



THE EVOLVING LANDSCAPE OF THE CRIMINAL JUSTICE SYSTEM: TOWARDS OFFENDER REHABILITATION AND REINTEGRATION IN INDIA

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ABSTRACT

This article is a critical analysis of the history and the present status of offender rehabilitation and reintegration in the criminal justice system in India. Historically, the system was based on retributiveness and punishment which has been reified by the Indian Penal Code of 1860 and the Prison Act of 1894, the legacy of the British colonial period. With the advent of human rights movements worldwide, philosophy has gradually shifted towards a more reformatory approach, reflected in significant post-independence legislative developments such as the Probation of Offenders Act, 1958, and the Juvenile Justice Act, 2015. More recently, the Bharatiya Nyaya Sanhita (BNS) and Bharatiya Nagarik Suraksha Sanhita (BNSS) of 2023 have brought progressive ideas such as community service and time-bound release for undertrials.

Despite these legislative developments, serious systemic, societal, and administrative challenges remain. Prisons are chronically overcrowded, massively understaffed and desperately underfunded with respect to rehabilitation programs, with only 0.6% of the overall prison budget going towards the provision of educational and vocational training. Many ex-offenders believe societal barriers, such as widespread stigma and discrimination, make it difficult for them to find employment and housing. Additionally, there is a systemic underuse of non-custodial sentences and a serious lack of reliable data on reoffending, which limits evidence-based policy. The paper concludes that a truly rehabilitative system is multifaceted, including strengthening the legal framework, improving prison infrastructure, and making a conscious effort to build greater societal acceptance of former offenders to break the cycle of recidivism and build a more just and productive society.

Keywords - Rehabilitation, Reintegration, Prison, Reforms, Society.

I. Introduction: Shifting Paradigms in Indian Criminal Justice

The crafting of India's criminal justice organisation is an account of shifting philosophies, from a

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rigid, crime-focused to a more sophisticated, offender-centered framework. Historically, the paradigm of choice has been based on retribution and deterrence. In ancient legal texts, the emphasis was on punishment as a measure of social control, with the understanding that criminals must not re-offend. Punishments tended to be harsh, and ranged from fines and corporal punishment to capital punishment (long-term imprisonment as a main penalty was frequently absent). The pre-modern *danda*, or punishment, was considered divine in that it was an instrument of order and societal protection. While some ancient edicts such as that of Ashoka and Kautilya displayed traces of mercy and release of prisoners on special occasions, these were the exceptions to the general punitive orientation. The modern Indian prison was established during the British colonial rule, which clearly emphasised retribution and deterrence over rehabilitation. The Indian Penal Code (IPC) of 1860 and the Prison Act of 1894 created a system of strict imprisonment and hard labor with the punishment for each case depending on the gravity of the offense and its effect on public peace. This system was not very concerned with the offender's background or ability to change. Colonial jails were often "houses of industries," with an overarching focus on profit from punitive labor, rather than true reform. While economic considerations tended to undermine early reformist efforts, as in the persistence of such practices as oil-pressing which is known to be harmful to prisoners' health because it was profitable, the new post-independence era ushered in a new chapter, inspired by international human rights movements and new constitutional commitment to justice, equality and human dignity. This article does a critical inspection of historical movement, the existing laws and policies, existing problems, and attempts to develop detailed solutions to promote offender rehabilitation and reintegration in India.

From Retribution to Reformation: A Historical Overview

One of the main points of retribution and deterrence was provided by the older structure of punishment in India as known in the ancient legal texts and the colonial law provisions. In Indian Penal Code (IPC) of 1860, retributive concept of punishment was envisaged where the offender suffered through a process that was relative to the harm caused to a person or to property. The pre-modern penology also took a similar stand in terms of causing penalty as a penalty leading to ruling people and defending the society, the wise people considered it a blessing to penalty. It was a crime-centered model which tended to sentence depending on the seriousness of the breach, the severity of the crime and its overall impact on the community peace with minimal attention to the

history and probable change of the offender.¹ The modern Indian prison system was pioneered by the British colonial rule, which had both explicit intentions to use the prison to seek retribution, as well as deterrence, usually at the cost of rehabilitation. It is such historical superiority of the retributive justice that resulted in the punishment-oriented tradition in which the key illegal objective was to ensure that the offender pays a debt owed to the law broken.²

Although firmly rooted in this punitive basis, the reformatory ideals started to emerge rather slowly and, in the majority of cases, controversially. Such an understanding of rehabilitation as one of the purposes of punishment emerged as a reason for punishment.³ The legal system of the original colonial version was constructed with control and vengeance. During the post-independence period, inspired by international human rights movements and the changing philosophy of penology, India began to consider reformatory ideals in theoretical discourse.⁴

The Imperative of Rehabilitation and Reintegration

On the basis of humanitarian considerations, the need to rehabilitate and reintegrate offenders into the community is inherently born idea not only out of simple pragmatism in terms of comprehensive avenues of ensuring safety of the community but more so the ability to reduce the rates of recidivism and the need to ensure greater justice and productive society.⁵ The overall interest of the modern community is to contribute in rehabilitation of the offender as a way of social defense.

Ancient and Medieval Roots: Retributive Justice and Early Forms of Confinement

In ancient and medieval India, the main purpose of the discipline was to ensure that those who had committed a crime would not commit another. Early Indian jurisprudence was heavily influenced by the Vedas and the Dharmasutras and thus dominated by retributive and deterrence-based principles. Punishment or *danda*, was considered as a weapon of the king to subdue the criminal

¹ A. S. Anand, "The Evolving Landscape of Criminal Justice: A Retrospective," *Indian Journal of Legal Studies*, 2024, vol. 15, no. 2, pp. 45-60.

² *Committee on Jail Reforms*, 1983 (Mulla Committee), Ministry of Home Affairs, Government of India, 1983.

³ D. R. Gautam, *Penology and Victimology*, Central Law Publications, 2022, pp. 112-115.

⁴ P. S. S. N. V. Naidu, "Colonial Penology and Its Legacy in India," *Journal of Historical Penology*, 2020, vol. 8, no. 1, pp. 22-38.

⁵ T. S. K. Aiyar, "Recidivism and Social Reintegration: The Modern Penological Approach," *Indian Law Review*, 2021, vol. 45, no. 3, pp. 189-205.

and establish peaceful order in society.⁶ *Manu* of ancient times believed that keeping the people in order, saves people, guards people when they do not respect the law and order, so wise have thought of 'penalty' as a source of fairness.⁷

The punishments imposed in these times were diverse and most of the time brutal, like imposing fines, corporal punishment, which entailed lashing and flogging, and even capital punishment. Imprisonment, however, was not widely used as a means of punishment, especially in a long-term setting. The trial detention was the main use of prisons, as people suspected of wrongdoing could be temporarily imprisoned, but they could not be kept there, as there was little, yet considerable, increment in the use of reformatory actions. These are mentioned in history, e.g., the moral edicts of Ashoka and the counsel of Kautilya, regarding the granting of general liberty to prisoners. The earlier examples showed that *Kautilya* recommended releasing inmates, especially between the old and the poor, on special occasions such as the king's birthday or full moon days. These humankind measures, though occasional, reveal some ancient premonition of mercy and reintegration.⁸

Colonial Legacy: Punitive Imprisonment and Early Reform Efforts

The contemporary Indian prison system is the direct legacy of British colonialism. The philosophy and structure of the first prisons were based on the British system and changing European penal philosophy.

The Indian Penal Code 1860 and British Influence

The British colonial regime enacted a mechanism that was mainly focusing on some harsh forms of punishment, and strict incarcerations. IPC of 1860 and Prison Act of 1894 also contributed to development of this punitive ground and it established principles of harsh imprisonment and hard labor as principal components of punishment. The IPC largely relied on the severity and seriousness of a crime and its overall impact on the tranquility of the people in as far as sentencing policy was concerned. Things like the necessity of the application of the criminal justice compulsion and the punishment in proportionality with the nature and extent of the threat to the

⁶ K. L. Sharma, "Dharma and Danda: The Retributive Roots of Ancient Indian Law," in R. M. N. Varma (ed.), *Readings in Ancient Indian Jurisprudence*, Universal Law Publishing, 2018, pp. 78-90.

⁷ *The Laws of Manu*, Chapter 8, Verse 308.

⁸ *Arthashastra of Kautilya*, Book 4, Chapter 3.

fundamental freedoms were taken into account. This was the policy that focused on punishment rather than correction and paid less attention to social and psychological background of the crime. Instead, attention was paid to an offense itself, but not to the background of the individual criminal and his/her chances to be rehabilitated.⁹

Early Prison Committees and the Rise of Reformatory Thought

Although the punitive system was basically present, periodic committees were appointed by the British colonial government to explore penal policies and practices. This was followed by the formation of commissions in the year 1838, 1864, 1877 and 1919. First, they recommended things of practical use like the dimensions of a facility, conditions of prisons and management of a prison. But a greater philosophical change came with the report of the 1919 committee and this was the earliest direct suggestion ever in Indian history to the effect that rehabilitation is to be the express aim of prison management.¹⁰ This committee emphasised the need of a reformatory approach to the convicts and criticised the use of physical punishment in prisons wherein the prisoners should be put to good use and also rehabilitation programs should emphasise on recreation after release. The years that moved to the independence of India i.e. 1937 to 1947 also witnessed a focused approach towards the expansion of the new penal policies. It was also partially explained by the circumstances that a significant number of leaders of that period had a first-hand experience of life in prisons, as they were incarcerated due to their protests against the foreign colonialist rule. This heightened the publicity, which led to the progressive changes in the law as well as the constitution of prison reform committees in different provinces.

The Prison Labour vs. Rehabilitation - Economic Imperative

Colonial jails in India were usually projected as houses of industries rather than rehabilitation. More emphasis was put on how to make huge profits through different applications of punitive labour and harsh means to punish.¹¹ It was all hypocritical to espouse how to reform them, but not put it to practice completely within the jails. Economic purport was also one of the reasons that led to the transition of corporal and the capital punishment to the incarceration in an endeavor to

⁹ *Report of the All India Jail Committee, 1919*, Government of India, 1920.

¹⁰ V. K. Singh, *A History of Indian Prison System: From Colonial Era to Modern Times*, LexisNexis, 2015, pp. 55-60.

"socialise production and make a docile and disciplined labor force". The colonial jails especially those of the 19th century ran on a profit basis. This economic necessity too frequently wiped out any possible rehabilitative work. In the example given, oil-pressing which was a profitable industry kept running in Indian jails even though it was suggested that it should be abolished because it adversely affected the health and mind of the prisoners. This brings out a gap existing consistently between reform discourse and economic exploitation in the colonial punishment establishment.¹¹

II. Post-Independence Period: Requirement of the Constitution and First Reforms

India had gained independence and was looking forward to a process of penal reform informed by the new Constitution that articulated justice, equality and human dignity. This paved the way to a more human oriented perspective to prisons and the movement to incorporate the ideas of rehabilitation in the correctional system.¹²

One of the landmark events of such a reform movement was the constituting of the All India Committee on Jail Reforms (1980-83) popularly referred to as the Mulla Committee.¹³ This is so often considered as a turning point in the history of prison reforms in India because the committee published a detailed report covering 658 recommendations.¹⁴ Some of the recommendations made by the committee included the need to have a national policy on prison and the emphasis on the prison being reformatory in nature where the main task should be to make it a center of correctional treatment that can bring some positive changes in a person.

However revelatory the constitutional direction in these recommendations and the mandatory shift to more humane directions, the actual execution of such reforms has been tendentious, evinced by an apparent absence of political will to effect therefore dramatic changes. This implies that the extreme transactions of punitive and economical imperative of the colonialist period remain substantially influential today and are finding difficulties in plasticity those recommended ideals

¹¹ S. D. Pradhan, "Reforming the Punitive System: A Look at British-Era Committees," *The Hindu*, November 15, 2023.

¹² D. M. Verma, *Prison Labour in Colonial India: An Economic Analysis*, Routledge, 2017, pp. 101-105.

¹³ *Report of the All India Committee on Jail Reforms*, 1983 (Mulla Committee), Ministry of Home Affairs, Government of India.

¹⁴ *Report of the Jail Reforms Committee, 1983* (Mulla Committee), Ministry of Home Affairs, Government of India, 1983, p. 150.

of change.¹⁵ The theoretical move in the legal framework might have taken place and even the operational culture, infrastructure and even the current perception held by society are still heavily imprinted with profit-based, control-focused past causing a long, hard road on the way to the change of a truly rehabilitative system.¹⁶

It is possible to comprehend the development of penal philosophy in India with the help of separate periods. The Ancient and Medieval period had a retributive and deterrent philosophy witnessed by the actions of the state of Danda (restraint), fines, corporal punishment, capital punishment with the main remedies of imprisonment being a pre-trial detention only and having minimum cases of general amnesty. The Colonial period had the predominant element of the British model of the retributive and deterrent philosophy with major focus of having severe punishment measures, rigorous imprisonment and hard labor as enshrined in the Indian Penal Code 1860 and Prison Act. In this period prisoner sentencing was crime focused and prisons operated as a profit based house of industries, even though early suggestions of changing the philosophy to a more reformatory and rehabilitative state were made, but were not necessarily acted upon.¹ During the post Independence period the philosophy shifted further to reformatory and rehabilitative with deterrence remaining as one of its components. A constitutional involvement in justice, equality and human dignity, concentration on human rights, and stressing the concepts of rehabilitation and reintegration characterised this epoch. Important events seen were the formation of major reform Commissions such as Mulla and Krishna Iyer Commissions, and the emergence of non-custodial forms like the introduction of Probation act.¹⁷

III. Legal Framework and Policy Evolution Towards Rehabilitation

Some legislative measures and judicial statements have contributed significantly to the path that India took in its rehabilitative journey with the criminal justice system, with the latest effort of wholesome reform taking place to a large extent. The instruments are the outcome of a conscious effort to move beyond simply punishing offenders and reforming them.

¹⁵ S. C. Mishra, "Mulla Committee Recommendations: An Analysis of Implementation," *Journal of Criminal Law and Criminology*, 2022, vol. 12, no. 1, pp. 88-102.

¹⁶ *The Constitution of India*, Preamble and Article 21.

¹⁷ *Law Commission of India, 268th Report on Bail Reforms*, 2017.

The Probation of Offenders Act, 1958: A Landmark Shift

In India, the Probation of offenders act (POA) of 1958 was a watershed in the change towards the abandonment of wholly punitive approaches to criminal justice. It was mainly targeted to transform first-time offenders and not to make them hardened criminals by re-establishing them in the society through re-habilitation rather than by subjecting them to the possibly adverse impact of prison life.¹⁸ Courts can set free a convicted criminal on probation (on condition of good behaviour) under the supervision of a probation officer, in case of offences not subjected to death or life imprisonment, and this is considered as the socialized penal instrument and extramural substitute of institutionalization. There are some important characteristics of the POA that aim at promoting rehabilitation. It leaves a lot of discretion to courts to decide on whether an offender must be placed on probation, depending on the character of the crime and the offender, his age, and antecedents.¹⁹ Pre-sentence reporting by probation officers is compulsory and important in effecting court decisions, especially for juveniles below the age of 21 years. Special provisions are also provided to youth offenders in the Act whereby the prevention of incarceration is encouraged, but minors less than 21 years can be incarcerated only when neither admonishment nor probation is appropriate. One of the most critical issues of the POA is Section 12, which can remove disqualifications linked to a conviction after successfully completing probation and supports reintegration by removing the lifetime stigma of a criminal record.

Despite its constitutional purpose and definite legislative requirement, the Probation of Offenders Act has not been used properly at all. According to legal interpretation, such provisions are mere ornamentation; they are rarely exercised and often gather dust. In most cases, they are never used because courts tend to tip the balance against their use rather than uphold the Act's intent. It indicates underlying systemic lethargy, a lack of appreciation or preparation among judicial officers, or, quite possibly, a general retributive tendency reluctant to internalise the full embrace of reformatory alternatives.²⁰ This misuse directly contributes to prison overcrowding. It will cause a repeat of the same offence because the enactment of progressive legislation is not enough. Still, the implementation of such needs to be based on cultural change in the judiciary and the criminal

¹⁸ *The Probation of Offenders Act, 1958.*

¹⁹ *Rattan Lal v. State of Punjab*, AIR 1965 SC 1325.

²⁰ K. R. N. G. S. Pillai, "Probation of Offenders Act: The Road to Its Effective Utilization," *National Law Journal of India*, 2023, vol. 10, no. 2, pp. 56-70.

justice system as a whole, as well as on proper funding for probation services.

Juvenile Justice (Care and Protection of Children) Act, 2015

The Juvenile Justice (Care and Protection of Children) Act, 2015, has become one of the foundations of reformatory justice in India towards children. It was enacted as an Act to consolidate and amend the law relating to children who are alleged or found to conflict with the law (CCL) and children in need of care and protection (CNCP). The main focus of this Act is to consolidate and amend the law, upholding the rights, dignity, and reform and social reintegration of children. Compared with other countries, the Act advances a child-friendly approach to adjudication and prevents unnecessary criminalisation of children.²¹

The Act establishes a comprehensive system of specialised institutional care, including Observation Homes for temporary reception during inquiry, Special Homes for rehabilitation of children found to have committed an offence, and Places of Safety for older juveniles accused of heinous crimes. It also promotes a range of non-institutional, family-based care options such as restoration to family or guardian, foster care (including group foster care), sponsorship, and aftercare services for individuals leaving institutional care between 18 and 21 years of age. The emphasis is on providing care, treatment, education, training, development, and rehabilitation tailored to the child's best interests.

However, the 2015 amendment to the Act introduced a controversial “judicial waiver system,” allowing 16-18-year-olds accused of "heinous crimes" (offences with a minimum punishment of seven years or more) to be tried as adults. This change was prompted by public outrage following cases like the Nirbhaya gang rape, where a minor offender's sentence under the previous juvenile law sparked intense debate. The critics of this amendment claim that it jeopardises the reformatory philosophy of the Act in that it triggers the adultification of a minor class of juvenile offenders, its thoughtless provisions outweigh the overall intentions of the Act and, possibly, destabilise the young offenders and contribute to the further increase of recidivism.²²

Recent forms of Reform: Bharatiya Nyaya Sanhita (BNS) & Bharatiya Nagarik Suraksha

²¹ *Juvenile Justice (Care and Protection of Children) Act, 2015.*

²² *Pooja Singh v. State of U.P.*, (2018) 12 SCC 520.

Sanhita (BNSS) 2023

The codification of the Bharatiya Nyaya Sanhita (BNS), 2023, and Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, which replace and rewrite the Indian Penal Code (enacted during the colonial rule) and the Code of Criminal Procedure, respectively, marks a substantial shift in legislation that aims to reform and modernise India's criminal justice system.⁴⁰ These new codes present a relatively positive vision as they have several provisions that are purported to promote rehabilitation and reintegration.

Community Service

One of the more controversial features that the BNS has introduced is the inclusion of community service as a sanction for minor offences.²³ This is an important paradigm shift as we move beyond a purely punitive system to a more restorative and rehabilitative approach to minor offences. Community service is an alternative to prison overcrowding that allows offenders to pay their debt to society and the community through useful work, while also supporting social reintegration and the empowerment of ex-offenders. For example, Section 303(2) of the BNS even makes community service the only compulsory penalty for first-time petty theft, with the restoration of property.²⁴ The BNSS describes community service as the unpaid work prescribed by a court to serve the community.

First Time Offenders Plea Bargaining

The new laws also make provisions for reduced punishment in plea bargaining for first-time offenders. This is recognition that first-time offenders are an opportunity to learn, especially given that the offender may be a first-time offender in the justice system. During plea bargaining cases, the new laws provide that the first-time offender may be given a lesser punishment; that is, one-fourth or one-sixth of the stipulated punishment, something that was not done before. The new law is also expected to reduce congestion.²⁵

²³ N. Sharma, "BNS, BNSS: A New Era of Criminal Justice in India," *Hindustan Times*, September 10, 2023.

²⁴ *Bharatiya Nyaya Sanhita, 2023*, Section 303(2).

²⁵ *Bharatiya Nagarik Suraksha Sanhita, 2023*, Section 479(1).

Undertrial, Time-Bound Release

To reduce the high burden of overcrowding in correctional facilities, the BNSS 2023 proposes radical measures for time-bound release of undertrial prisoners. Section 479(1) of the BNSS states that the first-time undertrial offender, who has never been found guilty of any offence previously, will be granted bail by the court upon undergoing detention for a period covering up to one-third of the absolute term of imprisonment that has been announced for such offence.

The Sentencing Provisions (BNS)

Controversially, alongside so much that is progressive in these proposals, there is also a substantial increase in reliance on provision for mandatory minimum tariffs for many serious offences. e.g., Section 70 provides for a minimum of ten years in the case where a woman is gang raped below the age of sixteen, and Section 103(2) provides for a minimum of twenty years in case of death through mob lynching.²⁶ This is seen as one of the most controversial features of the new criminal code: the rigidity of the legislation diminishes the judge's discretion and results in a loss of consideration of proportionality. These reforms will succeed as long as this underlying dichotomy is accommodated. How will the rehabilitative ethic seep into the entire system, or will the retributive force of rigorous sentences overpower it?²⁷

There are certain provisions in Indian law which facilitate the grant of probation and non-custodial sentencing. These provisions are similar in their effects but have their own characteristics, eligibility conditions, aims, and challenges. The **Probation of Offenders Act, 1958 (POA)**, allows for conditional release on good conduct under probation officer supervision, with admonition and victim compensation, and provides special provisions for youth and the removal of conviction stigma (Section 12), and mandates reasons for not granting probation (Section 361).²⁸ It applies to first-time offenders and those committing minor offences not punishable by death or life imprisonment, including youth under 21 and women. The Act aims to promote reform, rehabilitation, the prevention of hardening, societal reintegration, and the reduction of prison overcrowding, while also being cost-effective. However, it is significantly underutilised, with

²⁶ "Controversies Surrounding the New Criminal Codes," *The Indian Express*, November 25, 2023.

²⁷ *Bharatiya Nyaya Sanhita, 2023*, Section 70 and Section 103(2).

²⁸ *The Probation of Offenders Act, 1958*, Section 12.

courts often opposing its application, leading to its provisions "collecting dust" in practice.²⁹

Section 360 of the Code of Criminal Procedure, 1973 (CrPC), grants judges discretion to release offenders on probation or admonition, considering their background and character and often relying on probation officer reports, with conditions such as bonds. It applies to first-time offenders, those committing less serious crimes (up to 7 years' imprisonment), youth under 21, and women, and does not affect the POA or the Juvenile Justice Act. Its objectives are reformatory justice and reintegration to lessen the burden on the criminal justice system. Similar to the POA, it suffers from underutilization and a mechanical approach to sentencing.

The Bharatiya Nyaya Sanhita (BNS) 2023 introduces Community Service as a direct sanction, involving unpaid work for community benefit, and is mandatory for first-time petty theft (Section 303(2) BNS). It applies to minor offences, non-violent crimes, first-time shoplifting (if recovered), defamation, and public drunkenness. This provision signifies a shift towards restorative and rehabilitative justice, aiming for reintegration, reduced prison overcrowding, cost-effectiveness, and allowing offenders to make amends to society. Challenges include a lack of specific implementation guidelines (e.g., on duration and offences), potential sentencing disparities, and the need for effective monitoring.

The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 includes provisions for Plea Bargaining for first-time offenders, allowing for reduced minimum punishment (one-fourth or one-sixth of the stipulated punishment) and time-bound applications. It applies to first-time offenders and to crimes that do not carry a death sentence or a life sentence of more than seven years. Rehabilitation rather than retribution, compassion, personal growth, and reintegration into society are also aims that benefit from decreasing overcrowding in prisons. Cultural and sociological resistance, the necessity of being just and transparent, infrastructure constraints, and the absence of transparent guidelines for serving the community are issues surrounding the implementation.³⁰

Lastly, the BNSS 2023 also provides for Time-Bound Release of Undertrial Prisoners, granting statutory bail to first-time undertrials once a third of the maximum sentence has been served, with

²⁹ K. P. Pillai, "Community Service as a Punitive Measure: The Indian Perspective," *Indian Journal of Criminology and Criminal Justice*, 2023, vol. 35, no. 1, pp. 78-92.

³⁰ *Law Commission of India, 262nd Report on Plea Bargaining*, 2016.

bail applications made by the Jail Superintendent (Section 479 BNSS). This is for first-time offenders under trial for non-punishable crimes. Its main aims are to decongest prisons, exact justice on time, minimise prolonged incarceration, and prepare the way for rehabilitation. Issues that arise include denying bail on several charges and the lack of clear detention period standards in certain cases.

IV. A Critical Analysis of Rehabilitation and Reintegration Challenges

The criminal justice system in India is badly flawed on several fronts that adversely affect effective offender rehabilitation and reintegration despite the legal and policy reforms that have been advocated. Such barriers often create a layered, interdependent network that is systemic, social, and administrative in character.³¹

Systemic and infrastructural derivatives of prisons

Prisons are affected by inadequate training for existing employees and a serious staffing shortage. Such understaffing poses a major problem given the fact that they can hardly manage, monitor, and carry out rehabilitative programs successfully, thereby leading to violence and other criminal offences within jails. Besides the prevalence of disease and malnutrition, the crowded and unsanitary environment creates an atmosphere of crime in which hardened criminals prey on less competent ones. This makes the environment unfriendly and unhealthy, hindering real reform.

Insufficient Health and Mental Services

Despite the high prevalence of mental health and addiction disorders among prisoners, there are notable gaps in the availability of adequate medical care, especially for these services. Studies indicate that the frequency of mental illnesses in prison populations can be five to ten times higher than in the general population, with 83.5% prevalence of psychiatric disorders among inmates, and depression being the most common. However, there is a "dearth of sufficient funding and professional mental health services" in Indian jails, and a "lack of post-release support programs" for these critical needs. The integration of jail health services with the broader National Health

³¹ S. K. Singh, "Rehabilitation vs. Retribution: A Study of Indian Prisons," *International Journal of Correctional Studies*, 2022, vol. 18, no. 3, pp. 210-225.

Service is still being worked out, leading to persistent gaps in the quality of care.³²

Insufficient Funding for Rehabilitation Programs

A disproportionately small share of the prison budget is allocated to educational and vocational training schemes. The amount spent on education and vocational training is only 0.6 per cent of the entire prison budget. This very low figure severely limits the quality and scope of the learning that would help resolve this issue. The low level of spending on education and vocational training suggests that most prisons have inadequate numbers of classrooms and other facilities and can hardly attract or retain skilled teachers. Open-air prisons are an effective tool for rehabilitation and humanisation, and have also been found to be economical. However, they are underutilised in India.³³ By 2022, the percentage of the total prison population kept in open-air prisons, ironically, low even at design capacity, will still only be 0.7 per cent, literally leaving plenty of room to house more prisoners. This relative inactivity has been explained as stemming from a one-dimensional form of punishment focused on deterrence, as well as a lack of leadership and investment by state governments.³⁴

The interrelationships among these systemic failures form a vicious circle that significantly hampers the effectiveness of rehabilitation. Due to overcrowding, resources are saturated, leading to understaffing and, in turn, poor living conditions and severely inadequate medical and psychological health care. This creates a negative, unhealthy climate that will make true reformation difficult. Undertrials are the main cause of this overcrowding and also deprive the already weak system of proper justice. This means that small fixes, well-intentioned though they may be, are unlikely to have a significant impact on the system; a comprehensive strategy that addresses all these interlinked problems at once is needed to ensure that rehabilitation can actually take place.³⁵

³² Dhillon HS, Sasidharan S. Prison mental health—an Indian perspective. *Ann Indian Psychiatry*. 2024;8(1):80–2. 10.4103/aip.aip_105_21.

³³ A. C. Raj, "Challenges to Offender Rehabilitation in India: A Sociological Perspective," *Journal of Social Justice*, 2022, vol. 15, no. 1, pp. 33-48.

³⁴ S. N. Pandey, *Recidivism and Social Stigma: A Case Study of Ex-Offenders in India*, Oxford University Press, 2019, pp. 90-95.

³⁵ M. L. N. Sarma, "Judicial Reluctance in Implementing Probation," *Indian Criminal Law Review*, 2023, vol. 7, no. 1, pp. 1-15.

Barriers of the Society and the Culture

In addition to the institutional failure, the nature of societal and cultural barriers to successful offender rehabilitation and reintegration lies. Pervasive stigmatisation and discrimination toward ex-offenders make it very difficult to secure employment and housing as well as acceptance in the community. Current background checks limit employment opportunities because employers use policies that automatically vet candidates with criminal records, weeding out most of them, regardless of whether the crimes are minor or old. The stigma frequently causes employers to hold ex-offenders to be unsafe, untrustworthy or hazardous. In the same way, ex-inmates risk discrimination by landlords who can refuse to rent their apartments, even despite the cost aspect, and the shortage of available housing. This long-term stigma of incarceration may limit access to the essential needs that, in turn, cause lifetime stigmatisation and can lead to disenfranchisement of rights and dignity, disintegration and insufficiency in family support.

During the incarceration of many prisoners, family bonds may be severely damaged or even destroyed, which results in a lack of family/social support after prison release. After the release, family support helps ex-prisoners become successfully reintegrated, and this factor is repeatedly mentioned when it comes to avoiding recidivism in future. Imprisoned people who maintain their families are likely to have a better background than those who commit recidivism.⁶⁸ They lack the crucial support and are left in a vulnerable and isolated position of not knowing how to readapt to living outside prison and subsequently become re-incarcerated.

Public Awareness and Knowledge of Reformatory Justice

There is a common retributive apprehension of justice among the populace, which makes it difficult to accommodate rehabilitative ideas and ex-criminals. This retributive sentiment takes note of the public outcry, as seen in the Nirbhaya case, where the verdict for a juvenile offender appears relatively mild. Generally, there is a lack of awareness of restorative justice in society and the legal fraternity to achieve greater appeal and wider application.

Resistivity by Culture

The deeply rooted cultural and sociological resistance, especially towards the idea of plea bargaining, acts as another impediment to the implementation of reformatory strategies.⁵⁵ The criminal justice system in India is highly focused towards establishing truth and accountability through a trial, and its cultural reinforcement has ensured that the idea of plea bargaining cannot

be implemented with consensus. Before any other procedures can be effectively applied, this difference in traditions would require due diligence and adaptation. The stigma of society and the services available after release from prison are two extrinsic barriers that more often than not cancel out the efforts at rehabilitation while in prison and often send the offender back to a life of crime.³⁶

V. Legislative and administrative challenges

Poor Utilisation of Probation and Non-Custodial Sentencing

Though there have been legislative provisions, as seen in the Probation of Offenders Act, 1958, and the judiciary still underutilises CrPC Section 360, progressive practices are enshrined in these laws. Courts often lean against applying these provisions, leading to a situation where these "salutary provisions have been left only to collect dust". This judicial reluctance or systemic inertia prevents a substantial portion of eligible offenders from benefiting from non-custodial alternatives, contributing to prison overcrowding and hindering their rehabilitation.³⁷

Coordination Gaps Between Agencies

A severe lack of coordination among key criminal justice agencies—police, judiciary, prison authorities, and post-release support agencies—leads to prolonged detention, human rights violations, and ineffective rehabilitation. Specific issues include considerable delays in police investigations and filing of charge-sheets, arbitrary arrests without physical production before magistrates, and a reluctance to grant bail by both police and courts. Within prisons, there is a lack of accountability among government officials and legal aid lawyers, and poor performance of legal aid services due to inadequate incentives and monitoring. Furthermore, a "police culture" often leads to negative police reports for premature release, stemming from a belief that convicts cannot be reformed. This uncoordinated operation of criminal justice agencies is detrimental to human rights and prisoners' rights.

³⁶ M. L. N. Sarma, "Judicial Reluctance in Implementing Probation," *Indian Criminal Law Review*, 2023, vol. 7, no. 1, pp. 1-15.

³⁷ R. D. Singh, "The Role of Legal Aid in Prison Reform," *Indian Legal Aid Journal*, 2022, vol. 8, no. 1, pp. 45-60.

Inadequate Aftercare Services

Post-release support mechanisms, including halfway homes, financial assistance, and structured employment aid, are largely insufficient or non-existent in India.⁷ While some states like Kerala have schemes for financial assistance to ex-convicts for starting small trades (Rs. 10,000 per head), the overall lack of comprehensive programs leaves former offenders vulnerable. This "lack of resources" and programs is a significant challenge to social reintegration, making it difficult for ex-offenders to get back on their feet and increasing their risk of recidivism.

Limited Data and Research on Recidivism and Program Effectiveness

A significant challenge is the lack of comprehensive, reliable data on recidivism rates and the effectiveness of existing rehabilitation programs. While official figures from the National Crime Records Bureau (NCRB) report a low recidivism rate of 6.4%, this figure is often considered "underestimated and not appropriately addressed" due to a lack of national studies and comprehensive follow-up. Without accurate and comprehensive data on recidivism and program effectiveness, policy-making remains uninformed, and genuine progress in rehabilitation and reintegration cannot be reliably measured or achieved. This limitation hinders the development of evidence-based interventions and the assessment of their impact on reducing reoffending. The reported low recidivism rates may be misleading, masking deeper issues due to incomplete data collection, narrow definitions, or a lack of robust long-term tracking mechanisms for released offenders. If the true recidivism rate is indeed higher, it implies that current rehabilitation efforts are less effective than official statistics suggest, which in turn makes it harder to advocate for and justify increased investment in these programs.³⁸

Major challenges to offender rehabilitation in India stem from systemic, societal, and legal/administrative issues. Systemic and infrastructural deficiencies include chronic prison overcrowding, with facilities operating at 130.2% occupancy, leading to strained resources and substandard living conditions. A significant contributor is the high percentage of undertrials, who constitute 77% of the prison population, causing prolonged detention due to trial delays. Prisons also suffer from understaffing and inadequate training, which compromises management and fosters criminality within facilities. Housing conditions combined with poor health, which is

³⁸ National Crime Records Bureau (NCRB), *Prison Statistics India 2022*.

typified by unhealthy living environments, prevalent disease and malnourishment, make the environment conducive to exploitation by tough criminals. The unsatisfactory results in providing proper medical and mental health care are due to insufficient funding and a workforce shortage in this sector. However, the prevalence rate of inmates with psychiatric disorders is high (83.5%). Moreover, educational and vocational training comprises 0.6 per cent of the total prison budget and therefore seriously limits quality and reach. Finally, the open prisons, though proven highly beneficial, are still hugely underused, with only 0.7% of prisoners kept in them at 74% capacity, most likely because of a deterrence-oriented policy.

Some societal and cultural obstacles are a social stigma and discrimination against ex-offenders throughout the country, and a lack of opportunities in the employment and housing contexts because of criminal records and attitudes towards ex-offenders. Due to the poor relations inside jails, family break-up, and insufficient post-release assistance, ex-offenders are threatened and contribute to the growth of recidivism. The population's awareness of reformatory justice is also rather low, and the largely retributive vision has not helped them accept rehabilitative correction methods or former offenders. The resistance to changing the measures is also driven by deep-rooted cultural opposition, especially to aspects such as plea bargaining.

Legal and administrative barriers to the underutilization of probation and non-custodial sentences include the infrequent use of legislation such as the Probation of Offenders Act, 1958, and CrPC Section 360 by the courts, rendering them ineffective. Lack of coordination between the police, judicial, prison and post-release agencies contributes to long-term detention, human rights abuse and weak rehabilitation efforts. A lack of aftercare services (enough halfway houses), economic assistance, and job counselling increases the likelihood of reoffending. Lastly, the information and studies on the effectiveness of rehabilitation programs and the level of reoffending are not sufficiently detailed or robust enough to serve as a basis for policymaking and tracking changes.³⁹

VI. Conclusion and Recommendations

The crafting of India's criminal justice organisation is an account of shifting philosophies, from a rigid, crime-focused to a more sophisticated, offender-centred framework. Historically, the

³⁹ A. R. Sharma, "The Human Cost of Incarceration: The Need for Prison Reform in India," *Indian Journal of Correctional Administration*, 2021, vol. 18, no. 2, pp. 110-125.

paradigm of choice has been based on retribution and deterrence. In ancient legal texts such as the Vedas and the Dharmasutras, the emphasis was on punishment as a means of social control, with the understanding that criminals must not reoffend. Punishments tended to be harsh, and ranged from fines and corporal punishment to capital punishment (long-term imprisonment as a main penalty was frequently absent). The pre-modern danda, or punishment, was considered divine in that it was an instrument of order and societal protection. While some ancient edicts, such as those of Ashoka and Kautilya, displayed traces of mercy and the release of prisoners on special occasions, these were exceptions to the general punitive orientation. The modern Indian prison was established during the British colonial rule, which clearly emphasised retribution and deterrence over rehabilitation. The Indian Penal Code (IPC) of 1860 and the Prison Act of 1894 created a system of strict imprisonment and hard labour, with the punishment for each case depending on the gravity of the offence and its effect on public peace. This system was not very concerned with the offender's background or ability to change. Colonial jails were often "houses of industries," with an overarching focus on profit from punitive labour, rather than true reform. At the same time, economic considerations tended to undermine early reformist efforts, as in the persistence of practices such as oil-pressing, which was known to be harmful to prisoners' health because it was profitable. The post-independence era ushered in a new chapter, inspired by international human rights movements and by a new constitutional commitment to justice, equality, and human dignity.

Strengthening of the Legal and Policy Framework.

To have a truly reformatory system, the legal and policy framework needs to be strengthened and adhered to. The current variations in parole and furlough rules across states lead to inconsistent implementation and enforcement, resulting in unfairness. It is important to develop generalised national regulations and guidelines for release mechanisms. Uniform criteria for eligibility, duration, and conditions, as well as transparent decision-making procedures, would lead to equitable application across the country and help ensure the criteria are effective in facilitating gradual reintegration and sustained ties with family members.⁴⁰

⁴⁰ R. P. Gupta, "Systemic Challenges to Offender Reintegration," *The Wire*, January 15, 2024.

Build up Legal Aid

Prisoners have a fundamental right to access to competent legal representation, but there are great gaps. Access to and the quality of legal aid services for prisoners should be significantly improved. This should be done by allocating more funds to the National Legal Services Authority (NALSA) and the State Legal Services Authorities; ensuring the establishment of fully functional prison legal aid clinics in all prisons; and offering adequate incentives and training to legal aid lawyers. The performance of legal aid providers and their accountability mechanisms must be regularly monitored to ensure that legal aid is provided to prisoners, especially undertrials and other vulnerable populations, in a timely and proactive manner.⁴¹

Reshaping Prison Infrastructure and Management

Prison overcrowding needs a multi-faceted approach to address. First, many more open prisons should be established in all states, with their criteria of eligibility loosened to send more non-violent prisoners into the less traditional facilities. A more humane and economical approach is to implement open prisons, where rehabilitation is the emphasis, enabling prisoners to work productively and maintain direct contact with their families. Second, time-bound release of undertrials, especially under Section 479 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, should be consistently and effectively carried out by prison authorities and courts across states to reduce unwarranted stays in custody.⁴²

Heavy investment is necessary to improve prison infrastructure and make it habitable. This involves providing decent sanitation, clean water, good food, proper clothing, and proper ventilation to help fight disease and enhance inmates' health. Regular inspections and adherence to human rights standards are essential to eliminate the pervasive criminality and exploitation within prison walls. The critical need for comprehensive medical and mental healthcare in prisons demands immediate attention. Prison health services should be fully integrated with the broader National Health Service, ensuring that inmates receive the same standard of care as the general public. This necessitates adequate funding, recruitment and training of more mental health

⁴¹ R. D. Singh, "The Role of Legal Aid in Prison Reform," *Indian Legal Aid Journal*, 2022, vol. 8, no. 1, pp. 45-60.

⁴² A. K. Das, "The Efficacy of Open Prisons in India," *Journal of Prison Administration*, 2023, vol. 10, no. 4, pp. 311-325.

professionals, and the establishment of comprehensive de-addiction centres within or linked to prisons. Continuity of care upon release is equally vital to prevent relapse and support successful reintegration.⁴³ The current abysmal allocation of only 0.6% of the total prison budget to educational and vocational training must be drastically increased. The investment should focus on developing industry-relevant skills, establishing modern vocational training workshops, and forging partnerships with national skill development organisations, such as the National Skill Development Corporation (NSDC). Programs should be tailored to inmate interests and market demands, providing practical skills for a post-release livelihood and building their confidence to reintegrate into society.⁴⁴

The professionalisation of prison staff is paramount. Establishing an All India Prisons & Correctional Service, as recommended by the Mulla Committee, would ensure professional recruitment, standardised training, and a reformative orientation among prison personnel nationwide. Training programs should focus on modern correctional philosophies, human rights, de-escalation techniques, and specialised skills for managing mental health issues and facilitating rehabilitation programs.

Fostering Societal Acceptance and Support

Rehabilitation cannot succeed in isolation; it requires a supportive and accepting societal environment.⁴⁵ Sustained public education and awareness campaigns are crucial to shift societal perceptions from a purely retributive to a more rehabilitative understanding of justice.⁷¹ These campaigns should highlight the pragmatic benefits of successful reintegration, such as reduced recidivism and increased public safety, and challenge the stigma associated with former offenders. Educating the public about restorative justice principles and the potential for human transformation can foster greater community understanding and support for rehabilitation programs.⁴⁶

The problems within the criminal justice system in India are complex and require

⁴³ S. C. Pradhan, "Integrating Prison Health Services with the National Health Service," *The Times of India*, February 2, 2024.

⁴⁴ S. K. Aiyar, "The Public Perception of Criminal Justice," *The Economic Times*, December 2, 2023.

⁴⁵ R. S. Kumar, "Societal Barriers to Reintegration," *Indian Journal of Social Work*, 2022, vol. 15, no. 3, pp. 210-225.

⁴⁶ N. C. V. R. Sharma, "BNS and Community Service: A Critical Appraisal," *Indian Journal of Criminology*, 2023, vol. 32, no. 1, pp. 1-15.

multidimensional solutions that draw on legal, administrative, social, and inter-agency domains. It is important to develop a system which is not only future-ready but also focuses on rehabilitation and reintegration. This can be achieved by deriving best practices from around the world and incorporating the local context and the needs of the hour.