

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 8 | Issue 2

2025

© 2025 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of any **suggestions or complaints**, kindly contact support@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Punishment: Critical Criminal Law Analysis

SHAGUN SRIVASTAVA¹ AND ADARSH SINGH²

ABSTRACT

This paper critically examines India's criminal justice system—its historical roots, philosophical foundations, evolution, current challenges, and public perceptions. It explores the influence of ancient texts and thinkers on modern law, highlights systemic issues like prison overcrowding, and uses questionnaire survey data to reveal the sociocultural context of punishment. By linking history with present realities, the study aims to inform reforms for a more just and humane legal system.

Keywords: Indian criminal system, punishment, challenges, public perspective, reform.

I. INTRODUCTION

In many faiths, God, the highest authority who upholds justice, is seen to send people to hell as the ultimate form of punishment. This suggests that a greater power, existing outside of human legal or social structures, is believed to be the starting point of the framework for justice and punishment.

The concept of punishment has evolved from an ancient theory of harsh Danda to the equitable and human-rights-centric punishments in modern India. The judiciary frequently aims to find a middle way between punishing offenders and providing justice for victims without inflicting excessive harm on society or infringing upon fundamental rights. Amidst this evolution, numerous changes took place in the form of elimination, introduction, modification, etc, in the criminal law and its enforcement. Therefore, it seems necessary to continuously examine and keep a check and balance at the same pace with the changes in society as well as in laws.

II. HISTORICAL CONTEXT

Etymological Roots of the word -



¹ Author is a Student at Amity University Lucknow Campus, India.

² Author is an Assistant Professor at Amity University Lucknow Campus, India.

The Garuda Purana, a revered Sanskrit Hindu scripture with about 19,000 verses, is presented as lessons from Lord Vishnu to Garuda. Written around 800-1000 CE, it lists crimes and their often severe, cruel punishments, considered by some to be at odds with civilized norms.

The widely recognised Arthashastra of Kautilya also contains a series of mutilations that involve cutting different body parts and are prescribed for a number of sins as a form of punishment- ³-

“cutting ears and nose of an adulterous woman and for aiding a thief or an adulterer;

cutting the thumb and middle finger for pickpocketing (first offense);

cutting all five fingers for pickpocketing (second offense);

Cutting one foot for stealing a cart, boat, or small animal;

thief, changing a royal edict, kidnapping a girl, and selling forbidden meat.”

A. RATIONALE JUSTIFICATION OF PUNISHMENT

According to Peter Berger (1969) and Berger and Luckmann (1967), humans are special because of their "unfinished character of the human organism," which is an imperfectly formed genetic world for coping with their experiences and surroundings. To relate to themselves and their surroundings, humans must create symbolic worlds. Society—non-material culture shaping human interactions—is central to these worlds. Unlike genetically formed systems, human-made worlds are unstable and must be internalised and accepted by individuals, highlighting the need to legitimise social structures, laws, and cultural norms. Hence, we can understand that –

➤ A long-term and Evident Deterrent –

This reinforces the notion that individuals learn from negative sensory experiences. Physical punishments like incarceration deter harmful behavior and help maintain social order by restraining offenders. They also serve retribution, making criminals "pay" for their actions and restoring justice. Harsh penalties, such as mutilation, deter both the offender and others, with severity often seen as key to effectiveness in preventing future crimes.

➤ The human body as the primary link to the world at large -

Despite our "unfinished genetic world," the human body remains the primary medium for experience, making it a key target for punishment. Pain links wrongdoing to negative

³ Penance and Punishment: Marking the Body in Criminal Law and Social Ideology of Ancient India, The Journal of Hindu Studies, Volume 4, Issue 1,

outcomes, tapping into the human instinct to avoid suffering. Early punishments like branding and mutilation used this to deter crime through visible, lasting reminders of social consequences.

➤ **The Use of Punishment in Social Conditioning –**

Physical punishment powerfully reminds people of inappropriate behavior and its consequences. As people learn societal laws, this reinforces social norms and boundaries within the group, influencing their "unfinished" development. Physical punishment is a potent nonverbal way to convey the seriousness of violating social norms.

B. INTERPRETATIONS

Having undergone the historical position of penal punishments, a critical juxtaposition with the contemporary legislation and judicial developments in India exposes several significant conceptual and structural contradictions, which are follows:-

- **Ancient King vs. Modern Legislature in Imposing Punishment**

In India, punishment has shifted from the king's sole authority to the legislature's shared power. Historically, the king, considered divinely appointed to uphold Dharma, directly administered justice. Though legal texts like the Manusmriti and Arthashastra existed, the king's wisdom and circumstances influenced their application. As the most righteous person, the king's decisions were often final and uncontested, with a moral duty to punish deviations from Dharma. This concentration of power carried the risk of tyranny, with the king's feelings and political aims potentially influencing punishment. Limited accountability meant unfair or excessive punishment was hard to prevent. Justice was uneven, affected by the king, advisors, and social status. Legal application lacked consistency. Changes in the monarchy could alter legal interpretation and punishment severity, leading to instability.

To address the flaws of monarchical regimes, modern governance emphasizes accountability and power separation. In India, the principle of separation of powers assigns law-making to the legislature (Parliament and State Assemblies), implementation to the executive, and interpretation to an independent judiciary. Legislators, elected by the people, enact laws—including those defining crimes and punishments—through a democratic process. These laws are publicly accessible and applied fairly by the judiciary, which ensures due process and protects the rights of the accused. Rooted in popular sovereignty, this system reflects the collective will of the people, aligning with social contract theory. Punishment serves aims like deterrence, rehabilitation, and justice, while upholding equality and human dignity.

- Ancient Inhumane v contemporary humanized approach

The evolution of punishment in India has been shaped by socio-political, philosophical, and legal changes, moving from the harsh, physical penalties of ancient times, like those in Manu's code, to a more humane, rights-based modern approach. Retributive justice was evident in punishments like amputating the limb used in a crime, symbolizing bodily payment for wrongdoing. These severe penalties primarily aimed at deterrence, as seen in the Quran, where disfigurement served as both warning and punishment. Repeated offences led to harsher consequences—loss of fingers, then limbs, and ultimately execution—emphasizing incapacitation and societal exclusion. The visible impairments acted as lasting reminders of crime's consequences and reflected a strong stance against recidivism.

The 1950 Indian Constitution guarantees fundamental rights to protect against arbitrary and cruel treatment, with Articles 14 and 21 ensuring fair and just criminal processes. The newly enacted Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA) replace older criminal laws, promoting a more humane approach to punishment. The BNS introduces community service for minor offences, reflecting reformatory justice by focusing on rehabilitation over imprisonment, especially for first-time offenders. The BNSS aims to expedite trials, use technology for evidence, and reduce pre-trial detention, making the system more efficient and humane..

C. MAXIM

fiat justitia ruat caelum - let justice be done though the heavens fall⁴

fiat justitia pereat mundus - let justice be done though the world perishes

fiat justitia ne pereat mundus - let the justice be done in order that the heavens may not fall

- The phrase "Fiat Justitia Ruat Caelum" embodies an absolutist conception of justice. Despite potential negative outcomes, justice is a fundamental moral duty. In criminal law, this means a guilty person must receive appropriate punishment, regardless of social, political, or personal consequences, emphasizing strict law enforcement and the moral necessity of penalizing wrongdoing.
- A much more extreme form of the first maxim is "Fiat Justitia Pereat Mundus". The principle implies that justice must be pursued, even at the cost of the world's end. In criminal law, it reflects a strict resolve to punish all offenders, even if it risks societal

⁴ Merriam-Webster.com Dictionary defines the maxim as let justice be done though the heavens fall.

collapse. However, applying **Fiat Justitia Pereat Mundus** is difficult in practice, as legal systems aim to preserve society.

- A different, more practical perspective is provided by the “*Fiat Justitia Ne Pereat Mundus*” maxim. It implies that justice is essential to prevent society’s collapse, making it vital for survival and well-being. In criminal law, punishment should uphold order, deter crime, and rehabilitate offenders to support a stable society, with the goal of preserving and strengthening it through a just legal system.

Implementation of Punishment in India - based on the maxim

This study examines the shift in India’s criminal law from harsh punishments to a balanced approach that maintains social order. While ensuring accountability (“*fiat justitia*”) is vital, it is moderated by due process, human rights, and societal impact, with the judiciary aiming for justice without excessive harm. The criminal justice system in India is becoming more and more aware of the negative impacts that excessively harsh and severe penalties have on both individuals and society at large. This comprehension is the result of several factors:

- While India lacks rigid sentencing guidelines, judicial precedents ensure appropriate sentencing. The Supreme Court has stressed balancing the interests of victims, offenders, and society. In *Bachchan Singh v. State of Punjab* (1980), the “rarest of rare” doctrine for the death penalty highlighted the need for proportionality, even in the harshest punishments.
- Plea bargaining, introduced in 2006, allows the accused to negotiate a reduced sentence in exchange for a guilty plea in non-serious cases. Though its scope is limited, it helps expedite cases that would otherwise face lengthy trials.
- India's increasing awareness of the limitations of strictly punitive measures is reflected in the new *Bharatiya Nyaya Sanhita* (BNS), which introduced 'community service as a form of punishment. This approach is in direct accordance with the principle of “*fiat justitia ne pereat mundus*” (let justice be done lest the world perish).

III. THEORIES OF PUNISHMENT

A. DETERRENT THEORY

‘Consequently, the goal of punishment is to stop the offender from causing more harm to society and to stop others from committing the same crime.’

- Cesare Beccaria, *On Crimes and Punishment*

According to the deterrence theory of punishment, the existence of criminal penalties is required or warranted since they serve to discourage criminal activity.

This straightforward explanation highlights two key presumptions of the deterrence theory:

- (1) Punishment is meant to provide prospective perpetrators a reason not to commit a crime; and
 - (2) prospective criminals are rational beings capable of considering the likely consequences of their conduct.
- The Assumption of Disincentive—Punishment Aims to Give Reasons Against Criminal Offence
 - The Assumption of Capacity—Potential Offenders Are Rational Agents

REFORMATIVE THEORY

The utilitarian theory sees punishment as a means of deterrence and reform, with prisons aiming to rehabilitate rather than retaliate. Criminologists and psychologists support the reformative theory, viewing crime as a result of mental or physiological disorders. Therefore, offenders should receive medical or educational treatment, though some crimes involve deliberate moral violations.

RETRIBUTIVE THEORY

As explained by Didier Fassin⁵:

"The word "retribution" has Latin roots. The prefix re-, meaning "in return," and tribuere, which means "to divide among tribes," combine to form the word retribuere .

Desert- According to its etymology, the English word "desert" is a variation of the ancient French phrase "deservir," which means "deserve." Therefore, retributivists' main focus is on what a criminal meritoriously deserves for his transgression. In a different way, "the retributivists strives for, not primarily for socially acceptable punishment, but for just and fair punishment, the penalty that the offender (given his wrong-doing) deserves on merits, the punishment that the society has a right to put and the criminal a right to claim."⁶

IV. TYPES OF PUNISHMENT IN INDIAN STATUTES

Section 4 BNS⁷: The punishments to which offenders are liable under the provisions of this

⁵ Didier Fassin (2018: 47)

⁶ Murphy and J.Coleman, *Philosophy of Law* 121 (1997).

⁷ Section 4 of BNS is part of CHAPTER II OF PUNISHMENTS in Bharatiya Nyaya Sanhita 2023 Act.

Sanhita are:

- ❖ Death;
- ❖ Imprisonment for life, that is to say, imprisonment for the remainder of a person's natural life;
- ❖ Imprisonment, which is of two descriptions, namely:
 - Rigorous, that is, with hard labour;
 - Simple;
- ❖ Forfeiture of property;
- ❖ Fine;
- ❖ Community Service

FINE

The most usual type of punishment meted out by criminal justice systems worldwide is monetary sanction. Despite their common use for offenses from traffic violations to serious crimes, monetary punishments receive limited focus in criminological research. In the criminal justice system, they serve symbolic and functional roles, including funding, restitution, deterrence, and retribution.

Limitations of fines as punishment

Inequitable Impact and Socioeconomic Disparity: This is maybe the biggest obstacle. People with diverse financial capacity get quite different outcomes from a fixed fine amount.

Deterrent Effectiveness Vary: Not all sorts of criminals and offences are equally deterred by fines.

- Like for White-Collar Crimes: If the possible gains surpass the fine, a fine may be viewed as a "cost of doing business" by firms or rich individuals engaged in economic offences, and it may not be sufficient to prevent future criminal activity.
- Calculating the Fine amount: It might be difficult to develop a fair and uniform process for figuring out the right fine amount for various offences and offenders. Things to Take Into Account include the seriousness of the offence, the offender's financial situation, the possibility of victim recompense, and the demand for discouragement must all be balanced by the courts. Inconsistencies in the sentence may result from unclear criteria.

Significant changes were made in BNS

- Raising of fines: The amount of fines for a variety of offences has been greatly raised by the new Bharatiya Nyaya Sanhita (BNS). The fine amount has increased for at least 83 crimes.
- Obligatory Minimum Punishment with Fines: The BNS has implemented obligatory minimum punishments for 23 offences.
- Fines for New Offences: One of the possible penalties for the recently added offences under the BNS is a fine.

COMMUNITY SERVICE

The Indian Jail Committee's 1980–83 report⁸ emphasised the shortcomings of incarceration sentences and suggested substituting them with community service. Additionally, the Malimath Committee Report⁹ and the Law Commission's 156th report¹⁰ both suggested community service be implemented; however, these recommendations were never enacted.

The Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS") defines community service as "the work which the Court may order a convict to perform as a form of punishment that benefits the community, for which he shall not be entitled to any remuneration. Nevertheless, Several obstacles might prevent it from being implemented successfully and having the desired effect:

- Lack of Implementation Resources
- Judicial Hesitancy and Ignorance
- Possibility of Exploitation
- Absence of a Well-developed Infrastructure and extensive Guidelines
- Monitoring and Supervision
- Standardised Procedures

⁸ A.N. Mulla led the All India Committee on Jail Reforms, 1980–83, which is often referred to as the Mulla Committee. Following thorough examinations into a number of prison management-related topics, the report (volume 1)—a landmark piece of prison reform—was submitted in 1983.

⁹ The Ministry of Home Affairs formed the Malimath Committee in 2000 with the goal of reforming the criminal system of the nation. The 'Report of the Committee on Reforms of the Criminal Justice System', which was published in 2003, contained its recommendations. but nothing was done.

¹⁰ In addition to other possibilities like compensation or exclusion from office, the Law Commission's 156th report, which was issued in 1997, suggested that community service be added to the IPC as a form of punishment. For some offences, especially minor ones, community service may be a good substitute for jail time, according to the research.

IMPRISONMENT

Imprisonment, a key form of punishment in Indian criminal law, involves restricting a convict's liberty through confinement. Though widely used, numerous scholarly reports and legal reviews have consistently highlighted the harsh and often harmful conditions in Indian prisons.

The 'India Justice Report 2025'¹¹ is the most recent or latest thorough research that offers significant insights(revelations) into the condition of Indian jails. These include –

- ✓ 34 Prisons that consistently recorded 250% and more occupancy rates between 2020 and 2022.

(Uttar Pradesh alone has 18 such prisons.)

- ✓ 76% of people in jail are awaiting completion of their trials.

(With the exception Madhya Pradesh, the undertrial population of all states exceeds 60%. Delhi has over 90% undertrial priosners.)

- ✓ Over half of India's prisons are overcrowded, with 176 of them housing four times the number of inmates they were sanctioned to hold.

(Two prisons in Delhi's Tihar Jail have 400% occupancy.)

- ✓ An increase in the budget allocation for prisons and prisoners by 156% and 192%, respectively, in the past decade.

(The per-day expenditure on a prisoner has increased from Rs 62 per day to Rs 121 per day, a 96% rise.)

- ✓ The available capacity of Indian prisons has increased by 27% from 2012 to 2022.

But IJR 2025 also mentioned certain possible and forward-looking methods that could in some way lessen the prison burden in india , which include most importantly –

Open prison

Open prisons are frequently brought up as a welcoming solution that tends to promote rehabilitation and as a way to declutter prisons. The approach, which is built on trust, seeks to promote self-control so that inmates can acquire the skills they need to function in society after release . The Supreme Court noted in 2024 that this might be a way to address overpopulation in prison. There are 91 open prisons in 17 states, the most of which are in Rajasthan (41).

Inmates who have completed the required minimum sentence and exhibited "good behaviour"

¹¹ The India Justice Report (IJR) 2025 is India's first and only comprehensive quantitative index which uses government data to rank the capacity of 'pillars' of the formal justice system.

are eligible for transfer to open prisons.¹²

CAPITAL PUNISHMENT

Holmes had used to illustrate his idea of punishing the convicts :

*“The world has produced the rattlesnake as well as me; but I kill it if I get a chance, as also mosquitos, cockroaches, murderers, and flies. My only judgment is that they are incongruous with the world I want; the kind of world we all try to make according to our power.”*¹³

However, this statement undergoes a tough critical analysis and scholars and researchers weaken this idea of Holmes by stating that –

- Utilitarian philosophy: Holme’s assertion strongly supports a utilitarian philosophy, in which conduct and behaviors are evaluated according to their effects on reaching a desired goal (in this case, a world free of these "incongruous" aspects). The murderer, the rattlesnake, or even the mosquito are valued in relation to their alleged detrimental effects on the ideal world.
- Subjectiveness: "Incongruous" is the critical word. What is considered incongruous by one individual or community can differ significantly. This presents moral dilemmas regarding whose worldview is dominant and what constitutes a valid reason to eradicate things that don't align with that perspective/view.
- Dehumanizing idea : Holmes carries the risk of dehumanising criminals by putting them next to insects and mosquitoes. This may have an impact on how society perceives and handles offenders, possibly emphasising eradication over rehabilitation or an awareness of the nuanced factors that contribute to criminal behaviour.
- Power play : The expression "according to our power" emphasises how power shapes the world. More powerful people are better able to determine what is "incongruous" and to act on that determination. Groups that are unable to determine their own position in the world may become marginalised and subjected to oppression as a result.
- Oversimplifying the Complex Issues: It oversimplifies the social and ethical aspects of human behaviour and the legal system to compare the complex motivations underlying murder with a rattlesnake's innate impulse to damage/harm.

Saam, Daam, Dand, Bhed

An historic Indian political and strategic concept known as "Saam, Daam, Dand, Bhed"

¹² Ministry of Home Affairs, Government of India, Model Prison Manual, 2016, Chapter XXIII. Available at: <https://www.mha.gov.in/sites/default/files/PrisonManual2016.pdf>

¹³ Id at 404.

describes four methods for handling enemies/wrongdoers or accomplishing goals.

An explanation of each term and how it relates to Indian criminal law is provided below:

- According to **Saam**, this means "conciliation," "persuasion," or "negotiation." It entails resolving disputes or achieving desired results using diplomatic and nonviolent ways.

Relevance to Punishment is how Saam appears in the following criminal law contexts:

Plea bargaining : Plea bargaining is the practice of persuading the defendant to confess to the crime as a bargain for a lighter punishment, possibly preventing a complicated and hostile trial.

Compoundable nature of offences : By putting an emphasis on resolution and reconciliation over harsh penalty, this exemplifies the "Saam" suitably.

- According to **Daam**, this is "inducement" or "material persuasion." It entails providing prizes or incentives in order to accomplish a goal.

Its relation to Punishment is although not as apparent, Daam's use in criminal law is seen in:

- Offering cash or other incentives to those who offer information that results in the apprehension and conviction of criminals is known as "informer rewards."
- Decreased Penalties for Cooperation: Granting a pardon to criminals who assist law enforcement or offer insightful testimony.
- Victim Compensation: In some situations, the court orders that the victim receive a portion of the fines levied on convicted individuals. This can be considered an application of "Daam" since it makes use of financial resources to lessen the victim's suffering.
- The word "**Dand**" means "punishment" or "force." It entails applying harsh penalties to compel adherence or discourage misconduct.

It is the central component of the criminal justice system and includes:

- Imprisonment
- Fines
- Capital Punishment
- And various other punitive measures.

- The term, "**Bhed**," denotes "division" or "dissension." It entails sowing division or taking advantage of the enemy's flaws in order to accomplish one's goal.

Using Informers: Using informants to obtain information about illegal activity may lead to mistrust among criminal groups.

CRITICISM OF PUNISHMENT: NEGATIVE IMPACT OF PUNISHMENT

- Psychological impacts

Stigma and Social Isolation: Both during and after incarceration, a criminal conviction and incarceration entail a great deal of social stigma, which causes people to become isolated from their friends, family, and the larger community.

Anger and Resentment: Anger and resentment against the victims, the legal system, or society at large can develop among offenders, which may make rehabilitation more difficult.

- Socio-economic impacts

Loss of Work and Livelihood: Arrest, incarceration or any serious penal sanction frequently lead to employment loss, which makes it challenging for offenders and their families to make ends meet.

Decreased Educational and Skill Development Opportunities: Although some jails provide educational or vocational programs, access and quality may be restricted, impeding chances for both professional and personal development.

Increased Risk of Recidivism: Offenders may pick up bad habits and have few options for reintegration if the prison atmosphere is criminogenic and does not prioritise rehabilitation, which raises the risk of reoffending.

Financial Burden on Families: Because of the loss of the offender's income as well as the expenses of court cases and visits, families of incarcerated people frequently experience financial hardship.

- Bodily impacts

Health Deterioration: Infectious diseases (such as hepatitis and tuberculosis), skin conditions, and other health issues can proliferate in overcrowded and unhygienic prison environments. Access to prompt, quality healthcare is frequently restricted.

Problems with Substance misuse: Although the goal of prisons is to stop criminal activity, they can also be settings where substance misuse continues or even starts as a coping strategy.

▪ Systemic effects

Exposure to Criminal Networks: Jail can occasionally serve as havens for criminal organisations, exposing less serious or first-time offenders to more seasoned criminals and their philosophies.

Cycle of Poverty and Crime: For criminals from underprivileged backgrounds, incarceration can prolong a cycle of poverty and crime, making it more difficult to escape criminal activity.

V. QUESTIONNAIRE SURVEY

Beyond the Numbers: A Qualitative Analysis of Perceptions on Punishment

Survey Questionnaire: Public Opinion on Punishment in the Indian Criminal System

Greetings participants!

My name is Shagun Srivastav, and I am a law student currently undertaking a research study for the completion of my academic studies. Importantly, this research endeavor is also motivated by a sincere aspiration to contribute, in my capacity as a student of law, towards addressing a pertinent national concern within the legal framework. This survey is an integral part of my dissertation project aimed at critically analyzing **Punishments within the Indian criminal law system**. Your valuable insights and opinions as a member of the public are crucial in understanding diverse viewpoints on this important topic. Your responses will be used for academic research purposes only.

Please answer to the best of your understanding. There are no right or wrong answers.

Thankyou for your active contribution.

Age (आयु) *

- ☐ 14-17
- ☐ 18
- ☐ 19-25
- ☐ above 25

Gender (लिंग) *

- ☐ male
- ☐ female
- ☐ other
- ☐ prefer not say

Educational Qualification (शैक्षणिक योग्यता) *

- ☐ below or class 12th
- ☐ undergraduate
- ☐ postgraduate
- ☐ further higher studies

occupation (आपका पेशा) *

- ☐ student
- ☐ private profession
- ☐ government employee
- ☐ homemaker
- ☐ Other: _____

Area of occupation (पेशे का क्षेत्र) *

- ☐ legal
- ☐ non-legal

place of residence (आपका निवास) *

- ☐ rural (ग्रामीण)
- ☐ semi-urban (अर्ध शहरी)
- ☐ urban (शहरी)

Do you believe Punishments in India are **'effective'** in reducing crime? (क्या आपको * लगता है कि भारत में दंड, अपराधों को कम करने में प्रभावी हैं?)

- ☐ strongly agree
- ☐ agree
- ☐ neutral
- ☐ disagree

In your opinion, what should be the **primary goal** of punishment? (आपके अनुसार * दंड का मुख्य उद्देश्य क्या होना चाहिए?)

- ☐ Deterrence (prevent future crimes) (अपराध को रोकना)
- ☐ Retribution (just deserts) (बदला)
- ☐ Rehabilitation (reform the criminal) (सुधार)
- ☐ Restorative justice (repair harm) (पीड़ित को क्षतिपूर्ति)

Should **death penalty** be retained in heinous crimes(like mass murder or terrorism) in Indian law? (क्या भारतीय कानून में गंभीर अपराधों (जैसे सामूहिक हत्या या आतंकवाद) के लिए मृत्युदंड बनाए रखना चाहिए?) *

- ☐ yes
- ☐ no
- ☐ only for rarest of rare cases

Do you wish to bring back the old merciless or strict nature of penal punishments (like in ancient manusmruti or muslim law) in India. (क्या आप भारत में दंडात्मक दंड की पुरानी निर्दयी या कठोर प्रकृति (प्राचीन मनुस्मृति या मुस्लिम कानून की तरह) को वापस लाना चाहते हैं?) *

- ☐ Yes
- ☐ No
- ☐ Maybe

Are you aware of the punishment prescribed under section 302 Murder IPC? (क्या * आप भारतीय दंड संहिता की धारा 302 हत्या के अंतर्गत निर्धारित सजा से अवगत हैं?)

- ☐ 4-7 years of imprisonment + fine
- ☐ 8-14 years imprisonment + fine
- ☐ life imprisonment + fine
- ☐ Death or Imprisonment for Life + Fine
- ☐ not aware of it

Are you aware that **community service** has been introduced as a form of punishment under the new Bhartiya Nyay Sanhita (**BNS**)? (क्या आप जानते हैं कि नई भारतीय न्याय संहिता (बीएनएस) के तहत सामुदायिक सेवा को दंड के रूप में पेश किया गया है?) *

- ☐ Yes
- ☐ No

How effective do you believe community service will be as a punishment for **minor or first-time offences**? (आपके अनुसार छोटे या पहली बार किए गए अपराधों के लिए सामुदायिक सेवा दंड के रूप में कितनी प्रभावी होगी?) *

☐ Effective

☐ Ineffective

☐ neutral

In your opinion, how often do you think **false cases** are filed in India? (आपकी राय * में भारत में कितनी बार झूठे मामले दर्ज किये जाते हैं?)

☐ very frequently

☐ sometimes

☐ rarely

☐ never

Do you believe there should be specific and adequate legal provision to punish individuals who file **knowingly false or malicious** criminal cases? (क्या आप मानते हैं कि जानबूझकर झूठे या दुर्भावनापूर्ण आपराधिक मामले दर्ज करने वाले व्यक्तियों को दंडित करने के लिए विशिष्ट और पर्याप्त कानूनी प्रावधान होना चाहिए?) *

☐ strongly agree

☐ agree

☐ neutral

☐ disagree

☐ strongly disagree

THANKYOU!!

RESPONSES AND INTERPRETATIONS

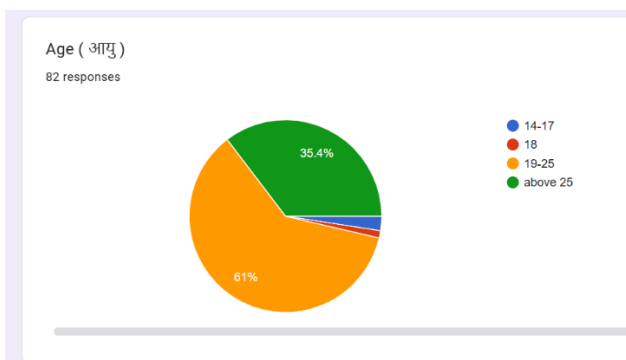
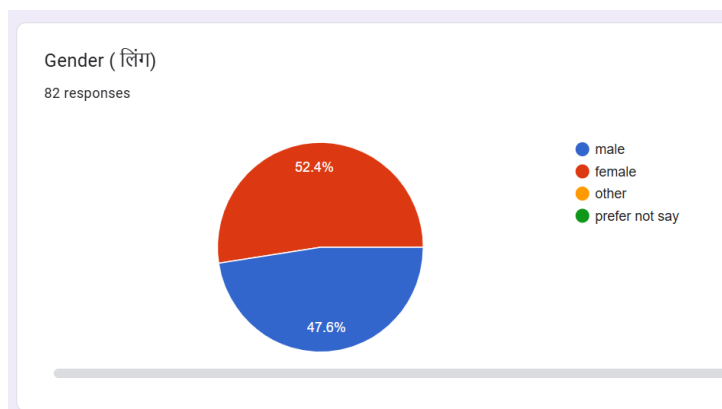


Figure 1

The survey's first question examines age, a key factor in understanding maturity, awareness, and evolving views. It's especially relevant as Delhi Jail data shows many detainees are aged 18–30. Analyzing age helps understand the role of stakeholders in India's criminal justice system. Below are the author's conclusions based on public responses.

- According to the study results, most respondents are between the ages of 19 and 30.

- This demographic data is noteworthy because it indicates that adults, who were assumed to have a sufficient degree of understanding of the survey's subject matter, were the ones who responded to the majority of the questioning that followed.
- As a significant portion of the country's future, this age group is frequently described as the working and creative class; as such, their answers are probably going to offer insightful information that will help produce a more thorough and forward-looking collection of findings.
- Given how common juvenile offences are in modern society compared to earlier decades, one possible limitation of this poll is the comparatively low response rate from residents under the age of 18.

*Figure 2*

The second survey question addresses gender, a key factor in national development. Historically male-centric, this view was challenged by thinkers like Dr. B.R. Ambedkar, who emphasized women's role in nation-building. The survey includes all gender perspectives, adding 'Other' and 'Prefer not to say' to reflect modern views. Gender also significantly impacts legal proceedings and criminal liability.

According to the results,

- Women made up 52.4% of participants, indicating growing academic engagement.
- The near-equal gender participation enhances the inclusivity of survey results.
- The low response rate for the 'Other' category may reflect oversight or stigma-related data gaps.
- There's a clear need to better integrate the 'Other' gender in laws and policies.

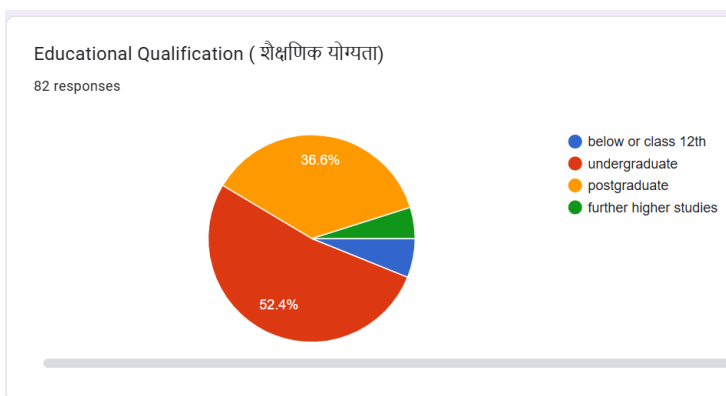


Figure 3

"This survey's third question seeks about the participants' educational backgrounds. This question adds to the survey's progressive and logical flow by acknowledging that knowledge can be a transformational force on both a personal and national level. Additionally, information about participants' educational backgrounds will aid in comprehending their opinions and cognitive styles.

The following conclusions can be drawn from the survey results about educational history:

- Higher education is often linked to better decision-making.
- Most respondents were undergraduates, followed by postgraduates, 12th grade or below, and higher studies.
- A large portion of participants held undergraduate degrees.
- Low responses from the "further higher studies" group limit the depth of insights.

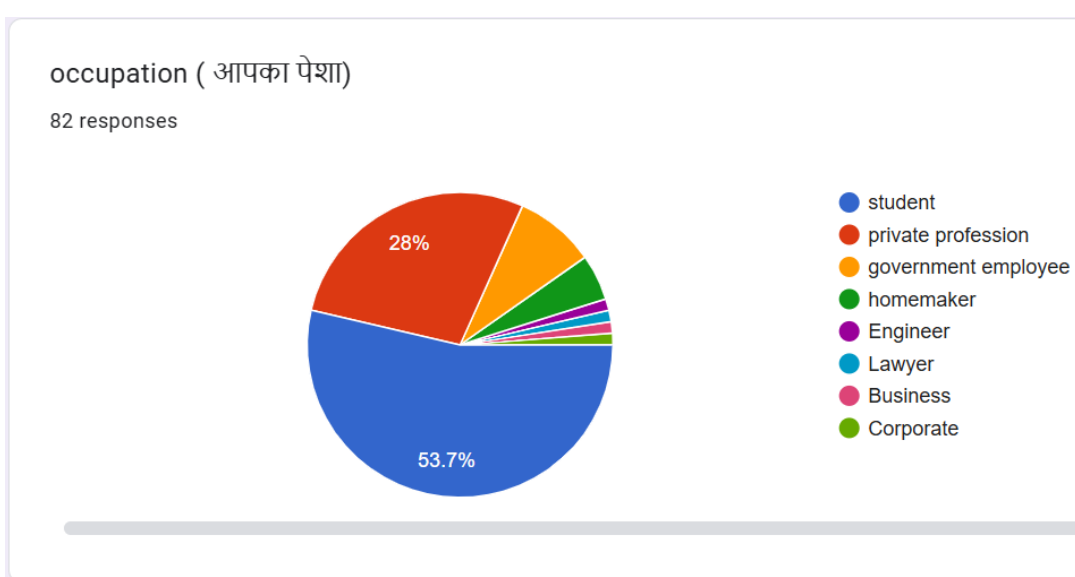


Figure 4

The fourth question investigates the occupations of the individuals. Given that people in different occupations frequently have differing experiences with laws and their actual application,

occupation is a crucial consideration in our poll. Any underlying difficulties, gaps, critiques, experiences, and effects pertaining to a variety of professions in day-to-day life are intended to be included in this question. This question had to be mandatorily answered in the survey as well.

- Survey responses include homemakers, engineers, lawyers, government and private employees, business, corporate workers, and students.
- Inclusion of homemakers reflects attention to a key social group.
- Students and private sector employees are well represented.
- Student participation highlights academic engagement and national awareness.
- A limitation is the under-representation of low-wage and traditional skilled workers.

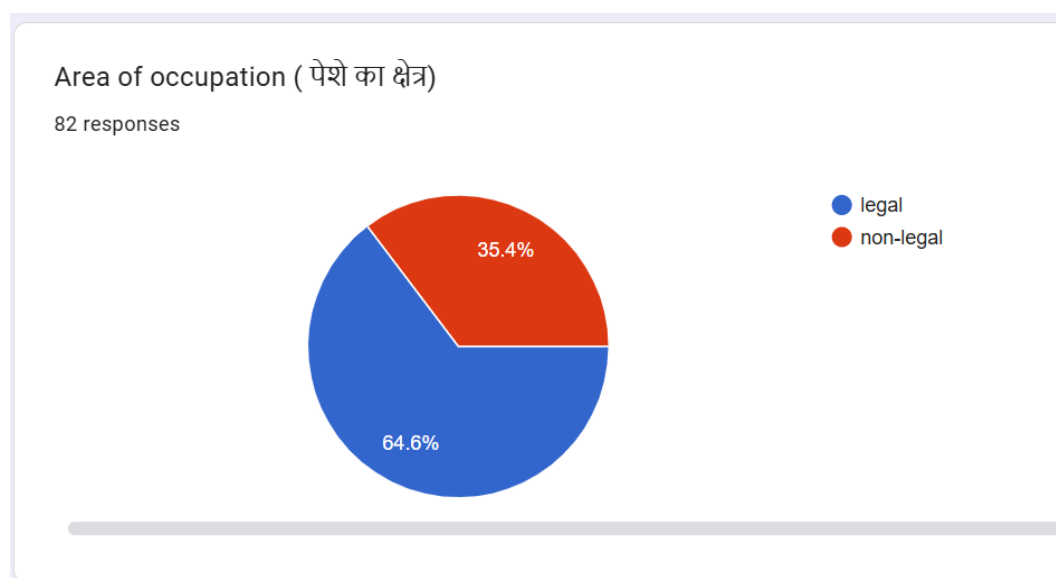


Figure 5

The fifth question examines each participant's occupation, specifically whether it's in the legal field. This is crucial as the study focuses on criminal punishment from legal and social angles. Legal professionals may have deeper insights than those from non-legal fields, making this question key to understanding data nuances.

Below are some inferences –

- Most participants are from the legal field.
- This overrepresentation suggests a predominantly legal perspective in the data.
- Criminal punishment in India is a significant concern within the legal community.
- A limitation is the underrepresentation of non-legal individuals, reducing the social perspective.

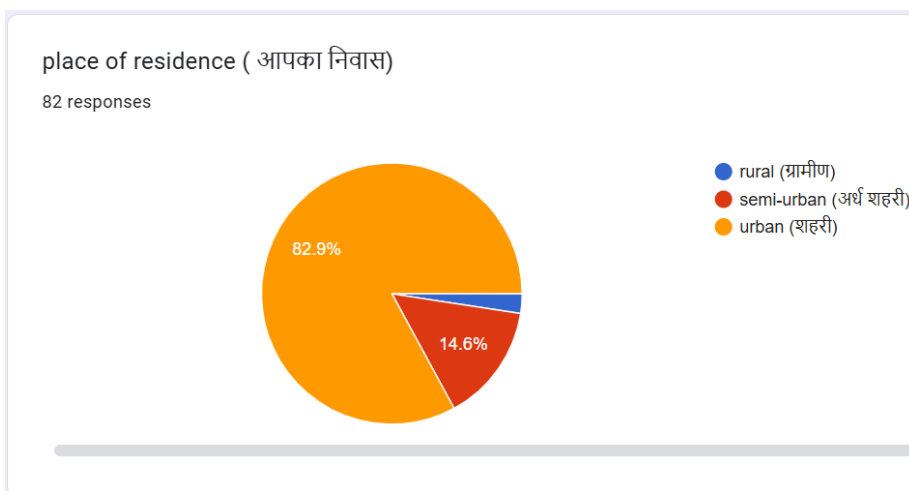


Figure 6

The survey's sixth question is about the participants' residential area. Participants' access to information, viewpoints, experiences, and awareness can be indirectly inferred from information about whether they live in urban, semi-urban, or rural regions.

According to the author's findings,

- Most participants are from urban areas.
- Urban residents may be more likely to participate in academic surveys.
- Semi-urban areas have the second-highest response rate, reflecting ongoing demographic shifts.
- A limitation is the low response rate from rural areas, despite the survey being available in Hindi.

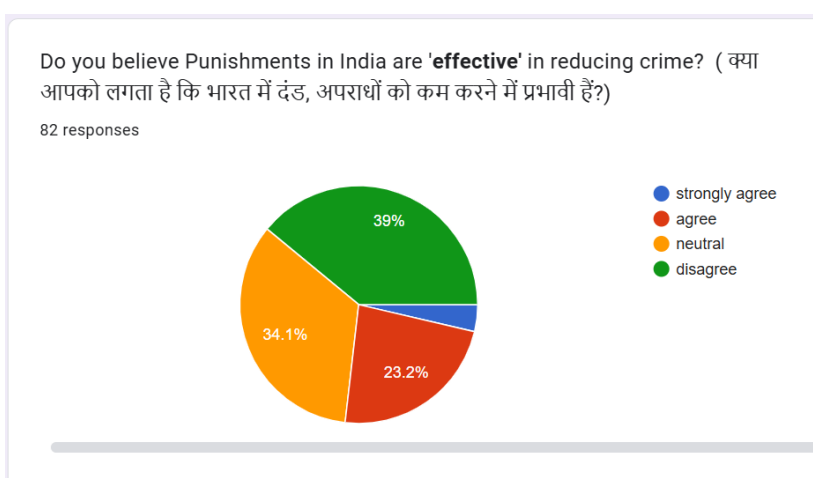


Figure 7

The seventh question supports the paper's goal of understanding India's legal-social view of criminal punishment. It explores participants' existing opinions, encourages critical reflection, and introduces the survey's theme to ensure engaged and meaningful responses.

Below are important inferences based on the responses –

- Survey responses show a close distribution between "disagree," "neutral," and "agree," indicating varied opinions on criminal penalties in India.
- This suggests skepticism or uncertainty about criminal punishment as a key part of India's legal system.
- The ambiguity may point to the need for reviewing and improving existing laws and policies.
- The results emphasize the importance of further academic research and evaluation in this field.
- The high "neutral" response rate suggests many respondents are uncertain or have not witnessed the effectiveness of criminal punishment in reducing crime.

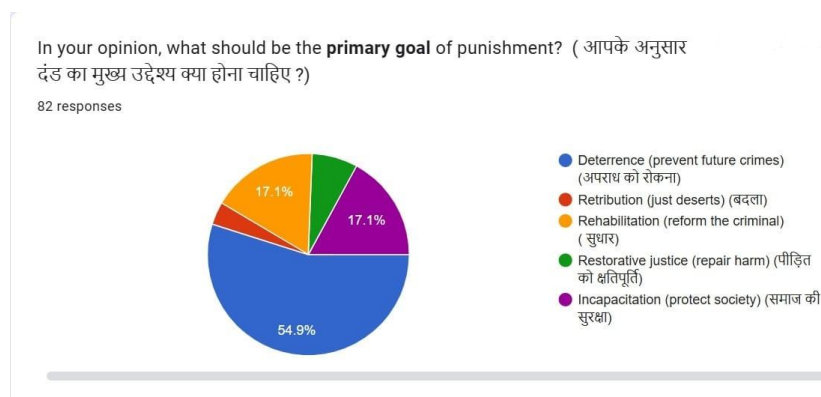


Figure 8

The purpose of this question is to determine which theory of punishment is most widely accepted or easily comprehended in Indian society. It is intended to assist participants in making connections between apparently separate ideas and experiences in order to reach a definitive knowledge of the function of punishment.

The following conclusions on theories of punishment are derived from the survey responses:

- Over half of participants supported deterrence as the main goal of punishment, highlighting its role in preventing future crimes.
- Equal support for social protection and rehabilitation suggests a desire to protect both individuals and society.
- The shift from traditional retributive views to a more reformatory approach is evident in the low support for retribution.

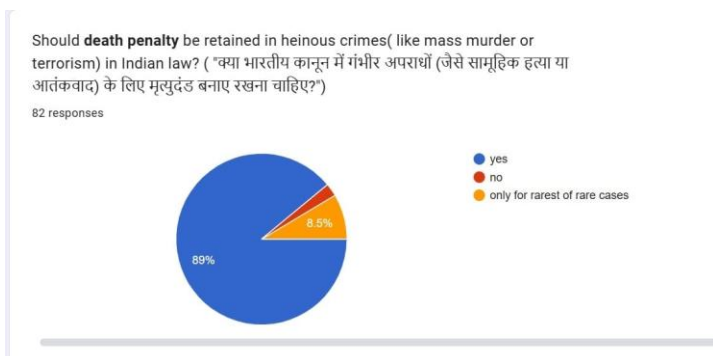


Figure 9

The death penalty, or capital punishment, is a highly debated issue due to its irreversible nature, which eliminates the possibility of offender rehabilitation. This inquiry aims to address this concern and clarify common social perspectives.

The following conclusions about the death penalty are drawn from the responses:

- Most respondents supported the death penalty for serious crimes, opposing global human rights views.
- The second-highest response for "rarest of rare cases" suggests support for the death penalty in extreme circumstances.
- Both points reflect a stance of retaining the death penalty in India, but limited to heinous crimes.

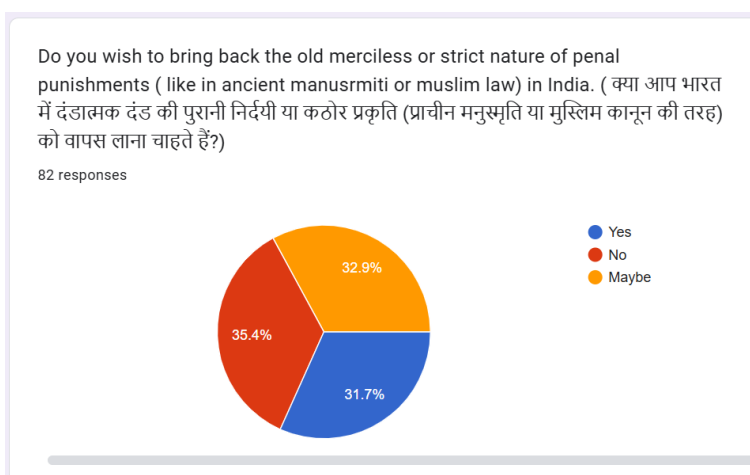


Figure 10

This issue addresses arguments from proponents of a crime-free nation, often citing strict laws like those in the UAE or ancient India. The author emphasizes the need to examine even controversial public opinions, noting that ancient legal systems, like the Laws of Manu and Islamic law, used bodily mutilation as punishment to match the severity of offenses.

Below are inferences –

- Responses were evenly distributed across "Yes," "No," and "Maybe."

– Key conclusions:

31.7% "Yes" and 35.4% "No" responses show a division in opinion on strict laws and human rights.

Some support eliminating such laws, while others advocate for their inclusion in the legal system.

- The high "Maybe" response suggests doubts about the effectiveness of current penalties and openness to alternative criminal justice approaches.

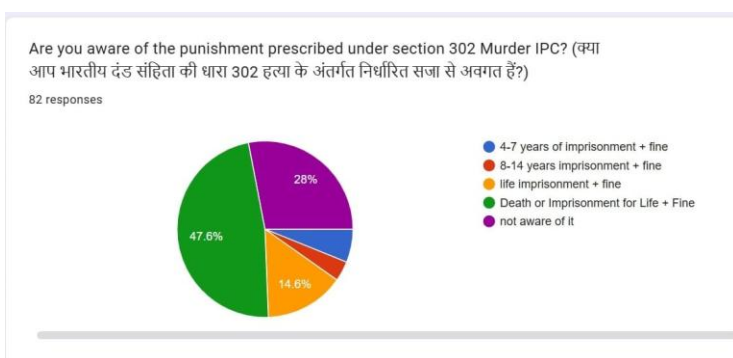


Figure 11

The question stems from the core tenet of criminal law, which states that ignorance of the law is not an excuse. It seeks to draw attention to the degree of legal knowledge among the Indian population, acknowledging that this could be a national concern. It's possible that this awareness and the effectiveness of the criminal justice system are indirectly related.

Based on survey results about legal awareness, the following conclusions can be made:

- Despite many respondents from the legal industry, less than half gave the correct answer.
- The second-highest response, "not aware of it," indicates a lack of legal awareness and citizen engagement.
- This ignorance is notable, especially considering Section 302 (murder) of the Indian Penal Code is widely known in media.

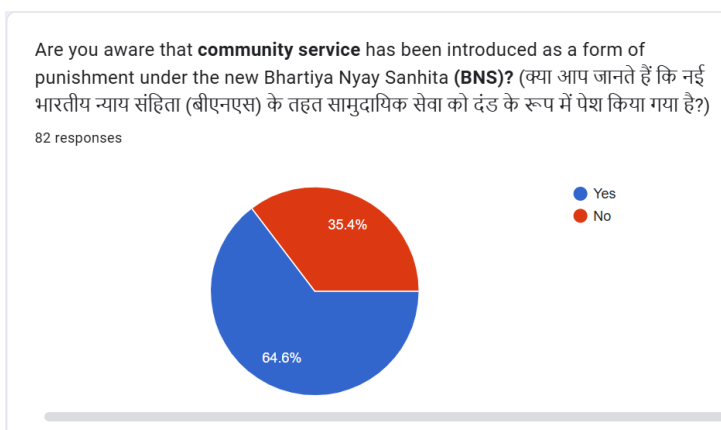


Figure 12

This request aims to evaluate the balance between citizen and state accountability. In a progressive society, citizens should be aware of key issues like the recent introduction of the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA), which replace older laws with new offenses, updated penalties, and improved criminological foundations. The question indirectly assesses the roles and responsibilities of criminal justice system stakeholders.

Below are inferences –

- A sizable percentage of respondents showed that they were aware of the most recent revisions and amendments to the law.
- The effective implementation and enforcement of the new legislation may be hampered by the significant proportion of respondents who expressed ignorance about it.
- This question is at par with the prior question of the area of occupation.
- The question replies may have a bias in favor of legal practitioners, which restricts how broadly the results may be applied.
- The data's comprehensiveness and generalizability across a range of demographics are limited by the extremely low response rate from rural areas.

How effective do you believe community service will be as a punishment for **minor or first-time offences**? (आपके अनुसार छोटे या पहली बार किए गए अपराधों के लिए सामुदायिक सेवा दंड के रूप में कितनी प्रभावी होगी?)

82 responses

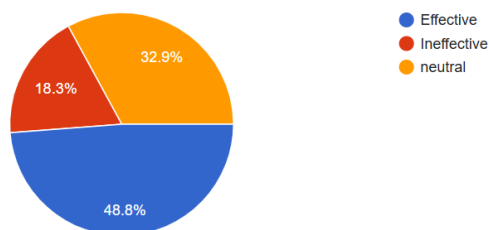


Figure 13

This question serves two purposes: first, to confirm participants' awareness of community service as a punishment under the Bharatiya Nyaya Sanhita (BNS); second, to invite insights from those unfamiliar with this amendment on its potential implementation for minor or first-time offenses. It provides context to reduce uncertainty and ensure clarity in responses.

Below are important inferences –

- Most respondents viewed community service as an effective punishment, followed by "neutral" and "ineffective."

- Nearly half believe it can serve as a useful corrective measure.
- This suggests a public preference for less severe, rehabilitative punishments promoting social harmony.
- These views align with earlier responses on the overall effectiveness of criminal penalties.
- "Neutral" responses may reflect uncertainty about its real-world implementation.

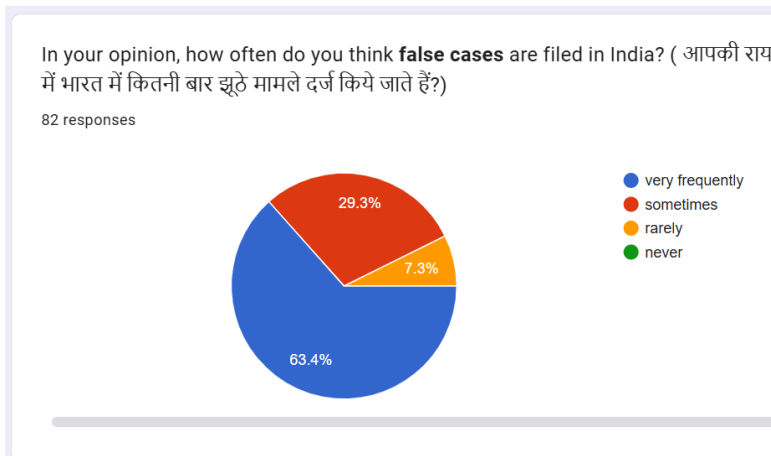


Figure 14

This inquiry emphasizes that modern punishment should consider both the accused and the victim. The criminal justice system must identify the true offender, as seen in recent Kerala High Court rulings on false sexual assault accusations. The poll aims to explore contemporary views on this issue and enhance understanding of criminal punishment.

Below are inferences drawn based on responses –

- A significant portion of survey participants believe fake cases are frequently filed in India.
- This reflects a widespread awareness and acceptance of the issue, possibly shaped by exposure to data and personal experiences.
- The varied response rates across options further support the societal acknowledgment of false allegations.
- The absence of votes for "never" indicates a strong perception that such cases are a real concern.
- If necessary, legislative measures should address this as a punishable offence, reflecting public sentiment in criminal law.

Do you believe there should be specific and adequate legal provision to punish individuals who file **knowingly false or malicious** criminal cases? (क्या आप मानते हैं कि जानबूझकर झूठे या दुर्भावनापूर्ण आपराधिक मामले दर्ज करने वाले व्यक्तियों को दंडित करने के लिए विशिष्ट और पर्याप्त कानूनी प्रावधान होना चाहिए?)

82 responses

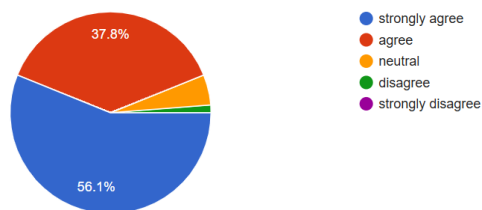


Figure 15

This inquiry aims to contribute to the evolution of Indian criminal law by identifying potential weaknesses or areas for revision. It emphasizes that legislation should reflect the needs and interests of the people it serves. The question specifically addresses malicious false complaints, seeking public opinion on the need for penalties for such offenses based on real-world experiences.

Below are certain inferences –

- Over 80% of responses strongly support legislation addressing fraudulent cases, indicating broad public backing.
- The higher percentage of "strongly agree" responses shows strong public demand for direct legislative action.
- This support suggests that the current legal system may be ineffective due to failure to adapt to societal changes and public sentiment.
- The low disagreement rate highlights widespread recognition of false cases as a significant issue in Indian society.

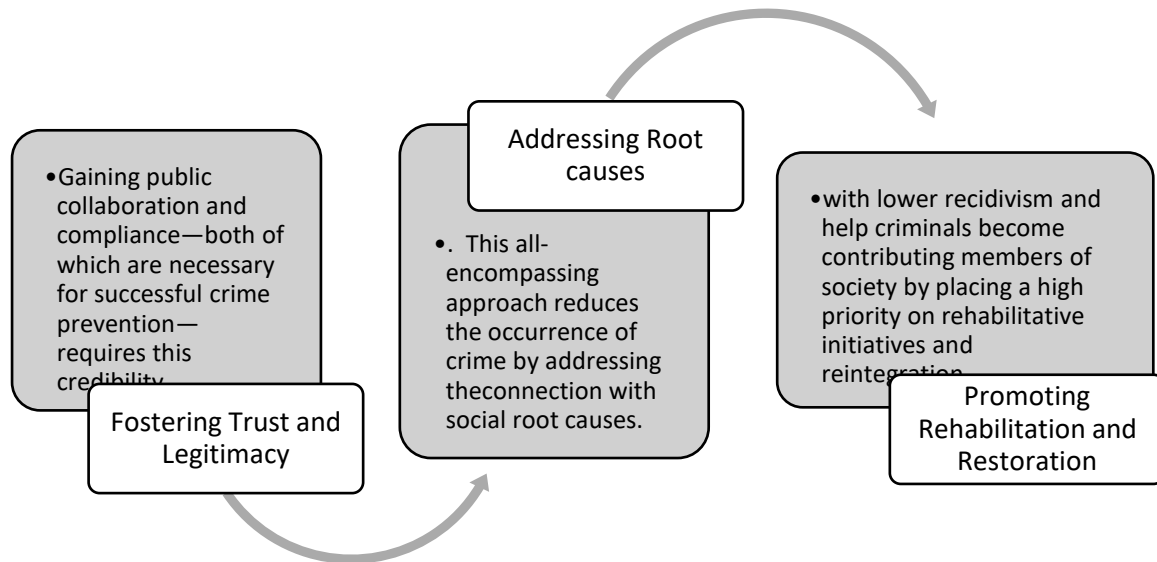
VI. SUGGESTION

Connecting General Positive Prevention Theory to Penal Punishments in the Indian Context

The prior evaluation of the criminal justice system in India conducted in this paper shows a complicated picture with both ongoing difficulties and advancements. In this regard, the ‘General Positive Prevention Theory’ provides a useful foundation for comprehending how criminal penalties might support a more comprehensive and, eventually, more successful strategy for reducing crime.

According to general positive prevention theory, the greatest way to reduce crime over the long

run is to actively create an environment/community where crime is far less likely to happen in the first place rather than relying only on punishing offenders after they have already committed a crime.



VII. CONCLUSION

Since ancient times, criminal punishments have been used to maintain social order and protect people. However, society is dynamic, and legal concepts must evolve to meet current and future needs. This study aims to contribute by offering insights into criminal punishments through academic research. The author seeks to critically analyze the Indian justice system, connecting theoretical punishment foundations with real-world applications. Drawing on legal maxims and historical tactics, the study highlights that no single theory can fully address criminal penalties. To enhance this analysis, a self-constructed survey was used to gather empirical data on public perceptions, aligning with the goal of evaluating India's criminal punishments. The "General Positive Prevention Theory" offers a valuable framework for understanding how punishments can effectively reduce crime.
