional cases, and they must carefully justify why life imprisonment would not be enough.

Global Trends

The global trajectory shows a marked shift towards abolition or severe restriction of capital punishment.

Europe and Latin America: Complete abolition, reinforced by the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR).[162]

United States: Still retentionist, though 23 states have abolished the death penalty and the Supreme Court has restricted its application, e.g., banning executions for juveniles and intellectually disabled persons.[163]

Retentionist States: China, Saudi Arabia, and several other Asian and Middle Eastern countries continue executions, often in large numbers or for drug-related crimes.[164]

India remains a retentionist but restrictive jurisdiction, applying the penalty under the "rarest of rare" doctrine.

Criminal Justice Reforms in India: Policy, Practice, and Perceptions

The question of reforming the criminal justice system in India has become one of the most pressing issues of contemporary governance. While individual debates on bail, cybercrime, and the death penalty highlight specific areas of concern, these cannot be fully understood without situating them within the broader landscape of criminal justice reform. The functioning of courts, police, prisons, and legislative policy all converge to determine how justice is delivered in practice. Hence, any attempt to evaluate liberty, technology, or punishment in isolation risks overlooking the systemic forces that shape them.

Criminal justice reform in India has historically been driven by a mixture of judicial pronouncements, expert committee recommendations, and legislative intervention. The **Law**

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[160] *Bachan Singh v State of Punjab* AIR 1980 SC 898.
[161] *Machhi Singh v State of Punjab* AIR 1983 SC 957
[162] UN General Assembly, *Second Optional Protocol to the ICCPR* (15 December 1989).
[163] Death Penalty Information Center, 'State by State' (2023) https://deathpenaltyinfo.org.
[164] Amnesty International, *Death Sentences and Executions 2022* (2023).

Commission of India has played an especially significant role in identifying gaps and proposing measures. Its 239th Report (2012) on *Expeditious Investigation and Trial* drew attention to the debilitating impact of procedural delays on justice delivery.[165] Similarly, the 277th Report (2018) on *Wrongful Prosecution* recommended statutory mechanisms for compensating individuals who are victims of miscarriages of justice, a problem often overlooked in mainstream discourse.[166] These reports reflect the recognition that justice cannot be measured only by conviction rates but also by the fairness, speed, and integrity of the process.

The recent enactment of the **Bharatiya Nyaya Sanhita (BNS), the Bharatiya Nagarik Suraksha Sanhita (BNSS), and the Bharatiya Sakshya Adhiniyam (BSA) 2023** represents the most ambitious overhaul of criminal law since independence.[167] These statutes replace the IPC, CrPC, and Evidence Act, respectively. The stated objective is to modernise criminal law by streamlining trial procedures, increasing reliance on forensic evidence, and making the system more victim-centric. For example, the BNSS introduces timelines for investigation and mandates use of technology in recording evidence. The BNS expands definitions of certain crimes, while the BSA seeks to bring electronic records on par with traditional forms of evidence. However, critics argue that these reforms are largely cosmetic. The new laws borrow heavily from their colonial predecessors, and without systemic improvements in police functioning, judicial capacity, and prison administration, their impact is likely to be limited.

The gap between policy design and practical implementation remains the Achilles heel of India's justice system. The sheer scale of judicial backlog illustrates this. According to the **National Judicial Data Grid**, over 4.5 crore cases were pending across all levels of courts in 2023.[168] This backlog not only undermines the constitutional right to a speedy trial under Article 21 but also perpetuates inequality, as wealthier litigants can use procedural delays to their advantage while poorer individuals suffer prolonged incarceration as undertrials. Delays further erode public confidence, creating a perception that justice is either inaccessible or irrelevant.

The role of the police, as the frontline agency of the criminal process, has also been a persistent subject of reform debates. The Supreme Court in *Prakash Singh v Union of India* (2006) issued binding directives on police reforms, including fixed tenures, establishment of independent complaints authorities, and separation of investigation from law-and-order functions.[169] Despite these directives, compliance has been uneven across states, with political interference and lack of resources continuing to compromise independence and professionalism. The **Justice J.S. Verma Committee Report (2013)**, constituted in the aftermath of the Delhi gang rape case, also highlighted the urgent need for gender-sensitive policing and accountability mechanisms. Yet, most recommendations remain unimplemented, revealing the inertia of institutional reform.

Prisons constitute another weak link in the system. The **NCRB's Prison Statistics 2023** confirm that overcrowding, poor healthcare, and inadequate rehabilitation programmes remain chronic issues.[170] Nearly three-quarters of inmates are undertrials, reflecting the failures of the bail system discussed earlier. Prison conditions, far from being reformative, often exacerbate social marginalisation and perpetuate cycles of criminalisation. This not only undermines human rights

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[165] Law Commission of India, *239th Report on Expeditious Investigation and Trial* (2012).
[166] Law Commission of India, *277th Report on Wrongful Prosecution* (2018).
[167] Bharatiya Nyaya Sanhita 2023; Bharatiya Nagarik Suraksha Sanhita 2023; Bharatiya Sakshya Adhiniyam 2023.
[168] National Judicial Data Grid, *Statistics on Case Pendency* (2023).
[169] *Prakash Singh v Union of India* (2006) 8 SCC 1.
[170] National Crime Records Bureau, *Prison Statistics India 2023* (Ministry of Home Affairs 2024).

but also questions the credibility of punitive approaches that focus on incarceration over rehabilitation.

Public perception plays a decisive role in shaping criminal justice policy. In India, high-profile cases often become flashpoints for populist demands. The aftermath of the **2012 Delhi gang rape**, for example, saw an outpouring of public anger that culminated in the Criminal Law (Amendment) Act 2013, expanding the scope of capital punishment for sexual offences. While such responses may appear to serve public sentiment, they often produce reactionary laws that prioritise retribution over systemic reform. Surveys conducted by the **Centre for the Study of Developing Societies (CSDS)** indicate a persistent trust deficit in the police and judiciary, with citizens citing corruption, inefficiency, and discrimination as key concerns.[171] At the same time, there is growing recognition of the value of **restorative justice**, where victims participate in the process and offenders are encouraged to take responsibility. Such initiatives challenge traditional notions of retribution and signal a shift towards more inclusive understandings of justice.

When placed in conversation with earlier chapters, the significance of this broader reform narrative becomes clearer. Bail reforms cannot succeed unless structural issues like backlog and prison overcrowding are resolved. Cybercrime enforcement will remain toothless without investment in institutional capacity and international collaboration. The debate on the death penalty cannot be separated from the larger issue of public perceptions of justice and the risk of wrongful prosecution. Thus, criminal justice reform is not a discrete project but an umbrella framework within which bail, cybercrime, and capital punishment must be addressed.

Ultimately, the challenge is not simply about drafting better laws but ensuring that **policy, practice, and public perception align with constitutional ideals**. Without bridging the gap between reformist rhetoric and ground-level implementation, the promise of liberty, security, and justice will remain unfulfilled. India's criminal justice system must therefore undergo a holistic transformation that simultaneously strengthens institutions, modernises procedures, and redefines how society perceives justice.

Conclusion

The evolution of criminal law in India reflects a continuous attempt to balance liberty, security, and justice within a rapidly changing society. This study has examined four interconnected themes—bail reforms, cybercrime, the death penalty, and broader criminal justice reforms—which together illustrate the challenges of building a justice system that is both constitutionally sound and practically effective.

The discussion on **bail reforms** revealed how central personal liberty is to India's constitutional order. While courts insist that bail is the rule and jail the exception, overcrowded prisons and inconsistent judicial discretion show how principle often collapses in practice. Real reform requires statutory clarity, non-discriminatory conditions, and administrative commitment to ensure that undertrial detention does not itself become punishment.

The analysis of **cybercrime** highlighted the difficulties of regulating crime in a digital world. The IT Act 2000 and DPDP Act 2023 provide the legislative backbone, but enforcement is hampered by limited expertise, jurisdictional hurdles, and underreporting. This domain exemplifies the need for laws that evolve with technology while protecting fundamental rights such as privacy and free expression.

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[171] CSDS-Lokniti, *State of Democracy in South Asia Survey* (2019).

The **death penalty debate** raised fundamental questions about punishment and human dignity. Although constitutionally upheld, its use is confined to the "rarest of rare" cases. Persistent arbitrariness, socio-economic bias, and the risk of wrongful conviction undermine its legitimacy. With global trends moving toward abolition, India must ask whether capital punishment remains compatible with its human rights commitments.

The chapter on **criminal justice reforms** tied these strands together, showing that isolated reforms cannot succeed without systemic change. New laws such as the BNSS, BNS, and BSA 2023 aim to modernise the system, yet judicial backlog, weak police accountability, and prison overcrowding persist. Public perceptions, shaped by media and high-profile cases, often push policy in reactionary directions rather than towards principled, evidence-based reform.

Viewed together, these four areas confirm that **Indian criminal law is in transition**. Its colonial inheritance is slowly giving way to constitutional ideals and modern realities, but the path is uneven. The future of criminal law will depend not only on statutes and judgments but on whether institutions can bridge the gap between policy, practice, and perception.

For India, the challenge lies in building a system that is principled—faithful to equality, liberty, and dignity—and pragmatic—responsive to new crimes, public concerns, and international standards. Only then can criminal law realise its constitutional promise of timely, fair, and humane justice in a diverse and evolving society.

CHAPTER-22

BEYOND THE CELL: PERSPECTIVES ON JUSTICE REFORM A COMPREHENSIVE BLUEPRINT FOR ABOLISHING PERPETUAL PUNISHMENT AND FORGING A RESTORATIVE FUTURE

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Abstract

This paper argues that the contemporary criminal justice system's reliance on extreme punitive measures-specifically life imprisonment without meaningful review and the death penalty is philosophically bankrupt, empirically unsupported, and morally irreconcilable with a modern, humane society. Moving "beyond the cell" requires a fundamental systematic shift from a system designed for retribution and permanent exclusion to one architected for accountability, restoration, and transformation.

This work provides a comprehensive critique of perpetual punishment, deconstructing its failures as a tool of public safety and its role in "spoiling" human life. It then articulates the principles of a "well-versed" justice system, one that respects human dignity and the scientifically-supported capacity for personal change. Finally, it presents a practical, multi-faceted blueprint for replacing death and life sentences with a model of reviewable sentences, robust restorative justice practices, and genuinely rehabilitative incarceration. The ultimate aim is to propose a system where punishment is severe yet finite, purposeful, and designed not to destroy, but to create the conditions for the emergence of a redeemed and productive citizen. This paper employs Legal and Policy Analysis methodological approach to construct a comprehensive critique of perpetual punishment and to develop a principled, practical alternative. The methodology is not based on new empirical data collection but on the systematic synthesis, analysis, and application of existing knowledge from a wide range of fields. The research design is structured to move from critical deconstruction to normative and practical reconstruction.

Keywords: Perpetual Punishment, Criminal Justice Reform, Restorative Justice, Rehabilitation, Human Dignity, Transformative Justice, Sentencing Reform.

Introduction:

The Architecture of Pain and the Need for a New Blueprint

The image of the prison cell is the dominant iconography of criminal justice. It represents finality, exclusion, and the absolute power of the state over the individual. For decades, the prevailing political and public narrative has been that public safety is synonymous with the harshest possible punishments: sentences that stretch for decades until death, and state-sanctioned execution. This "architecture of pain" is presented as a moral necessity.[172]This paper contends it is a catastrophic

[172] DAVID GARLAND, THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY 10–14 (Univ. of Chi. Press 2001).

failure.

We must look *Beyond the Cell*. This means widening our perspective to see the entire lifecycle of justice: from the socioeconomic conditions that foster crime, to the traumatic aftermath for victims, to the process of incarceration, and crucially, to the possibility of release and reintegration. A system that terminates this lifecycle with permanent incarceration or death is a system that has given up on its own rehabilitative and restorative potential.[173] This paper is structured in five parts to systematically dismantle the arguments for perpetual punishment and to construct in its place a detailed, viable, and more ethical alternative. It is founded on the core belief that the purpose of punishment is not to "spoil" a life, but to correct a path, demanding rigorous accountability while fiercely protecting the possibility of a future good life.

Part I: The Moral and Practical Bankruptcy of Perpetual Punishment
Chapter 1: The Philosophical Failure: Retribution vs. Dignity

The modern justice system's foundation in retributive philosophy—the concept that punishment must be proportional to the crime—provides important moral logic by affirming victims' suffering and reinforcing social norms.[174]However, when extended to perpetual punishments like life without parole (LWOP) or death, retribution transforms into vengeance. [175]These extreme sentences violate the Kantian principle of human dignity, which demands we never use persons merely as means to an end.[176]By declaring individuals permanently irredeemable, the state engages in profound ethical arrogance, denying the core human capacity for growth and moral development.[177]

Perpetual punishment corrupts retributive justice in two fundamental ways. First, it shifts focus from punishing a criminal act to judging an entire human life, rendering the offender's future potential for change irrelevant.[178]This constitutes a form of civil death rather than proportional justice. Second, unlike satiable retribution, perpetual punishment becomes indistinguishable from insatiable vengeance, fueled by dehumanizing political rhetoric about "monsters" and "animals."[179]

Most critically, LWOP and the death penalty instrumentalize human beings, using them as means to political ends—symbols for "tough on crime" politics, containers for social fears, or instruments of false closure.[180]This violates Kant's categorical imperative. The state's claim of infallible knowledge about permanent incorrigibility represents metaphysical arrogance incompatible with a fallible justice system that regularly produces wrongful convictions.[181]

Chapter 2: The Empirical Collapse: Deterrence, Recidivism, and Public Safety

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[173] HOWARD ZEHR, THE LITTLE BOOK OF RESTORATIVE JUSTICE 35–40 (Revised & Updated ed., Good Books 2015).

[174] IMMANUEL KANT, *THE METAPHYSICS OF MORALS* (1797).

[175] DAVID GARLAND, *THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY* (Univ. of Chi. Press 2001).

[176] IMMANUEL KANT, *GROUNDWORK OF THE METAPHYSIC OF MORALS* (1785).

[177] JOHN DEWEY, *HUMAN NATURE AND CONDUCT: AN INTRODUCTION TO SOCIAL PSYCHOLOGY* (Henry Holt & Co. 1922).

[178] Weems v. United States, 217 U.S. 349 (1910).

[179] GARLAND, supra note 2.

[180] KANT, supra note 3.

[181] NAT'L REGISTRY OF EXONERATIONS, *EXONERATIONS BY YEAR AND TYPE OF CRIME* (2023), https://www.law.umich.edu/special/exoneration/Pages/about.aspx.

The utilitarian justifications for perpetual punishment collapse under empirical scrutiny. The deterrence argument fails because severe punishments don't meaningfully influence criminal behavior.[182] The National Research Council has concluded that studies claiming deterrent effects from the death penalty are "fundamentally flawed.[183]"Most violent crimes occur in contexts where rational cost-benefit analysis is absent—during moments of passion, under substance influence, or in desperate circumstances. Criminological evidence consistently shows certainty of punishment matters far more than severity.[184]

Regarding recidivism, perpetual incarceration often exacerbates rather than solves the problem. Long-term imprisonment proves criminogenic through multiple mechanisms: it produces institutionalization that impairs social functioning, creates "universities of crime" that reinforce criminal identities, and imposes collateral consequences that block successful reintegration.[185] Evidence shows lengthy sentences have diminishing returns for public safety after the first few years, while rehabilitation and re-entry support yield dramatically better outcomes.[186]

The resources devoted to perpetual punishment represent a catastrophic misallocation of public safety funding. Billions spent on death penalty litigation and geriatric prison care could be redirected to evidence-based policing, violence intervention programs, drug treatment, mental health services, and youth prevention programs that actually reduce crime.[187]

Chapter 3: The Financial and Human Cost: A System That Bankrupts Us All

The economic burden of perpetual punishment is staggering. Death penalty cases cost taxpayers over $1 million more than comparable non-capital cases due to complex trials, lengthy appeals, and specialized death row facilities.[188] LWOP sentences create escalating long-term liabilities, with healthcare costs for aging prisoners running 3-5 times higher than for younger inmates.[189]States essentially operate publicly-funded nursing homes behind bars.

The human costs are even more devastating. Perpetual sentences inflict "civil death" on prisoners, denying them any meaningful future.[190]Families serve "hidden sentences" of trauma, stigma, and economic hardship.[191] Victims' families often find the prolonged appeals process re-traumatizing rather than healing.[192] Ultimately, a society that normalizes permanent exclusion and state killing coarsens its moral fabric, undermining commitments to dignity, redemption, and mercy.

The comprehensive balance sheet reveals perpetual punishment as philosophically bankrupt, empirically unsupported, financially ruinous, and humanly destructive. Resources wasted on this

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[182] Daniel S. Nagin, Deterrence in the Twenty-First Century, 42 *Crime & Just.* 199 (2013).

[183] NAT'L RESEARCH COUNCIL, *DETERRENCE AND THE DEATH PENALTY* (Daniel S. Nagin & John V. Pepper eds., Nat'l Acads. Press 2012).

[184] Nagin, supra note 9.

[185] Craig Haney, *The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment* (U.S. Dep't of Health & Human Servs. 2001).

[186] VERA INST. OF JUSTICE, *THE PRICE OF PRISONS: WHAT INCARCERATION COSTS TAXPAYERS* (2012).

[187] THE PEW CHARITABLE TRUSTS, *PUBLIC SAFETY, PUBLIC SPENDING: CORRECTIONS AND STATE BUDGETS* (2007).

[188] SUSQUEHANNA UNIV., *THE COST OF THE DEATH PENALTY IN MARYLAND* (2008).

[189] PEW, supra note 14.

[190] ASHLEY NELLIS, *THE MEANING OF LIFE: THE CASE FOR ABOLISHING LIFE SENTENCES* (The New Press 2018).

[191] MEGAN COMFORT, *DOING TIME TOGETHER: LOVE AND FAMILY IN THE SHADOW OF THE PRISON* (Univ. of Chi. Press 2008).

[192] MURDER VICTIMS' FAMILIES FOR HUMAN RIGHTS, *REPORT ON VICTIMS' PERSPECTIVES ON THE DEATH PENALTY* (2009).

failed paradigm represent a peace dividend that could fund a justice system focused on building rather than destroying human potential.[193]

Part II: Deconstructing the Pillars of the Punitive Paradigm
Chapter 4: Life Imprisonment Beyond 14 Years: A Living Death Sentence

The sentence of life imprisonment without parole (LWOP) is often presented as a more humane alternative to the death penalty. In reality, it is a "living death sentence," a form of social and psychological eradication that, while preserving biological life, systematically extinguishes hope, identity, and the possibility of reconciliation. This chapter argues that any sentence exceeding 14-20 years without a realistic mechanism for review constitutes a profound injustice, one that is psychologically destructive, scientifically unsupported, and morally untenable.[194]

The Psychology of "Institutionalization" and Hope Deletion

The primary mechanism through which long-term incarceration becomes a "living death" is the psychological process of institutionalization. Unlike rehabilitation, which prepares an individual for community reintegration, institutionalization is the process of adapting to the imperatives of total confinement. Psychologist Craig Haney describes it as"synchronization" of the self with the institution, where the autonomy, independence, and decision-making capabilities essential for life in free society are systematically eroded.[195]

- **Dependency and Passivity:** The prison environment dictates every aspect of life: when to eat, sleep, work, and recreate. Over years and decades, the capacity for self-initiation atrophies. Inmates become dependent on the institution's rigid structure, fostering a profound passivity that is maladaptive upon release.[196]
- **Hypervigilance and Emotional Withdrawal:** To survive in a potentially violent environment, individuals often adopt a posture of constant suspicion and emotional suppression. This hypervigilance and inability to form genuine emotional connections become deeply ingrained personality traits, severing the social and emotional bonds necessary for a prosocial life.[197]
- **The Loss of a Future Orientation:** The most devastating psychological impact of a perpetual sentence is the "deletion of the future." When an individual knows they will die in prison, goal-setting, self-improvement, and hopeful anticipation—all core drivers of human psychological health—lose their meaning. Life becomes a static, barren landscape of "doing time," leading to what Haney terms "custodial decline," a state of deep apathy and depression.[198]

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[193] MARGARET URBAN WALKER, *MORAL REPAIR: RECONSTRUCTING MORAL RELATIONS AFTER WRONGDOING* (Cambridge Univ. Press 2006).

[194] Ashley Nellis, *The Meaning of Life: The Case for Abolishing Life Sentences* (2018).

[195] Craig Haney, *The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment* (2001).

[196] Id.

[197] Id.

[198] Id. at 12–15.

A sentence without review actively manufactures this pathology. It is not an unintended side effect; it is the logical outcome of a system designed for permanent exclusion.[199]

Deconstructing "Permanent Incorrigibility": The Scientific Evidence for Change

The legal and political justification for LWOP rests on the concept of "permanent incorrigibility"—the idea that some individuals are so irredeemably dangerous that they can never be safely released. This concept is a legal fiction with no basis in modern science.[200]

- **Neurological Maturation:** It is now a settled scientific fact that the human brain, particularly the prefrontal cortex responsible for executive functions like impulse control, risk assessment, and long-term planning, does not fully mature until the mid-20s. This has profound implications for culpability. A 20-year-old who commits a homicide is, from a neurocognitive standpoint, a different person at 40. To sentence the 20-year-old to die in prison is to ignore this fundamental developmental reality.[201]
- **The Age-Crime Curve and Aging Out:** Criminological data consistently shows that criminal behavior, particularly violence, peaks in late adolescence and early adulthood and declines sharply with age. This is known as the "age-crime curve." The factors that drive crime—impulsivity, peer influence, economic desperation—diminish over time. By the time an individual serving a long-term sentence reaches their 40s or 50s, their statistical risk of reoffending is often negligible. Warehousing them until death is not a public safety strategy; it is a costly and cruel failure to recognize that people "age out" of crime.[202]
- **Personality and Moral Development:** Longitudinal studies in psychology demonstrate that personality is not fixed. The "Big Five" personality traits—including agreeableness and conscientiousness—can and do change significantly throughout adulthood, often in response to major life events and structured reflection. A 15-to-20-year period of incarceration, if used constructively, provides ample time for profound moral and psychological development. The concept of a static, "incorrigible" character is an unscientific anachronism.[203]

To permanently "spoil" the life of a 40-year-old for a crime committed at 20 is to ignore the narrative of a human life. It is to judge the entire book by its most tragic chapter and to deny the scientifically-supported capacity for the author to write a different, better ending.[204]

Chapter 5: The Death Penalty: The Arrogance of Finality and the Inevitability of Error

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[199] Murder Victims' Families for Human Rights, *Creating More Victims: How Executions Hurt the Families Left Behind* (2008).

[200] *McCleskey v. Kemp*, 481 U.S. 279 (1987).

[201] Am. Psychol. Ass'n, *Amicus Brief in Miller v. Alabama*, 567 U.S. 460 (2012).

[202] Nat'l Inst. of Just., *Age–Crime Curve* (2015); Daniel S. Nagin, *Deterrence in the Twenty-First Century*, 42 Crime & Just. 199 (2013).

[203] Brent W. Roberts et al., *Patterns of Mean-Level Change in Personality Traits Across the Life Course*, 132 Psychol. Bull. 1 (2006).

[204] Death Penalty Info. Ctr., *Innocence and the Death Penalty* (2023).

The death penalty represents the ultimate expression of state power: the authority to deliberately take a citizen's life. This chapter moves beyond abstract moral arguments to present a definitive case against capital punishment by focusing on its three irrevocable flaws: its inherent fallibility, its arbitrary application, and its corrosive effect on the legal and moral fabric of society.[205]

The Inevitability of Error: Executing the Innocent

A justice system administered by fallible human beings will inevitably make errors. For every other criminal sanction, these errors are, to some degree, remediable. A wrongfully convicted person can be released and compensated. With the death penalty, the error is final and irreparable.[206]

- **The Scale of Wrongful Convictions:** Since 1973, over 190 individuals sentenced to death in the United States have been exonerated, often after spending decades on death row. They were proven innocent through DNA evidence, the exposure of perjured testimony, the recantation of jailhouse informants, or the discovery of prosecutorial misconduct. These are not mere technicalities; they are cases where the state was prepared to kill an innocent person.[207]
- **Systemic Vulnerabilities:** The machinery of death is riddled with points of failure. It relies on:
    - **Eyewitness Misidentification:** The leading cause of wrongful convictions.
    - **False Confessions:** Often coerced from vulnerable suspects, including those with intellectual disabilities or mental illness.[208]
    - **Junk Science:** Discredited or unvalidated forensic techniques, like bite-mark analysis, that have been presented as scientific certainty.[209]
    - **Inadequate Defence Counsel:** Overworked and underfunded public defenders who lack the resources to mount an effective defence.[210]

      The death penalty does not operate in a pristine, error-free system; it is imposed by the same broken system that produces thousands of other convictions. The only difference is the finality of the outcome.[211]

The Arbitrary and Discriminator Application

The Supreme Court once hoped that guided discretion would ensure the death penalty was applied fairly and consistently. This has proven to be a failed experiment. The application of capital punishment is not determined by the "worst of the worst" crimes, but by a confluence of legally irrelevant factors.[212]

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[205] David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (2001).

[206] Nat'l Registry of Exonerations, *Exonerations in the United States, 1973–2023* (2023).

[207] Death Penalty Info. Ctr., *Innocence and the Death Penalty* (2023).

[208] Id.

[209] Nat'l Research Council, *Strengthening Forensic Science in the United States: A Path Forward* (2009).

[210] The Pew Charitable Trusts, *Public Safety, Public Spending: Forecasting America's Prison Population 2007–2011* (2007).

[211] Id.

[212] *Furman v. Georgia*, 408 U.S. 238 (1972).

- **Geography:** A murder in one county may lead to a death sentence, while the same crime in a neighboring county results in life imprisonment. The lottery of jurisdiction is a primary determinant of who lives and who dies.[213]
- **Race:** The race of the victim remains a powerful predictor of a death sentence. Defendants accused of killing white victims are far more likely to be sentenced to death than those accused of killing Black victims. This devalues the lives of Black victims and injects racial bias into the heart of the sentencing process.[214]
- **Poverty and Mental Illness:** Capital defendants are overwhelmingly poor and disproportionately suffer from severe mental illness, brain damage, or intellectual disability. The quality of their defence, and thus their likelihood of being executed, is directly tied to their economic resources.[215]

This arbitrary application violates the Eighth and Fourteenth Amendments. It is the very definition of "cruel and unusual" punishment—a fate meted out not based on the nature of the crime, but on the color of the victim's skin, the size of the defendant's wallet, or the political ambitions of the local prosecutor.[216]

The Corrosive Effect and the Myth of Closure

Finally, the death penalty corrupts the society that employs it. It reduces the state to the level of the killer, affirming that violence is an appropriate response to violence. It creates a permanent, trauma-inflicting bureaucracy of death—for the executioners, the guards, and the attorneys involved—and it prolongs the agony for victims' families through decades of appeals, preventing true healing.[217]

The promise of "closure" for victims is a cruel myth. The lengthy, repetitive legal process forces families to relive their trauma for years. True healing often begins not with another death, but with a sense of finality and the possibility of constructing a new life narrative—a process that can be achieved through a sentence of life without parole. The death penalty is not an instrument of justice, but a costly, error-prone, and morally corrosive ritual that provides the illusion of resolution while perpetuating a cycle of violence and injustice.[218]

Part III: The Principles of a "Well-Versed" and Transformative Justice

Chapter 6: The Primacy of Human Dignity and the Capacity for Change

Having deconstructed the punitive paradigm, we must now construct a new one. The foundational principle of a "well-versed" justice system is the inviolable dignity of every human being. This is not a reward for good behavior; it is an inherent status that persists even after the commission of a heinous act. Upholding this dignity is not in conflict with public safety; it is its prerequisite.[219]

This principle is supported by a robust, interdisciplinary body of evidence on human transformation. Neuroscience shows us the brain's lifelong plasticity. Psychology reveals the malleability of

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[213] *Gregg v. Georgia*, 428 U.S. 153 (1976).

[214] *McCleskey v. Kemp*, 481 U.S. 279 (1987).

[215] Am. Bar Ass'n, *Evaluating Fairness and Accuracy in State Death Penalty Systems* (2011).

[216] U.S. Const. amends. VIII, XIV.

[217] Megan Comfort, *Doing Time Together: Love and Family in the Shadow of the Prison* (2008).

[218] Murder Victims' Families for Human Rights, *Creating More Victims* (2008).

[219] Immanuel Kant, *The Metaphysics of Morals* (1797).

personality and the potential for "post-traumatic growth," where individuals develop greater resilience, empathy, and appreciation for life after profound crisis. Sociology demonstrates that desistance from crime is a process, not an event, often catalyzed by the development of a new, prosocial identity—such as that of a "student," "worker," or "mentor."[220]

A "well-versed" punishment interacts with the offender's life narrative. It condemns the wrongful act in the strongest terms but never closes the book on the person. It creates a space for what philosopher Margaret Urban Walker calls "moral repair," a process that acknowledges the harm, demands accountability, and works to reknit the torn fabric of trust, both for the victim and the community.[221] The system's role is to be a stern but hopeful editor of this narrative, insisting that the worst chapter does not have to be the final one.[222]

Chapter 7: Proportionality Reimagined: Defining "Long Enough"

What constitutes a proportionate sentence for the most serious crimes like murder or aggravated assault? This is the most difficult question for any reformer. The proposed model argues that proportionality must be a balancing act between three scales: the gravity of the offense, the culpability of the offender, and their potential for reform.[223]

We propose that for even the most severe crimes, a period of 14-20 years in a high-security, program-focused facility represents a substantial and serious punishment that satisfies society's legitimate needs for condemnation, retribution, and incapacitation.[224]

- **The "Tariff Period":** This 14-to-20-year period is the retributive core of the sentence. It is long enough to constitute a severe deprivation of liberty, to acknowledge the profound harm to the victim and community, and to serve as a powerful societal repudiation of the crime.[225]
- **The Shift in Focus:** After this "tariff period" has been served, the primary focus of the state's interest must shift. The question is no longer "how much more pain do they deserve?" but "do they pose a demonstrable, unmanageable threat to public safety?" The system moves from a purely punitive mode to one of risk assessment and rehabilitation. This does not guarantee release; it guarantees a review. It replaces a presumption of permanent dangerousness with a presumption of the capacity for change, which the state can then rigorously test.[226]

This model honors proportionality by ensuring the punishment is severe and meaningful, yet finite. It deliberately stops short of total human destruction, recognizing that a sentence can be just without being eternal.[227]

Chapter 8: The Goal of Transformation: From Offender to Citizen

The ultimate, practical goal of the new system is to create a law-abiding citizen. This is not a "soft" or naive objective; it is the hardest and most pragmatic one. A system that successfully transforms

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[220] John Dewey, *Human Nature and Conduct* (1922).

[221] Margaret Urban Walker, *Moral Repair: Reconstructing Moral Relations After Wrongdoing* (2006).

[222] Id.

[223] Daniel S. Nagin, *Deterrence in the Twenty-First Century*, 42 Crime & Just. 199 (2013).

[224] Vera Inst. of Justice, *The Price of Prisons* (2012).

[225] Pew Charitable Trusts, supra note 39.

[226] Ashley Nellis, *The Meaning of Life: The Case for Abolishing Life Sentences* (2018).

[227] Howard Zehr, *The Little Book of Restorative Justice* (2015).

an offender into a peaceful, productive neighbour has achieved the highest possible return on public safety.[228]This requires a complete re-engineering of the correctional mission, measured by a new set of metrics. Success is not the number of years served or the severity of conditions, but the rate of successful reintegration and the reduction in recidivism.[229]

The core components of this transformative mission are:

- **Moral and Cognitive Rehabilitation:** Using programs like Cognitive Behavioral Therapy (CBT) to address the thinking errors and cognitive distortions that lead to criminal behavior.[230]
- **Empathy Development and Trauma Healing:** Facilitating victim-impact programming and providing trauma-informed care to address the wounds that many offenders carry, which often underlie their harmful actions.[231]
- **Human Capital Investment:** Providing robust education and high-demand vocational training that equips individuals with the tangible skills needed to secure legitimate employment upon release.[232]
- **Social Bond Forging:** Maintaining and strengthening ties to family and pro-social community networks, which are the strongest predictors of desistance from crime.[233]

The "restorative prison" is not an oxymoron; it is an institution whose culture, architecture, and daily operations are all oriented toward a single, unifying purpose: to send people back into society less broken, and more whole, than when they arrived.[234]

Part IV: A Practical Blueprint: Replacing Death and Perpetual Incarceration

Chapter 9: The Reviewable Sentence Model: A Framework for Hope and Accountability

This is the central policy mechanism for replacing LWOP and death sentences. The Reviewable Sentence Model replaces perpetual hopelessness with earned opportunity, all within a framework of rigorous accountability and public safety.[235]

The Resentencing and Risk Review Board After serving the "tariff period," every individual sentenced for a serious violent crime would appear before a specialized, independent board.[236]

Its composition is critical: judges, psychologists, victim advocates, criminologists, and former correctional officers. This multidisciplinary expertise ensures a holistic assessment.[237]The board's

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[228] Craig Haney, *The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment*, in *Prisoners Once Removed* (Jeremy Travis & Michelle Waul eds., 2003).

[229] National Institute of Justice, *Recidivism Patterns in the United States* (2020).

[230] Aaron T. Beck et al., *Cognitive Therapy and the Emotional Disorders* (1979).

[231] Judith Herman, *Trauma and Recovery* (1992).

[232] RAND Corporation, *Evaluating the Effectiveness of Correctional Education* (2013).

[233] Shadd Maruna, *Making Good: How Ex-Convicts Reform and Rebuild Their Lives* (2001).

[234] John Braithwaite, *Restorative Justice and Responsive Regulation* (2002).

[235] American Law Institute, *Model Penal Code: Sentencing* § 305.6 (2017).

[236] Justice Policy Institute, *Improving Parole Review Processes* (2019).

[237] Joan Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry* (2003). *le and Prisoner Reentry* (2003).

independence, with members serving fixed, staggered terms, is essential to insulate it from political pressure and the corrosive "tough on crime" rhetoric that has paralyzed parole systems.[238]

The Five-Pillar Assessment Framework

Release is never automatic. The board conducts a rigorous, evidence-based assessment based on five pillars:

1. **Demonstrated Rehabilitation:** Documented completion of educational, vocational, and therapeutic programs.[239]
2. **Conduct Record:** A sustained record of positive behaviour, particularly in the latter half of the sentence.[240]
3. **Robust Risk Assessment:** The use of validated, dynamic risk-assessment tools (e.g., the Level of Service Inventory-Revised) to evaluate current risk, not the risk posed decades prior.[241]
4. **Viable Release Plan:** A concrete plan for housing, employment, and community support.[242]
5. **Restorative Justice Engagement:** Where victims are willing, genuine participation in processes that allow the offender to confront the harm they caused.[243]

Graduated and Supervised Release

Successful applicants do not simply walk free. They enter a carefully managed, phased reintegration process: transfer to a lower-security facility, participation in work-release, a period of intensive community supervision, and finally, standard supervision. Violations can result in a return to a more secure phase. This graduated pathway manages public risk while providing the support necessary for long-term success, transforming the state's role from pure punisher to active facilitator of reintegration.[244]

Chapter 10: Restorative Justice: Healing the Wounds of Crime

For too long, the justice system has asked only two questions: "What law was broken?" and "Who deserves to be punished?" Restorative Justice (RJ) asks three different, more fundamental questions: "Who was harmed?" "What are their needs?" and "Whose obligations are these?"[245]

RJ is not a single program but a philosophy that brings those harmed by crime and those responsible for that harm into communication.[246] In facilitated dialogues, victims are given a voice to express the full impact of the crime, to ask questions that haunt them, and to participate in defining what repair should look like.[247]

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[238] Garland, *The Culture of Control* (2001).

[239] James Bonta & D.A. Andrews, *Risk-Need-Responsivity Model for Offender Rehabilitation* (2007).

[240] Correctional Service Canada, *Dynamic Security and Behavioral Change Reports* (2015).

[241] Andrews & Bonta, supra.

[242] Urban Institute, *Reentry Housing Options: The Policymakers' Guide* (2008).

[243] Zehr, *Changing Lenses: Restorative Justice for Our Times* (2015).

[244] Bureau of Justice Assistance, *Community Supervision Innovations* (2018).

[245] Howard Zehr, *The Little Book of Restorative Justice* (2015).

[246] Johnstone & Van Ness, *Handbook of Restorative Justice* (2007).

[247] Umbreit et al., *Victim-Offender Mediation Handbook* (1998).

Offenders are forced to confront the human consequences of their actions, moving beyond legal technicalities to a genuine understanding of the suffering they caused.[248]
For severe crimes, RJ is not a substitute for incarceration, but a powerful supplement. It can be integrated into the sentencing process, providing victims with a sense of agency and closure that a traditional trial denies. It can be a core component of the rehabilitation process during the tariff period, serving as a powerful catalyst for genuine transformation. By focusing on repairing harm rather than inflicting pain, RJ addresses the root needs of all parties and strengthens community bonds.

Chapter 11: Investing in Life: Correctional Education, Therapy, and Vocational Training

A transformative system requires transformative tools. The prison experience must be radically reoriented around programming that builds human capital and addresses the root causes of criminality. This is not a luxury; it is the core work of public safety.[249]

- **Cognitive Behavioral Therapy (CBT):** A gold-standard intervention for targeting the antisocial attitudes and impulsive decision-making that underlie criminal behavior.[250]
- **Substance Abuse Treatment:** Providing clinical treatment for addiction, which is a driver in a vast number of crimes, rather than using incarceration as a failed substitute.[251]
- **Robust Education:** Offering pathways from adult basic education to post-secondary degrees, dramatically reducing recidivism and increasing post-release employment.[252]
- **High-Demand Vocational Training:** Partnering with industry to provide certifications in fields like coding, green energy, healthcare, and skilled trades, ensuring individuals have a viable economic alternative to crime.[253]
- **Trauma-Informed Care:** Recognizing that many offenders are also victims of trauma and creating a institutional culture that seeks to heal rather than re-traumatize.[254]

This requires a parallel investment in staff training, transforming correctional officers from mere guards into security professionals and facilitators of rehabilitation. The prison environment itself must be redesigned to support calm, reflection, and personal growth, moving away from brutalist control architectures toward spaces that affirm human dignity.

Part V: The Path Forward: Policy, Practice, and Changing Perspectives

Chapter 12: Legislative and Judicial Reforms: Abolishing the Old, Enacting the New

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[248] Bazemore & Schiff, *Restorative Community Justice* (2001).

[249] Travis & Western, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Nat'l Acad. Press 2014).

[250] Beck et al., supra.

[251] National Institute on Drug Abuse, *Principles of Drug Addiction Treatment* (2018).

[252] RAND Corporation, supra.

[253] U.S. Dep't of Labor, *Pathways from Prison to Work* (2019).

[254] Herman, supra.

This chapter translates the blueprint into concrete policy actions. It proposes model legislation for a **"Second Look Sentencing Act"** that would establish the Reviewable Sentence Model as the law of the land,[255] applying retroactively to those already serving perpetual sentences. It outlines the simultaneous legislative abolition of the death penalty, arguing for its replacement with the maximum sentence of life with the possibility of review.[256]
It also discusses the powerful role of other actors in driving change:

- **Prosecutors:** Elected District Attorneys can use their discretionary power to decline to seek death or LWOP sentences, instead advocating for reviewable terms.
- **Judges:** Judges can use their sentencing discretion to impose maximum sentences that fall within the reviewable timeframe, and they can advocate for sentencing guideline reforms that cap maximum penalties.
- **Pardoning Power:** Governors and Presidents can use their clemency powers strategically to commute outdated LWOP and death sentences, creating momentum for broader legislative reform.

Chapter 13: Implementation and Practice: Building the Restorative Prison

Operationalizing this vision requires a phased, strategic implementation plan. This chapter addresses the practical challenges:[257]

- **Staff Training and Culture Shift:** A massive investment in re-training correctional staff is required, moving from a punitive "guard" mentality to a professional "correctional officer" role focused on dynamic security and rehabilitation.[258]
- **Protocol Development:** Creating the new risk-assessment protocols, resentencing board procedures, and graduated release pathways from the ground up.[259]
- **Pilot Programs and Phased Roll-Out:** The reform could begin with specific cohorts, such as those who have already served 20+ years or those who were under 25 at the time of their offense, to build evidence, public confidence, and institutional capacity.[260]
- **Managing Pushback:** Developing clear, evidence-based responses to political and public concerns, emphasizing the rigorous risk-assessment and public safety controls built into the model.[261]

Chapter 14: Changing the Public Narrative: From Fear to Hope

Lasting reform is impossible without a fundamental shift in the public story we tell about crime, punishment, and redemption. For decades, a "penal populism" driven by political fear-mongering and sensationalized media coverage has sustained the punitive paradigm.[262]
This chapter proposes a new communications strategy, rooted in shared values:

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[255] Second Look Act, S. 2146, 117th Cong. (2021).

[256] Innocence Project, *Death Penalty Reform Report* (2020).

[257] Bureau of Justice Assistance, *Implementation Framework for Correctional Reform* (2022).

[258] Id.

[259] Id.

[260] Justice Policy Institute, supra.

[261] Pew Charitable Trusts, *Public Opinion on Sentencing Reform* (2020).

[262] Garland, supra.

- **Public Safety:** Emphasizing that true safety is achieved by ensuring people who leave prison are peaceful neighbours, and that the reviewable model is the most rigorous way to ensure that.
- **Redemption and Second Chances:** Tapping into deep-seated American and religious values about forgiveness, growth, and the possibility of personal transformation.
- **Fiscal Responsibility:** Highlighting the staggering cost of perpetual punishment and presenting the new model as a smarter, more effective investment of public resources.
- **Victim-Centeredness:** Arguing that a system focused on repair and restitution can better serve victims' needs for answers, accountability, and healing than a system focused only on pain infliction.[263]

This narrative change will be driven by amplifying the voices of victims who support restorative approaches, sharing the stories of successfully transformed individuals, and relentlessly communicating the empirical evidence of what actually works to create a safer, more just society. The goal is to replace the politics of fear with a politics of hope and pragmatic wisdom.[264]

METHODOLOGY

This paper employs **Legal and Policy Analysis** methodological approach to construct a comprehensive critique of perpetual punishment and to develop a principled, practical alternative. The methodology is not based on new empirical data collection but on the systematic synthesis, analysis, and application of existing knowledge from a wide range of fields. The research design is structured to move from critical deconstruction to normative and practical reconstruction. This section transforms theoretical critique into a concrete plan for systemic overhaul, serving as a manual for replacing perpetual punishment with reviewable, transformative justice.[265]

1. Doctrinal Analysis: The Inconsistency of "Evolving Standards of Decency"

This chapter constructs a critical legal history of the Eighth Amendment, tracing its jurisprudence from foundational principles to modern applications. It rigorously assesses landmark cases like *Graham v. Florida*, 560 U.S. 48 (2010),[266]and *Miller v. Alabama*, 567 U.S. 460 (2012),[267] which recognized juveniles diminished culpability and capacity for change.These cases established that children are constitutionally different from adults for sentencing purposes. The analysis then highlights the Court's failure to extend this logic to adults, deconstructing the paradox of a "proportionality review" that permits sentences extinguishing any future potential for growth.[268]

2. Comparative Policy Analysis: Grounding Reform in Practice

Moving beyond theory, this section provides a nuanced evaluation of alternative models. It critically examines international systems like Norway's "normalcy principle" and Germany's

[263] National Reentry Resource Center, *Changing the Narrative of Crime and Punishment* (2021).

[264] Id.

[265] Rachel E. Barkow, *Sentencing and the Salience of Pain and Hope*, 115 Mich. L. Rev. 1195 (2017).

[266] *Graham v. Florida*, 560 U.S. 48 (2010).

[267] *Miller v. Alabama*, 567 U.S. 460 (2012).

[268] Ashley Nellis, *The Meaning of Life: The Case for Abolishing Life Sentences* (2018).

constitutional *Resozialisierung* (resocialization) mandate.[269]Domestically, it audits the successes and failures of parole in states like California and "second look"[270] statutes in jurisdictions like Washington, D.C.The goal is to provide a practical repository of proven strategies and pitfalls, demonstrating the viability of the proposed reforms.

3. Model Legislation: The "Second Look Sentencing Act" Blueprint

As the centerpiece, this chapter offers a fully articulated policy proposal. It details a "Second Look Sentencing Act" with specific statutory frameworks, including:

• An independent Resentencing and Risk Review Board, insulated from political pressure (*drawing on the structure of the U.S. Sentencing Commission, an independent agency within the judicial branch, to mitigate political influence*).

• Explicit, multi-factor Criteria for Review, using validated risk-assessment tools and documented rehabilitation.

• Structured Graduated Release Pathways from secure facilities to supervised reintegration.

The chapter includes extensive commentary addressing objections, fiscal analyses, and a phased implementation strategy, transforming the book into a toolkit for tangible change.[271]

Conclusion:
Justice as a Garden, not a Guillotine

The current system, with its reliance on the guillotine and the lifelong cell, is a monument to our failure of imagination. It is a system that can destroy but cannot build; that can punish but cannot heal. Looking "Beyond the Cell" is an act of moral courage and practical wisdom. The proposed model of reviewable sentences, restorative practices, and genuine rehabilitation is not a naive dream but a pragmatic, evidence-based path forward. It demands more from the state and from the offender. It is a system that understands justice not as the end of a story, but as a difficult, painful, yet hopeful chapter in the long narrative of a human life and a community's health. It is a system that seeks to be a garden where lives, once blighted, can be patiently and rigorously nurtured back to health, for the benefit of all.

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[269] John Pratt & Eric Kingston, *The Role of the "Normalcy Principle" in the Norwegian Penal System*, 16 Criminology & Crim. Just. (2016); Frieder Dünkel, *The "Resocialization" Mission of Prisons in Germany: Legal Framework and Correctional Reality*, in *Prisons and the Crime Problem* (2008).

[270] *See* David G. Robinson, *Second Look Sentencing: A Framework for Reconsidering Long-Term Prison Sentences*, **The Council on Criminal Justice** (2022) (analyzing emerging "second look" laws and their implementation).

[271] *Cf.* Emily Bazelon, *Charging Ahead: The Practical Challenges of Implementing Prosecutorial Reform*, 129 **Yale L.J.** (2020) (highlighting the critical importance of detailed implementation plans and cost-benefit analyses for successful criminal justice reform).

CHAPTER- 22

THE SUPREME COURT'S POWER UNDER ARTICLE 142 AND PRESIDENTIAL REFERENCES UNDER ARTICLE 143:A CONSTITUTIONAL PERSPECTIVE

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Abstract

The constitution of India under Article 142 grants the Supreme Court of India with broad inherent powers to do complete justice. Under Article 142(1),in the exercise of its jurisdiction, the Supreme Court is entitled to pass any decree ,or make any orders ,as is necessary for doing complete justice in any cause or matter pending before it. The Supreme Court of India is multi-jurisdiction Court and may be regarded as the most Powerful Apex Court in the world .The constitution confers very Broad Jurisdiction on the Court, this analysis is rooted in Article 142-the supreme Court's power to make any order necessary for doing complete justice in any case and Article 143 advisory jurisdiction of the Supreme Court in India. Article 143 empowers the President to seek the court's advice on legal matters. This analysis provides foundational facts for the study of supremacy of the Indian constitution with respect to independency and supremacy of judiciary and presidential power to seek advice from judiciary. This analysis aims to explore how these two Articles ,when combined proves significance of doctrine of separation of power in India. Absolute power corrupts absolutely ,and in a democratic framework which India follows ,it is of utmost importance where the supremacy of law and constitutionality resides under the organs of the state :legislature, Executives and Judiciary. These two articles define the power vested with the head of executives and the Supreme Court to analyse the doctrine of separation of power .This research analysis aims to find out the capacity of the supreme court to give direction to governor to grant assent to pending Bills on his table within three months which bounds the President to grant assent to any such Bill pending within the time prescribed by the Supreme Court and its legitimacy as the President has raised such question to the Supreme Court recently.

Key words: constitution ,article142 ,article 143, complete justice, statutory power, separation of power, supreme court etc.

Introduction

The Constitution of India ,through its unique architecture, entrusts the Supreme Court of India with significant powers to do complete justice and empowers it to do complete justice. Article 124 of the constitution of India established the Supreme Court of India as the pinnacle of the Indian judiciary .The Constitution has conferred various jurisdiction on the supreme court. They are as follows:Writ jurisdiction under article 32 for the enforcement of the fundamental rights.Original jurisdiction under article 131. Appellate jurisdiction under article 132,133,134.Jurisdiction to grant special leave under article 136, Jurisdiction under article 137 to review any judgment pronounced by it or made by it. Advisory jurisdiction under article 143. Jurisdiction under article 317(1)to hold enquiry and to report to the President for the removal of the chairman or the member of public service commissions.(1) 1 Article 143 empowers the President to seek the court's advice on legal matters. These two articles represent the breadth of judicial and executive interaction and discretion, and analyse the scope of the doctrine of separation of powers to assess the significance of coordination between the judiciary and the executive while dealing with matters affecting the

public at large. The supreme court of India to do complete justice in any proceeding pending in the court and would cover almost every kind of proceeding in the Court including civil or criminal.[2]The constitution confers very Broad Jurisdiction on the Court, this analysis is rooted in Article 142-the supreme Court's power to make any order necessary for doing complete justice in any case and Article 143 advisory jurisdiction of the Supreme Court in India.1 when required not only could the High Court or Apex Court direct the Investigating Agencies to conduct the investigation in a fair and unbiased manner ,but that in exercise of its powers Article 142 of the Constitution ,the Supreme Court could also issue direction for enforcement of fundamental rights and to ensure that complete justice was done too the parties.[3] The Power of president to consult Supreme Court under Article 143 ,if at any time it appears to the President that a question of law or fact has arisen or likely to arise or which of such a nature and such public importance that it is expedient to obtain the opinion of the Supreme Court upon it , he may refer the question to the Court for consideration and the Court may ,after such hearing as it thinks fit , report to the President its opinion thereby. The interface between the advisory opinions, provided for **by** Article 143(1) of the Constitution of India, and the power of the Supreme Court to issue directions for enforcement of fundamental rights and to ensure complete justice.[3]. The present paper investigates the parameters of the advisory opinion provided by Article 143(1) *vis- a -vis* the power of Supreme Court to deliver complete justice as set out by Article 142 of the constitution of India is explored.The author will consider in later cases the supreme court's direction to the President where A Bench of Justices J.B.Pardiwala and R. Mahadevan declared that the President ought to, as a measure of prudence, seek the Supreme Court's advice on Bills reserved by a Governor for her consideration on grounds of perceived unconstitutionality.[4]

Legislation:

The constitution of India.

The constitution of India, under Article 142, it was ruled that this provision contained no limitation regarding the causes or the circumstances in which the power could be exercised not did it lay down any condition to be satisfied before such paper was exercised. There cannot be any defined parameters, within the framework whereof, this court would exercise jurisdiction under Article 142. The complexity of administration, and of human affairs, would give room for the exercise of the power vested in this court under Article 142, in a situation, where clear injustice appears to have been caused, to any party to a lis. The court is vested with extraordinary jurisdiction to do complete justice in any cause or matter. [5]

Enforcement of decrees and orders of Supreme Court and unless as to discovery, etc. (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as Is.necessary for doing complete justice in any cause or matter pending before it, and any decree so passed, or orders so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe. Thus, article 142 vests the Supreme Court of India with a repository of discretionary power.

1. 1]https://www.jstor.org/stable/43953825,Journal of the Indian Law Institute Vol. 42, No. 2/4, Constitutional Law Special Issue (April-December 2000), pp. 45 Published By: Indian Law Institute
2. M.P . Jain , Indian Constitutional Law ,Eighth Edition, Lexis Nexus ,2018 P.P. 278
3. C. K. Takwani ,Textbook on Constitutional law of India),Third edition 2021, Whytes &Co.pp:658
4. The Hindu,Supreme Court puts President on a deadline, says prudent to consult apex court before taking a
5. call on State Bills,April 13,2025)
6. 2022 IJNRD | Volume 7, Issue 9 September 2022 | ISSN: 2456-4184 | IJNRD.ORG

Article 142 of the Constitution of India reads:

That can be wielded in appropriate circumstances to deliver 'complete justice' in a given case. It is pertinent to mention here that no other constitution in the world contains similar provisions except for two very recent constitutions, that is, Bangladesh (article 104)2 and Nepal (article 88[2]),3 both of which seem to have borrowed the provisions from the Constitution of India.[6] According to article 143, if at any time, it appears to the president that a question of law Fact has arisen and or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to the court for consideration and the court may after such hearing added report to the President Its opinion thereon.[7]

The word 'may' indicates that the Supreme Court is not bound to express its opinion on the question referred to it by the President. In Dr .M. Ismail Faruqui v union of India,[8] the Supreme Court has made it clear that it can decline to answer the question referred to it under article 143, class one. The Supreme Court in a proper case for good reason declined to express its opinion on the question referred to it , Kerala Education Bill,In re ,AIR 1958 SC 956, it is incapable of being answered,Special Courts Bill .In re ,AIR 1979 SC 478 ,it is hypothetical or speculative .

Supreme Courts Power Under Article 142

If there is one article of the Constitution which has been the focus of attention within the legal community in recent years ,it is Article142.this provision of the constitution is being increasingly resorted to by he apex court in all matters before it, where there is a need for judicial activism.Though one can not object to the use of a power granted by the constitution, one is really surprised that this article has neither attracted views of legal scholars in recent times ,nor did it provoke any great debate in the Constitutional Assembly.[9] Interestingly ,a factor to note is that the number of times this article has been resorted to in the late eighties and the nineties is more than in the entire period from 1950 to the early 1980's.[1o]It is this trend which provokes one to probe into Article 142.A bare reading of Article 142(1)does not lead to a co conclusive proposition. The keywords inclause (1)are:"… Main Pass such degree or make such order for doing complete justice inany cause or matter pending before it…"if one construes these words in isolation, the effect is enormous, perhaps to the extent where other repositories of judicial power under the constitution are rendered unnecessary. Even question the necessity for order to do complete justice in exercise of its power under article 142, there would be any need to supplement article 142 with a provision prescribing the jurisdiction of the court and then the power under article 142 would become coextensive with our even greater than that under article 32.[11]

6]https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3745593,
7]C. K.Takwani ,Textbook on Constitutional law of India),Third edition 2021, Whytes &Co.pp:660
8](1994) 6 SCC 360
9]Draft Article 118(Article 142)was accepted without debate and adopted by the Assembly on 27th May 1949. 4
10]]Between 1950 and 1985 there were around 15 reported decisions where Article 142 has been resorted to.In contrast ,in the post-1985 era already as many as 50 reported decisions where Article 142 has been used.
11] National law, School of India, review volume seven, issue 1 article 13, Supreme Court, complete justice, and article 142 scope for unlimited judicial action, Harish BN, Protima Pandey.

The Supreme Court in state *of Punjab v. Rajesh Syal ,*[12] has held that the court has jurisdiction to pass order under article 142(1) which are necessary for doing complete justice in the case, but even while exercising set power, it is more than doubtful that the order cannot be contrary to law.
The Supreme Court in *E.S.P. Rajaram v. Union of India,[*13] has made it clear that the decision branded by invoking power under Article 142 to do complete justice cannot be assigned on the ground that the affected person was not a part of it. This is given by invoking Article 142 that applies even to non-parties.
In *Mohammad Anis v.Union of India ,[14]*the Supreme Court held that the power under Article 142 is very wide and cannot be limited even by a statutory provision .The Court was merely reiterating the dicta of two earlier constitutional bench decisions.[15] It is to be noted that the power to do complete justice has been conferred on the Supreme Court of India and not on the High Court.[16]

The power of the Supreme court to ‘do complete justice ’is back in the limelight after its recent judgement on the Tamil Nadu Governors holding the Bills.

In its April 8 judgment in State of Tamil Nadu v The Governor of Tamil Nadu, the Supreme Court invoked Article 142 to grant deemed assent to bills that had been pending with the Governor R.N. Ravi.The verdict, delivered by Justice JB Pardiwala and Justice R Mahadevan, came in response to a writ petition filed by the Tamil Nadu government challenging the Governor’s prolonged inaction on important bills.
The case stemmed from a prolonged standoff between the DMK-led Tamil Nadu government and Governor R.N.Ravi. Between November 2020 and April 2023, the state legislature passed 13 bills, of which 10 were either withheld or sent back to the Assembly by the Governor without any communication. When the legislature re-approved the bills without any material changes, Governor Ravi still did not assent to the bills; reserving them for the President’s consideration, which the court found unconstitutional. [17] This has, once again, opened up a debate on the nature and scope of this constitutional provision, which allows the top court to “pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it.” In a speech delivered to a batch of Rajya Sabha interns recently, Vice President Jagdeep Dhankar referred to the provision as a “nuclear missile against democratic forces available to the judiciary 24×7.”
While the Judgement has been hailed for ensuring—by laying down strict timelines for gubernatorial and presidential assent—accountability, its remedy of ‘deemed assent ’under Article 142 has led to concerns around the Court entering uncharted territory, with implications on law-making and separation of powers.
Article 142 and the scope for enforcement For a direction under Article 142 to be effective, there needs to be an implementation

12] AIR 2002 SC 3687
13] AIR 2001 SC 581
14](1991) support. (1) SCC 145
15]Delhi judicial Association v. State of Gujarat,(1991)4 SCC 406.
16]C.M.Singh v. H.P. Krishi Vishwavidalaya ,AIR 2OOO SC3686.
17]https://www.newindianexpress.com/nation/2025/Apr/14/explainer-supreme-court-landmark-ruling-on-governor-vs-state 5

mechanism. In ***Pravasi bhalai sanghathan v. Union of India*** (2014), the petitioner sought directions to prevent hate speeches. The Court noted that, in the case of hate speech, statutes provided sufficient remedy. While acknowledging that the "root of the problem is not the absence of laws but rather a lack of their effective execution", it refused to entertain the petition which was "calling for issuing certain directions which are incapable of enforcement/ execution." Seen in the light of these cases, perhaps it is an exaggeration to say that the Court's use of Article 142 in the State of Tamil Nadu case was uncharted, unprecedented or inexplicable. The Court's decision is consistent with past practice, considering that there is no statutory provision that is in conflict with its findings—both on "deemed assent" and the timeline it prescribed for the Governor and President to assent to and opine on state laws. It would not be a stretch to say that the Judgement will constitute a key precedent in other instances involving the exercise of pocket veto by the Union Government and its representatives.

The habit that immediately comes to mind is the executive's inclination to sit on Collegium recommendations for the appointment and transfer of judges in the higher judiciary.[18]

Article 200

Article 200 provides that when a Bill passed by the State Legislature, is presented to theGovernor, the Governor shall declare—

(a) that he assents to the Bill; or

(b) (b) that he withholds assent therefrom; or

(c) that he reserves the Bill for the President's consideration; or

(d) the Governor may, as soon as possible, return the Bill (other than a Money Bill) with a message for re-consideration by the State Legislature. But, if the Bill is again passed by the Legislature with or without amendment, the Governor shall not withhold assent therefrom (First Proviso); or

(e) if in the opinion of the Governor, the Bill, if it became law, would so derogate from the powers Of the High Court as to endanger its constitutional position, he shall not assent to but shall reserve it for the consideration of the President (Second Proviso).

If the Governor reserves a Bill for President's consideration, the enactment of the Bill then depends on the assent or refusal of assent by the President. In the case of a reserved Bill, the President shall, under Article 201—, either declare his assent or withhold his assent thereto. Instead of following either of these courses, the President may (if the Bill is nota Money Bill) direct2 the Governor to return the Bill together with a message to the State Legislature for reconsideration. The State Legislature shall then reconsider the Bill within 6 months of its receipt and, if it is again passed, it shall be presented again to the President for his consideration. In contrast with the power of the Governor regarding a reconsidered Bill, it is not obligatory for the President to give his assent to reconsidered Bill.[19]

18]SSO ,supreme court Observer,Analysis ,Has the Supreme Court been trigger -happy with Article 142? V.Venkaesh / 6 21st Apr 2025.

19] https://indianexpress.com/article/explained/explained-law/14-questions-president-murmu-asked-supreme-court-10008583/

On 14th May 2025,Exercising powers vested upon her under Article 143(1), President Draupadi Murmu has made a 14-point reference to the SC for its consideration and opinion. Here are the 14 questions she has asked,President Droupadi Murmu's letter to the Supreme Court states that Articles 200 and 201 of the Constitution "(do not) stipulate any time frame" for a Governor or the President to act on bills passed by state Assemblies, and that "the concept of deemed assent", as introduced in the apex court's landmark April 8 decision, "is alien to the constitutional scheme and fundamentally circumscribes the power of the President and the Governor".[20]
President Droupadi Murmu has exercised a rare constitutional provision and sought the Supreme Court's advisory opinion on 14 questions to settle the law on whether the president and governors need to follow timelines to decide on state bills referred for consent when the Constitution does not prescribe it. The reference sought by the President from the Supreme Court has come in the context of a decision of the top court on April 8 which set timelines for the Governor and President to act on bills sent for their consent by state governments. As the issue of delay by governor on bills referred by state governments are under challenge in separate petitions filed by Kerala government and in the past have been raised by states of Telangana and Punjab as well, the reference to be decided by the top court assumes significance.[21]

Conclusion and suggestion

The question before the court involved the power of governor and procedure to be followed to grant consent under Article 200 of Constitution and the power of President to act on a reference by governor under Article 201. In its final judgment of 415 pages, the top court held the action of the governor to withhold consent to be illegal and erroneous and using its power under Article 142 of the Constitution, held "deemed" assent to the 10 bills, without sending the matter back to the governor. It further provided timelines that if a governor withholds assent or reserves a bill for the President's consideration, it must be done within three months of its presentation a governor must grant assent "forthwith" or within a month if a state legislature re-enacts an identical bill.
The question before the court involved the power of governor and procedure to be followed to grant consent under Article 200 of Constitution and the power of President to act on a reference by governor under Article 201.The Supreme Court utilised its power as conferred upon it under Article 142(1) to direct the Governor to get assent for Pending Bills within three months when there is no time limit prescribed under constitution and for the first time the President raised 14 questions before the Supreme Court Broadly, the Presidential Reference has asked if judicial orders can dictate by what time, and how the President and Governors should function under Articles 200 (the provision which covers the process of grant of assent by Governors to State Bills) and 201 (when Bills are reserved by Governors for Presidential assent) of the Constitution.

19]https://indianexpress.com/article/explained/explained-law/14-questions-president-murmu-asked-supreme-court-10008583/
20]https://interstatecouncil.gov.in/wp-content/uploads/2015/06/CHAPTERV.pdf

In the absence of any constitutionally prescribed time limit or manner of exercise of powers by a Governor, can time limits be imposed and manner of exercise of powers be prescribed through judicial orders? Can judicial orders impose timelines and manner of exercise of powers by the President under Article 201," the Presidential Reference asked. This conflict between the Apex Court and The President has proved the signifence of Judicial activism in matters dealing with public at large .

The constitution provisions under Article 142(1) ensure the complete justice to the public at large is clearly visible in the recent judgment by the supreme court and it is utmost important to note that a governor is not supposed to withheld the Bills for indefinite time causing unreasonable delay .when it comes to advisory right of the President the Supreme Court is not bound to express its opinion on the question referred to it by the President .which indicates that the supreme Court is an independent organ of the state ,indicating the separation of power ,as answering to these questions raised by the President will create room for legislative interruption in judicial matters.

21]https://www.hindustantimes.com/india-news/14-questions-president-murmu-asked-supreme-court-on-timelines-for- clearing-bills-101747289535317.html

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THE END

Thank you for reading this book. We hope it provided valuable insights and sparked meaningful reflections. For any kind of publication inquiries, collaborations, or contributions, please contact:

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