



## Retribution vs Reformation: Balancing Justice in Modern Criminal Law

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### Abstract

Punishment plays an important role in the criminal justice system. It aims to maintain social order and respond to legal violations. Over time, various punishment theories have emerged, with retributive and reformatory approaches being the most notable. The retributive theory is based on the idea that punishment should match the severity of the crime. It serves as a moral response to wrongdoing. In contrast, the reformatory theory emphasizes rehabilitating offenders and aiding their reintegration into society. Modern criminal law tries to strike a balance between these two opposing views. This paper examines the growth and application of retributive and reformatory punishment theories within the Indian criminal justice system. It looks at the retributive elements in the statutory penalties specified in the IPC and the BNS, 2023. Simultaneously, this study also points out methods like probation, plea bargaining, community service, and the juvenile justice system, which focus on rehabilitating offenders. This study shows hybrid mode of punishment where balance is maintained to ensure justice, social stability and constitutional values.

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### Introduction

Punishment is a suffering given to person for wrong done against person or property. It is inflicted by society for violation of rules of society. The amount of punishment varies according to circumstances of the case. Punishment aims to fulfill different goals including retribution, deterrence and rehabilitation. Contemporary sentencing practices encompasses blend of some or all the objectives. The Roman philosopher Cicero wrote " Let the punishment fit the offence" (Latin: noxae poena par esto).<sup>[1]</sup> This concept continues to be a fundamental principle of criminal justice systems worldwide. With enactment of the Bharatiya Nyaya Sanhita, 2023 (BNS), India has embarked on a thorough reform of its criminal law framework. This new legislation replaces the Indian Penal Code, 1860 (IPC), a law from the colonial era that has long regulated substantive criminal law within the nation.

### Retributive Theory of Punishment

In ancient India punishment was based on retributive and deterrence theory of punishment. The punishment given was cruel tortious and barbaric in nature. Capital punishment i.e. death was most prevalent that time. It includes hanging, burning alive, beheading stoning. Corporeal punishment, in which some sort of injury was inflicted to deter offender from committing crime. It includes whipping, beating, mutilation etc.

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<sup>1</sup> Cicero, Marcus Tullius (1928) [c. 50 BC]. *De Legibus [On the Laws]*. Loeb Classical Library. Vol. 213. Translated by Keyes, Clinton. Harvard University Press. Book III, paragraph XX.

As a result, the principle of *lex talionis* (an eye for an eye) was prevalent in ancient legal systems. The Code of Hammurabi contains the earliest known instance of *lex talionis*, and the Hebrew Bible also features a directive: *middah ke-neged middah* (law of 'measure for measure').<sup>[2]</sup>

Retributive theory considers punishment as an end. The revenge was the aim of this theory. It is based on the principle that offender must be punished in proportion to the harm caused by him. Proportionality refers to the principle that the severity of the punishment should correspond to the severity of the crime. In simpler terms, when an offense is more severe or violent, the punishment should be more significant, whereas for a less serious offense, the punishment can be reduced. It has to do nothing to do with welfare and reform of offender.

### Retributive Elements in Modern Criminal Law

Provisions for punishments were provided under section 53 of IPC. According to section 53 of the Indian Penal Code, a court can impose five different types of penalties on an individual found guilty of a crime. These penalties include death, life imprisonment, both simple and rigorous imprisonment, forfeiture of property, and fines. Additionally, section 73 outlines another form of punishment, which is solitary confinement.

This is the landmark ruling in *Bachan Singh V. State of Punjab*<sup>[3]</sup> exemplifies Retributive Justice where the Supreme Court upheld the constitutionality of the death penalty under Section 302 IPC and established the "rarest of rare" doctrine, indicating that capital punishment should only be imposed in extraordinary and atrocious circumstances.

Section 4 of the *Bharatiya Nyaya Sanhita, 2023* outlines six different categories of punishments that courts can enforce on individuals found guilty of criminal offenses. The *Bhartiya Nyaya Sanhita* aligns with modern legal principles as it enhances the importance of retribution within the justice system. The accountability of the offender is highlighted by enforcing punishments that correspond to the severity of their crime. It reassures the victim that their perspectives are acknowledged in the process and that delivering justice with respect is a key goal for BNS. The objective continues to be to proactively establish social order and avert the recurrence of offenses.

From the perspective of punishment philosophy, the BNS primarily preserves the framework, intensity, and deterrent–retributive nature of the IPC, while also tightening several provisions with increased penalties and newly introduced offenses. Simultaneously, the BNS establishes various new crimes, including terrorism, organized crime, mob lynching, and actions jeopardizing the sovereignty and unity of India, many of which carry harsh penalties like life imprisonment and the death penalty. For several existing offenses, the legislation increases minimum sentences, limits judicial discretion, and explicitly acknowledges life imprisonment for the offender's natural life, thus enhancing the retributive and deterrent nature of criminal sanctions.

### Explicit Criminalization of Specific Crimes

**Mob Lynching:** Section 103(2) BNS clearly defines and criminalizes mob lynching (the act of murder by five or more

individuals based on factors like race, caste, or community), a type of crime that was not recognized in the IPC. It imposes harsh penalties, including life imprisonment or the death penalty.

**Organized Crime:** (Sections 111 BNS) establishes specific and severe penalties for organized crime, such as kidnapping, extortion, and cybercrimes, which were previously managed under special state regulations.

**Terrorist Acts:** The BNS introduces a definition of a "terrorist act" (Section 113BNS) within the general penal code, creating a strict retributive legal framework that was previously lacking in the IPC.

**Sexual intercourse obtained through deceitful methods** (Section 69 BNS), which makes such acts illegal if they involve a false promise of marriage or concealment of identity, with a potential punishment of up to 10 years imprisonment.

### Enhance Punishment and tougher penalty

Some examples are:

**Criminal breach of trust Sec. 316(2) BNS** - Five years or with fine, or with both  
**Sec. 406** - Three years or with fine, or with both

**Voluntary causing hurt or grievous hurt by dangerous weapons Sec. 118(1) BNS** - fine which may extend to 20,000 rupees  
**Sec. 324** - or with fine

Apart from this *Bhartiya Nagarik Sukarsha Sanhita*, which replaced CrPC also seems to be influenced by retributive character of criminal justice system which strengthens the trail time lines, expanding police custody<sup>[4]</sup>, mandatory registration of FIR<sup>[5]</sup> etc.

### Reformative Theory of Punishment

With the passage of time, the moment has arrived where the emphasis has transitioned from punishment to rehabilitative techniques, as criminals are not born; they are created. This transformation also demonstrates a movement away from a solely retributive approach towards one that includes restorative and reformative components. The concept seems to align with the objective given under Article 10(3) of International Covenant on Civil and Political Rights (ICCPR), 1966 which states that

*"The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation."*

*Freedom is what Freedom does—to the last and the least—Antyodaya.* This principle shows that true independence is measured not by national strength but by the real progress and empowerment of the most marginalized, vulnerable, and poor members of society. Justice V.R. Krishna Iyer strongly

<sup>2</sup> [https://en.wikipedia.org/wiki/Retributive\\_justice#cite\\_note-8](https://en.wikipedia.org/wiki/Retributive_justice#cite_note-8)

<sup>3</sup> *Bachan Singh v State of Punjab* [1980] 2 SCC 684 (SC).

<sup>4</sup> Section 187 of BNSS

<sup>5</sup> SECTION 173

expressed this idea in the important Supreme Court case Sunil Batra v. Delhi Administration & Ors.<sup>[6]</sup>

In the case of Mohammed Giasuddin v. State of A.P.<sup>[7]</sup> Justice V.R. Krishna Iyer highlighted the necessity of perceiving offenders as individuals needing care. He proposed that prisons should be viewed as facilities aimed at mental and moral rehabilitation. The community plays a vital role in facilitating the transformation of offenders. Instead of employing fear or punitive measures, the focus should be on providing treatment that aids their reintegration into society.<sup>[8]</sup>

### Reformative Elements in Modern Criminal Law Plea bargaining

Plea bargaining under the Bharatiya Nagarik Suraksha Sanhita (BNSS) is outlined in Chapter 23, specifically from sections 289 to 300. It allows a defendant to plead guilty in exchange for a lighter sentence or a lesser charge. Plea bargaining refers to an arrangement in a criminal case where a prosecutor and a defendant agree to resolve the case against the defendant. The defendant consents to plead guilty or no contest in return for some concession from the prosecutor, such as a reduced charge of a lesser degree or a lighter sentence.

### Community service

One of the biggest changes is introduction community service as a form of punishment in BNS (section 4(f)). It is a punishment given in non-serious matter or sometimes first-time offender where court ask offender to perform unpaid words and contribute to welfare of society. The underlying objective is to encourage rehabilitation and promote offender meaningful reintegration into society. This punishment is not given to habitual and professional criminals. Its aim to cure him from drawbacks that drive him to commit the crime.

Offences under BNS punishable with community service- Defamation<sup>[9]</sup> - punishable with imprisonment up to 2yrs, fine or community service

First time theft of property valued under Rs 5000, if offender restores the property, shall be punished with community service.<sup>[10]</sup>

### Probation

When a person is found guilty of an offense that does not carry the death penalty or life imprisonment, and the court believes that based on the details of the case, such as the type of offense and the character of the offender, it is suitable to release the person on probation for good behavior, then the court may choose not to impose an immediate sentence. Instead, it can allow the offender to be released if they enter a bond, with or without sureties, to appear for sentencing when needed during a period of up to three years, as the court directs. During this time, the offender must maintain good behavior.

However, the court will not grant the release unless it is convinced that the offender or their surety, if there is one, has a stable home or a regular job in the area under the court's

jurisdiction or where the offender is likely to reside during the bond period.

Before making any decision, the court must review any report from the probation officer related to the case.<sup>[11]</sup>

### Juvenile Justice System

The reformative perspective within the juvenile justice system focuses primarily on the well-being, rehabilitation, and comprehensive growth of young offenders instead of emphasizing punishment or deterrence. Juveniles typically have underdeveloped mental capacities; their understanding of the repercussions of their actions is constrained because of ongoing emotional, psychological, and cognitive maturation. Consequently, young individuals often engage in illegal activities not out of a desire to commit crime, but rather due to curiosity, peer pressure, emotional susceptibility, or a draw towards fleeting thrills.

The Juvenile Justice Act was implemented in 1986, along with its later changes, marking an important point in this development. By the end of the 21st century, it aligned with global standards set by the UN Convention on the Rights of the Child (1989), the UN Standard Minimum Rules for the Administration of Juvenile Justice (1985), and the UN Rules for the Protection of Juveniles Deprived of their Liberty (1990). This shift in legislation led to the creation of the Juvenile Justice (Care and Protection of Children) Act in 2000, along with its model regulations, which were updated in 2007.

A pivotal moment in this journey was the response to the 2012 Delhi gang rape case involving a minor. Despite the Supreme Court affirming the Act's constitutional validity in 2015, widespread public outrage over justice system failures prompted legal reforms. This led to the enactment of as the Juvenile Justice (Care and Protection of Children) Act, 2015.<sup>[12]</sup>

### Challenges in balancing both approaches-

1. **Public demand of vengeance** -it refers to collective social urge for exemplary punishment. This perspective stems from the belief that certain crimes are so horrific, inhuman, or morally unacceptable that simply rehabilitating the offender seems insufficient. The Nirbhaya gang rape case (2012) serves as a prime example of the public's call for retribution in India. Outrage grew when it was disclosed that one of the accused was under 18 years old. According to the Juvenile Justice Act of 2000, he faced a maximum of three years in a reform facility, despite being the most violent perpetrator. This situation was viewed as a severe injustice towards the victim, a misuse of age-related immunity, and a failure of rehabilitative justice. The community vehemently rejected the notion that such an offender could be released after three years for the sake of rehabilitation.
2. **Many prisons and correctional facilities in India experience:** extreme congestion, deteriorating infrastructure, inadequate living standards, restricted

<sup>6</sup> (1978 AIR 1675).

<sup>7</sup> (1977 3 SCC 287)

<sup>8</sup> <https://www.livelaw.in/articles/parole-rule-denial-exception-justice-beyond-bars-294845>

<sup>9</sup> Section 356(2) BNS

<sup>10</sup> Section 303(2) Provision

<sup>11</sup> Section 4 of The Probation of offender Act, 1958

<sup>12</sup> History of Juvenile Justice in India <https://share.google/sakHaOp7crqLJ7xSf>

opportunities for education or vocational training. Overcrowding hinders personalized attention and turns prisons into mere holding facilities instead of rehabilitation centers.

3. **Victim rights v. rehabilitation of offenders**—Restorative justice places emphasis on the offender, whereas retributive justice focuses on the moral obligations to the victim. The challenge lies in balancing the victim's satisfaction and sense of closure with the offender's rehabilitation and reintegration. Prioritizing one aspect too heavily often neglects the other.
4. **Sentencing Discretion and Lack of Uniform Guidelines**—The discretion in sentencing and the absence of standardized guidelines can lead to several issues. Finding a balance between both theories needs a careful approach to sentencing. Unfortunately, India does not have clear sentencing guidelines. This causes inconsistencies in judicial outcomes, unequal penalties for similar offenses, and uncertainty in applying rehabilitative principles. This unpredictability weakens both the deterrent effects and opportunities for rehabilitation.

## 5. Conclusion

The debate between retributive and reformatory theories of punishment shows the ongoing challenge in criminal law to balance society's demand for justice with the goal of helping people change. Retributive punishment, based on fairness and moral responsibility, plays a key role in maintaining order, discouraging crime, and supporting public trust in the justice system. However, modern criminal law understands that punishment cannot rely only on revenge. The reformatory approach recognizes the possibility of changing behaviors and helping offenders reintegrate into society.

Current Indian criminal law reflects a mix of these punishment methods, where neither retribution nor reformation can work alone. A fair and effective criminal justice system must combine both approaches, ensuring that punishment is fair while upholding the values of dignity, fairness, and rehabilitation.

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