

Alternatives to Punishments Under the Indian Criminal Law

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Abstract: *The evolution of punishment reflects the changing philosophies of justice across civilizations and eras. Early societies relied heavily on retributive and deterrent punishments, often brutal and public, to maintain social order. Ancient and medieval systems prioritized authority, fear, and moral conformity, with limited scope for reform. Over time, institutionalization of justice introduced imprisonment, fines, and compensation as alternatives to physical penalties. The modern age marked a decisive shift toward rehabilitation, restorative justice, and proportionality. In India, colonial codification and post-independence reforms reshaped criminal justice with humane objectives. International standards such as the Tokyo, Bangkok, and Beijing Rules further reinforced non-custodial measures. Contemporary criminal law emphasizes offender reform, victim compensation, and community participation. The Bharatiya Nyaya Sanhita, 2023 reflects this progressive approach by formally recognizing community service and alternatives to imprisonment. Overall, punishment has transformed from vengeance-based practices to rights-oriented and reformatory justice mechanisms.*

Keywords: alternatives to punishment, community service, cultural shift from retributive to reformatory approach, fine, compensation, probation and admonition, open prison, plea bargaining

I. INTRODUCTION

Punishment in the ancient age represents the earliest mechanism through which human societies attempted to regulate conduct and preserve social order. In the absence of structured legal institutions, early civilizations relied heavily on customs, traditions, and religious beliefs to decide what constituted wrongdoing and the consequences that followed. Crime was not merely viewed as an offence against an individual but as a violation of the moral and cosmic order, often believed to anger gods or disrupt social harmony. As a result, punishments were designed to restore balance through retribution, deterrence, and public denunciation of the offender. Ancient legal systems such as the Code of Hammurabi, Manusmriti in India, Chinese dynastic codes, and Roman law imposed severe penalties including death, mutilation, whipping, branding, exile, and enslavement. Retributive justice was the guiding principle, best illustrated in the lex talionis doctrine “an eye for an eye.” Punishment often varied by social status and was intended to display the power of rulers and reinforce obedience through fear. Over the centuries, social, philosophical, and humanitarian developments led to significant changes in penal thinking. Enlightenment thinkers like Cesare Beccaria criticised cruelty and emphasised proportionality, rationality, and the worth of human life. Gradually, the world witnessed a clear shift from purely retributive models to reformatory and rehabilitative approaches. Modern penology recognizes that offenders are capable of change and that punishment should not only deter but also correct behaviour. This evolution is reflected in contemporary systems that prioritize reformation through education, vocational training, counselling, psychological assistance, and reintegration programmes. Many countries now emphasize restoring offenders to society as responsible individuals rather than isolating them permanently. Even prisons, once symbols of suffering and isolation, are increasingly viewed as correctional institutions meant to facilitate behavioural change. In modern India and across the world, punishments include imprisonment, life imprisonment, fines, forfeiture of property, and in rare cases, the death penalty. India retains capital punishment only for the “rarest of rare” cases, whereas several nations in



Europe and South America have abolished it entirely. Corporal punishments, common in ancient times, are now abolished in most democratic countries due to human rights concerns.

Alongside traditional punishments, many jurisdictions have adopted alternatives that aim to reduce overcrowding, promote proportionality, and address minor or non-violent offences more effectively. These alternatives include probation, parole, community service, compounding of offences, plea bargaining, restorative justice conferences, mediation, diversion programmes for juveniles, and behavioural therapy. Countries such as Norway, Sweden, Canada, Australia, and the United Kingdom also use electronic monitoring, suspended sentences, drug courts, and specialized rehabilitation centres. Norway's correctional system, known for its humane environment and low recidivism rates, stands as a global model of reformatory justice. The development of international conventions has further strengthened the global commitment to humane punishment, rehabilitation, and reintegration. The Universal Declaration of Human Rights (1948)¹ and the International Covenant on Civil and Political Rights (1966)² prohibit torture, degrading treatment, and arbitrary detention, emphasizing that dignity must be preserved even in punishment. The United Nations Convention Against Torture (1984)³ imposes a global obligation to prevent torture and cruel treatment in all detention settings. The Nelson Mandela Rules (UN Standard Minimum Rules for the Treatment of Prisoners, 2015)⁴ set comprehensive standards regarding accommodation, healthcare, discipline, contact with the outside world, and opportunities for education and rehabilitation. The Tokyo Rules (1990)⁵ focus specifically on non-custodial measures, encouraging states to adopt community-based alternatives to imprisonment. For children in conflict with the law, instruments such as the Convention on the Rights of the Child (CRC, 1989)⁶, the Beijing Rules (1985)⁷, and the Riyadh Guidelines (1990)⁸.

They emphasize diversion, minimal institutionalization, and complete reintegration into society. Today's legal systems recognize that true justice lies not only in punishing crime but also in transforming lives, preventing re-offending, and enabling offenders to return as productive members of society.

NEED FOR THE STUDY

The Indian criminal justice system has traditionally relied on imprisonment and other punitive sanctions as primary responses to crime. However, increasing prison overcrowding, rising recidivism rates, delays in criminal trials, and concerns regarding the effectiveness of incarceration have highlighted the need for alternative sentencing mechanisms. Recent reforms under the Bharatiya Nyaya Sanhita, 2023, particularly the introduction of community service as a formal punishment, indicate a shift towards reformatory and restorative justice. Therefore, it becomes necessary to

¹Universal Declaration of Human Rights (1948),

<https://www.un.org/en/about-us/universal-declaration-of-human-rights>

²International Covenant on Civil and Political Rights (1966), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

³United Nations Convention Against Torture, (1984), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

⁴Nelson Mandela Rules (UN Standard Minimum Rules for the Treatment of Prisoners, 2015) https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

⁵Tokyo Rules (1990), <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard-minimum-rules-non-custodial-measures>

⁶Convention on the Rights of the Child (CRC, 1989)

<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

⁷Beijing Rules(1985), <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard-minimum-rules-administration-juvenile>

⁸Riyadh Guidelines (1990), <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-guidelines-prevention-juvenile-delinquency-riyadh>



examine the evolution, legal framework, effectiveness, and challenges of alternatives to punishment in India and to evaluate whether such measures can achieve justice more effectively than conventional punitive methods.

SIGNIFICANCE OF THE STUDY

This study is significant because it explores the transformation of criminal justice from a retributive model to a reformative and restorative approach. It contributes to understanding how alternatives such as probation, admonition, plea bargaining, compensation, community service, Lok Adalats, and open prisons help reduce prison overcrowding, facilitate offender rehabilitation, and provide victim-centric justice. The study also analyses the impact of international standards such as the Tokyo Rules, Bangkok Rules, Beijing Rules, and ICCPR on Indian criminal law. Further, it evaluates the reforms introduced under the Bharatiya Nyaya Sanhita, 2023, thereby contributing to contemporary legal scholarship and policy development.

REVIEW OF LITERATURE

1. Cesare Beccaria – On Crimes and Punishments (1764)

Beccaria criticized cruel punishments and advocated proportionality, certainty of punishment, and humane treatment of offenders. His work laid the foundation for reformative criminal justice.

2. Jeremy Bentham – Principles of Morals and Legislation

Bentham emphasized utilitarianism and argued that punishment should serve social utility and crime prevention rather than vengeance.

3. N.V. Paranjape – Criminology and Penology

The author discusses various theories of punishment and highlights the growing importance of probation, parole, and rehabilitation in modern criminal justice.

4. K.D. Gaur – Textbook on Indian Penal Code

The work examines sentencing policies in India and recognizes the importance of alternatives to imprisonment for minor offenders.

5. M.P. Jain – Indian Legal History

The author traces the evolution of punishments in India from ancient to modern periods and explains the gradual transition towards reformative justice.

6. United Nations Tokyo Rules (1990)

These rules advocate non-custodial measures and encourage states to reduce dependence on imprisonment.

7. Reports of the Law Commission of India

Various reports have recommended probation, plea bargaining, victim compensation, and alternative dispute resolution mechanisms to reduce burden on courts and prisons.

RESEARCH GAP

Although extensive studies have been conducted on punishment theories and prison reforms, limited research focuses on a comprehensive analysis of alternatives to punishment under the newly enacted Bharatiya Nyaya Sanhita, 2023. Most existing literature discusses individual mechanisms such as probation or plea bargaining separately. There remains a lack of comparative analysis between traditional punishments and alternative sanctions, particularly in the context of recent criminal law reforms and international standards. This study seeks to bridge that gap by examining all major alternatives within a single analytical framework.

RESEARCH PROBLEM

The research problem therefore is whether alternatives to punishment under Indian criminal law effectively achieve the objectives of justice, rehabilitation, victim restoration, and crime prevention better than conventional punitive sanctions or not.



RESEARCH QUESTIONS

1. What is the historical evolution of punishment and alternative sentencing mechanisms?
2. What are the major alternatives to punishment available under Indian criminal law?
3. How do international instruments influence the development of alternatives to punishment in India?
4. What changes have been introduced under the Bharatiya Nyaya Sanhita, 2023 regarding alternative punishments?
5. To what extent do alternatives to punishment contribute to offender rehabilitation and victim restoration?
6. What are the challenges in implementing alternative sentencing mechanisms in India?

HYPOTHESES

- 1) H1: Alternative punishments such as probation, community service, plea bargaining, and compensation are more effective in rehabilitating offenders than traditional imprisonment for minor and first-time offences.
- 2) H2: The incorporation of community service and other non-custodial measures under the Bharatiya Nyaya Sanhita, 2023 reflects a shift from retributive justice towards reformatory and restorative justice.
- 3) H3: Effective implementation of alternatives to punishment can reduce prison overcrowding and recidivism while promoting social reintegration of offenders.
- 4) H4: International standards such as the Tokyo Rules, Bangkok Rules, Beijing Rules, and ICCPR have significantly influenced the development of alternative sentencing policies in India.

OBJECTIVES OF THE STUDY

To critically analyse alternatives to punishment under Indian criminal law and assess their effectiveness in achieving the objectives of modern criminal justice.

1. To examine the historical evolution of punishment from ancient to modern times.
2. To study the legal framework governing alternatives to punishment in India.
3. To analyse the role of international standards in promoting non-custodial measures.
4. To evaluate the reforms introduced under the Bharatiya Nyaya Sanhita, 2023.
5. To assess the effectiveness of alternatives in offender rehabilitation and victim restoration.
6. To identify challenges and suggest reforms for strengthening alternative sentencing mechanisms.

RESEARCH METHODOLOGY

The study adopts a doctrinal research methodology based on qualitative analysis. The primary sources are Bharatiya Nyaya Sanhita, 2023, Bharatiya Nagarik Suraksha Sanhita, 2023, Probation of Offenders Act, 1958, Juvenile Justice (Care and Protection of Children) Act, 2015, International instruments such as ICCPR, Tokyo Rules, Bangkok Rules, and Beijing Rules, Judicial decisions of the Supreme Court and High Courts. The secondary sources include books, journals, research articles, commentaries, reports of the Law Commission of India, government publications and reports and online legal databases and scholarly publications. The study uses analytical, descriptive, and comparative methods to evaluate the effectiveness of alternative punishments in India and other jurisdictions.

SCOPE OF THE STUDY

The study focuses on the concept, evolution, legal framework, and practical application of alternatives to punishment under Indian criminal law. It covers probation, admonition, plea bargaining, community service, open prisons, Lok Adalats, victim compensation, compounding of offences, forfeiture of property, and related non-custodial measures. The study also examines international standards and comparative practices in selected foreign jurisdictions. Particular emphasis is placed on reforms introduced through the Bharatiya Nyaya Sanhita, 2023 and Bharatiya Nagarik Suraksha Sanhita, 2023.



1.12 LIMITATIONS OF THE STUDY

The study is primarily doctrinal and relies on statutory provisions, judicial decisions, and secondary literature. It does not include empirical field research involving offenders, victims, prison officials, or judicial officers. The practical effectiveness of alternative punishments may vary across states and jurisdictions, which cannot be comprehensively assessed within the scope of this study. The study is limited to Indian criminal law and selected international comparisons. Since the Bharatiya Nyaya Sanhita, 2023 is relatively recent, sufficient judicial precedents interpreting some provisions may not yet be available.

II. CONCEPTUAL FRAMEWORK

EVOLUTION OF PUNISHMENTS

ANCIENT AGE

Punishment in the ancient age largely reflected a retributive approach, grounded in the idea of vengeance, moral condemnation, and the need to restore social order within early communities that lacked formal judicial systems.

INDIA

As described in sources such as the Manusmriti, Arthashastra, and Dharmashastras, punishments were primarily retributive and often severe, including mutilation, death penalty, and public humiliation, all of which were intended to deter wrongdoing and maintain dharma. Minor offences attracted monetary fines, demonstrating an early understanding of proportionality, while expiation and penance (Prāyaścitta) operated as significant mechanisms for moral or religious correction. These practices reveal that punishment was not merely about inflicting pain but also about spiritual purification. Kings held wide discretion in determining punishments, reflecting a system where authority and morality were deeply intertwined.

OTHER ANCIENT CIVILISATIONS

Other ancient civilizations also displayed similar punitive philosophies.

GREECE

Punishments ranged from fines, exile, and loss of citizenship to death, embodying a spectrum that combined both retribution and social regulation; exile, in particular, served as a significant alternative to harsh physical penalties.

ROME

It distinguished between citizens and slaves, subjecting slaves to severe corporal punishments while imposing relatively milder penalties on citizens. Roman legal practices also included banishment, monetary fines, forced labor, and the confiscation of property, showing a clear hierarchy in the administration of justice.

CHINA

Especially during the Ancient and Imperial periods, the legalist philosophy emphasized extremely harsh punishments such as mutilation and death, reflecting the belief that strict enforcement ensured societal order. However, later Chinese thought began to incorporate rehabilitative ideals, promoting moral correction as a legitimate objective of punishment.

Across these diverse civilizations, a general trend becomes evident: early societies placed a heavy emphasis on retribution and deterrence as the central purposes of punishment. Although certain alternatives such as fines, exile, expiation, or rehabilitation did exist, their application was limited and often secondary to the overriding concern of restoring authority and preventing future transgressions. Punishment in ancient societies was shaped by cultural norms, moral expectations, and the need to affirm social control, creating systems that blended severity with occasional avenues for correction and reform.



MEDIEVAL AGE

This age marked a shift toward more organized and institutionalized systems of punishment, although the methods remained largely harsh and punitive across regions.

INDIA

Under the Sultanate and Mughal rule,

- the justice system became comparatively structured, yet corporal punishments such as amputation and flogging continued to be widely used for various offences.
- Imprisonment gained prominence during this era, being employed more extensively than in ancient times as a means of restraining offenders and reflecting evolving ideas of state authority.
- Financial crimes were dealt with through fines and the seizure of property, indicating a move toward economic sanctions alongside physical penalties.
- Certain restorative elements emerged in the form of victim compensation, particularly through the Islamic legal concept of Diya, or blood money, which aimed to provide restitution to the aggrieved party.

EUROPE

- Punishments often took on a public and theatrical character, serving as both retribution and deterrent. Public executions, mutilation, and severe torture were commonly inflicted, reflecting a belief that fear of physical suffering would maintain social order.
- The influence of the Church led to the introduction of more spiritual or corrective measures such as penance, mandatory pilgrimage, and confinement in monasteries, which aimed to reform the offender's moral character rather than inflict bodily harm alone.

ISLAMIC COUNTRIES

Penal practices were shaped by religious principles, with Hudood punishments including stoning and flogging prescribed for specific offences deemed grave under Sharia law. The concept of Qisas represented retributive justice, allowing victims or their families to demand equal retaliation but also granting them the power to forgive, thus introducing a moral and reconciliatory dimension. Additionally, Diyya, or blood money, functioned as a restorative option that permitted financial compensation in place of physical retribution, thereby balancing justice with mercy.

The general trend of the medieval period reflects a gradual development toward more institutionalized forms of justice, with legal systems becoming increasingly organized and regulated by state or religious authorities. However, despite this structural evolution, punishments remained severe and often brutal, rooted in retribution, deterrence, and the preservation of social and moral order.

MODERN AGE

Punishment gradually shifted away from the traditional ideology of pure retribution and began embracing more progressive principles such as rehabilitation, deterrence, and restorative justice. This period marks a significant transformation in how societies perceive crime and offenders, moving from inflicting physical pain or social exclusion toward reforming individuals and reintegrating them into society.

INDIA

PRE- INDEPENDENCE

- Punishments, particularly under British rule, introduced major changes in the penal system. The British administration replaced many earlier punitive mechanisms with imprisonment as the primary form of punishment, institutionalizing jails as formal spaces for confinement and correction. This shift was rooted in utilitarian principles, emphasizing deterrence and societal protection rather than vengeance.



- Penal codes were codified to ensure consistency, leading to the creation of the Indian Penal Code (IPC) in 1860⁹, which established a rational and uniform structure of offences and penalties.

POST- INDEPENDENCE

- The focus of the criminal justice system continued evolving. Post-independence reforms placed greater emphasis on reformation and rehabilitation, recognizing that offenders could be corrected through humane and supportive measures. Systems such as probation, parole, suspended sentences, open prisons, and community-based corrections became more prominent, reflecting a growing commitment to reducing reliance on incarceration. Juvenile justice also developed as a specialized branch, acknowledging the need to treat young offenders differently, with greater care and rehabilitative focus.

The modern approach further incorporated restorative justice principles, encouraging mechanisms that promote reconciliation, compensation, and healing for victims, offenders, and communities.

III. TYPES OF PUNISHMENTS THROUGHOUT THE AGES

CAPITAL PUNISHMENTS

1. CRUCIFIXION

Crucifixion is an ancient method of execution where a person is tied or nailed to a cross and left to die slowly. It was used as a severe form of punishment for slaves, rebels, and criminals, primarily by the Romans. The method was intended to inflict extreme pain, humiliation, and public deterrence. It symbolized both retribution and social control in ancient societies.

2. BEHEADING

Beheading was an ancient method of execution where the head was severed from the body, often using a sword, axe, or guillotine. It was believed to be a swift and deterrent form of punishment for grave offences. Many societies viewed it as a method that preserved honour compared to more brutal penalties. Over time, it declined as legal systems shifted towards humane and reformative justice.

3. STONING

Stoning is one of the oldest forms of capital punishment, where a group throws stones at a condemned person until death occurs. It was often used for serious crimes like adultery, blasphemy, or murder in traditional societies. The method was meant to serve as both punishment and a public deterrent, involving community participation. Modern legal systems have largely abolished it due to its brutality and inhumanity.

4. BURNING

Burning alive was an ancient form of execution, often for heresy, witchcraft, or treason. The condemned was exposed to fire, sometimes tied to a stake or pyre. It was intended as both punishment and a public spectacle to instill fear. Over time, it was abolished as societies adopted more humane forms of justice.

5. DROWNING

Drowning was used in various cultures as a method of capital punishment or execution. The accused was submerged in water until death, sometimes using weighted restraints. It symbolized purification or divine judgment in some traditions. Modern law condemns it as cruel and inhumane.

⁹Indian Penal Code (IPC), 1860 <https://www.indiacode.nic.in/repealedfileopen?rfilename=A1860-45.pdf>



6. CRUSHING BY ELEPHANT

In ancient India and Southeast Asia, elephants were used to crush criminals as public execution. The elephant's immense strength ensured a slow, terrifying death. This method often targeted serious offenders or political prisoners. It disappeared as legal systems evolved toward more standardized punishments.

7. IMMUREMENT

Immurement involves imprisoning a person in a confined space, often leading to death by starvation or dehydration. It was used for severe crimes or as a form of ritual sacrifice in some cultures. The punishment was slow and psychologically tormenting. It is now considered a barbaric and unlawful form of execution.

8. POENA CULLEI

A Roman punishment for parricide where the offender was sewn into a sack with animals and drowned. It symbolized ultimate disgrace and divine retribution for killing one's parents. The choice of animals varied, often including a snake, dog, monkey, and rooster. It was abolished as Roman law evolved, seen today as a historical curiosity of extreme punishment.

9. IMPALEMENT

Impalement was a brutal form of execution where a victim was pierced with a sharp stake, often through the body, and left to die slowly. It was used in medieval and early modern times for crimes like treason, rebellion, or severe offenses. The method caused prolonged suffering and served as a terrifying public warning. It has been universally condemned today as an extreme and inhumane form of punishment.

10. SHOOTING

Shooting is a method of execution where the offender is killed by firearms, often by a firing squad. It is considered quick and was commonly used in military tribunals and wartime justice. Sometimes a single executioner fires the fatal shot; other times, multiple shooters share responsibility. Many countries have abolished it, viewing it as a harsh but less torturous method of capital punishment.

11. HANGING TO DEATH

Hanging involves suspending a person by the neck with a rope until death occurs by strangulation or neck fracture. It became one of the most widely used execution methods due to its simplicity and perceived swiftness. The effectiveness depended on the drop height and technique used. Modern societies increasingly reject it due to ethical concerns about capital punishment.

12. ELECTROCUTION

Electrocution uses a high-voltage electric current delivered through a specially designed electric chair to cause death. Introduced in the late 19th century as a "more humane" alternative to hanging. Death results from cardiac arrest, organ failure, or severe burns. It is now rare, with many countries abandoning it as cruel and outdated.

13. FLAYING

Flaying is an ancient and extremely brutal punishment where the skin of the victim is removed while alive or after death. It was used as a terror tactic by certain empires to punish severe crimes or enemies. The process caused unbearable pain and prolonged suffering. It is now universally condemned as one of the most barbaric forms of execution.



14. DEATH BY LETHAL INJECTION

Lethal injection delivers a combination of drugs intended to induce unconsciousness, paralysis, and cardiac arrest. It was introduced as a modern, “clinical” form of execution to reduce visible suffering. However, controversies exist about botched procedures and ethical concerns. Many countries have abolished or suspended its use due to human rights considerations.

CORPORAL PUNISHMENTS

1. WHIPPING/ FLOGGING/ FLAGELLATION

A form of corporal punishment where the offender is struck with a whip, rod, or cane. Used for minor crimes, moral offenses, or discipline in military and religious contexts. Intended to inflict pain and humiliation rather than death. Still practiced in some regions but largely outlawed as cruel and degrading.

2. MUTILATION

Involves the deliberate removal or damaging of a body part, such as hands, ears, or nose. Common in ancient societies for theft, treason, or rebellion to serve as a permanent deterrent. It caused lifelong physical and social consequences. Modern law rejects it as barbaric and inhumane.

3. BRANDING

Offenders were marked with a hot iron to signify their crime permanently. Used for crimes like theft, desertion, or slavery, making identification easy. Served both as punishment and a warning to society. It has been abolished in most legal systems due to its cruelty.

4. DISFIGUREMENT

Disfigurement is a form of punishment where a person’s appearance is deliberately damaged, often by cutting, burning, or mutilation. It was used in ancient and medieval societies to mark criminals, humiliate them, or serve as a permanent deterrent. The punishment inflicted lasting physical and social consequences, affecting the offender’s status in the community. Modern legal systems consider it cruel, inhumane, and a violation of human rights.

IV. SOCIAL OR FINANCIAL PUNISHMENTS

1. FINES

Fines were monetary penalties imposed on offenders as compensation or punishment for wrongdoing. They served to deter minor crimes without resorting to physical harm. Wealthier offenders could pay, sometimes creating inequality in justice. Over time, fines became standardized in legal systems as a corrective measure.

2. PUNISHMENTS

Punishments in early societies varied widely, from corporal penalties to capital punishment, aimed at maintaining social order. They were often public to deter others and reinforce moral codes. The severity usually corresponded to the perceived gravity of the offense. Modern systems increasingly focus on rehabilitation over mere retribution.

3. BANISHMENT/ EXILE

Banishment involved removing an offender from their community or territory, effectively cutting social and economic ties. Exile was used for political dissenters, criminals, or those who threatened social stability. It served as both punishment and protection for society. Today, it is largely symbolic or replaced by imprisonment.

4. PUBLIC HUMILIATION

Offenders were exposed to public ridicule, such as pillorying, stocks, or shame rituals, to enforce moral and social norms. The goal was to shame the individual and deter others from similar behavior. It relied on community participation and social pressure. Modern justice favors privacy and dignity over public shaming.

5. SLAVERY/ FORCED LABOUR

In ancient societies, criminals or war captives were often subjected to slavery or forced labor as punishment. They worked in mines, fields, or construction, contributing economically while serving retribution. This method was both punitive and utilitarian. Contemporary law considers it a severe violation of human rights and has abolished it globally.



6. IMPRISONMENT

Imprisonment involves confining an offender in a jail or prison for a specific period as punishment for crimes. It removes the individual from society to prevent further offenses and serves as a deterrent to others. Modern imprisonment also aims at rehabilitation, education, and reintegration of offenders. It remains one of the most common forms of punishment in contemporary legal systems.

7. FORFEITURE OF PROPERTY

Forfeiture of property is a legal penalty where an offender loses ownership of assets, land, or wealth due to criminal activity. It serves both as punishment and a deterrent, depriving criminals of ill-gotten gains. This method has been used historically for treason, corruption, or serious crimes. Today, it continues under modern law, often alongside fines or imprisonment, to enforce justice and restitution.

V. INTERNATIONAL STANDARDS GUARANTEEING ALTERNATIVES TO PUNISHMENT UNITED NATION TOKYO RULES (1990)

The United Nations Standard Minimum Rules for Non-Custodial Measures, commonly called the Tokyo Rules (1990), provide a comprehensive framework for promoting alternatives to imprisonment. These rules encourage member states to treat imprisonment as a measure of last resort and emphasize that incarceration should only be used when no other suitable alternatives exist.

The Tokyo Rules recommend a wide spectrum of non-custodial options applicable at both the pre-trial and post-conviction stages. For pre-trial procedures, the rules promote mechanisms such as release on recognizance, bail, conditional release, and judicial supervision, allowing the accused to maintain social and familial ties while awaiting trial. For sentencing, alternatives include probation, community service, house arrest, monetary or economic sanctions, suspended or deferred sentences, and counseling orders, as well as other non-institutional measures aimed at rehabilitation.

The Tokyo Rules emphasize that these measures should be applied fairly, taking into account the offender's circumstances, age, gender, and social context. The main objectives of these non-custodial measures are to reduce recidivism, minimize the psychological, social, and economic harms of imprisonment, and facilitate the offender's reintegration into society.

Article 2¹⁰ of the Tokyo Rules specifically states that imprisonment should only be imposed when other sanctions are insufficient, highlighting a global shift from punitive justice toward rehabilitative and restorative approaches. By prioritizing alternatives, member states can prevent prison overcrowding, reduce the cost of incarceration, and maintain social harmony, thereby promoting both the welfare of the offender and the broader interests of society. In India, these principles have influenced reforms in sentencing policy, such as the inclusion of community service under the Bharatiya Nyaya Sanhita, 2023¹¹, aligning domestic law with international best practices.

BANGKOK RULES (2010) AND GENDER SENSITIVE ALTERNATIVES FOR WOMEN

The United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, known as the Bangkok Rules (2010)¹², address the distinct vulnerabilities of women in the criminal justice system. These rules recognize that women offenders often face unique social, economic, and familial challenges, including childcare responsibilities, discrimination, and a higher likelihood of having experienced physical or sexual abuse.

¹⁰ Article 2 of the Tokyo Rules, <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard-minimum-rules-non-custodial-measures>

¹¹ Bharatiya Nyaya Sanhita, 2023, https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf

¹² Bangkok Rules (2010), https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf



The Bangkok Rules encourage gender-sensitive application of non-custodial measures, particularly for women who commit minor or first time offences. Rule 60¹³ emphasizes that custodial sentences should be a last resort for women, while Rule 61¹⁴ advocates for alternatives such as probation, community service, house arrest, and counseling programs, ensuring that imprisonment is only imposed when absolutely necessary for public safety. These measures aim to preserve women's social ties, protect family stability, and reduce the adverse effects of detention. The Bangkok Rules complement the Beijing Rules for juveniles, creating a cohesive framework for vulnerable offenders. Their adoption highlights the international commitment to human rights under instruments such as the ICCPR, ratified by India, which guarantees humane treatment (Article 10)¹⁵ and prohibits inhuman or degrading punishment (Article 7)¹⁶. In practice, the Bangkok Rules guide Indian courts to consider alternatives for women offenders, balancing societal protection with rehabilitation and dignity. The rules also reinforce the principle of proportionality in sentencing, ensuring that women are not subjected to unnecessary incarceration. By integrating these standards into domestic policy, India aligns with international human rights norms, promoting justice that is both equitable and rehabilitative.

BEIJING RULES (1985) AND JUVENILE JUSTICE

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, or the Beijing Rules (1985), establish international standards for the treatment of children in conflict with the law. Rule 17¹⁷ explicitly states that detention of juveniles should be a last resort and for the shortest period necessary, emphasizing that alternatives to deprivation of liberty must be prioritized.

These alternatives include probation, community service, restorative justice programs, counseling, and supervision in non-institutional settings, ensuring that juveniles retain their social and familial connections. The Beijing Rules also stress that the juvenile justice system must consider the child's age, development, circumstances, and potential for rehabilitation.

Articles 3¹⁸ and 7¹⁹ highlight the rights to a fair trial and protection from cruel or degrading treatment, consistent with ICCPR Articles 7, 9²⁰, and 14²¹, which India has ratified. The rules reinforce the principle that juvenile justice should focus on rehabilitation and reintegration, rather than punishment, to prevent recidivism and promote societal well-being. Indian domestic law reflects these principles in the Juvenile Justice (Care and Protection of Children) Act, 2015, which prioritizes non-custodial measures and diversion programs for children in conflict with the law, aligning with international norms.

¹³ Rule 60 of the Bangkok rules,

https://cdn.penalreform.org/wp-content/uploads/2021/12/BR_Guidance_Doc_English_Second_Edition.pdf

¹⁴ Rule 61 of the Bangkok rules, https://cdn.penalreform.org/wp-content/uploads/2021/12/BR_Guidance_Doc_English_Second_Edition.pdf

¹⁵ Article 10 of ICCPR, <https://www.un.org/esa/socdev/enable/rights/ahcstata14refinthr.htm>

¹⁶ Article 7 of ICCPR, <https://www.un.org/esa/socdev/enable/rights/ahcstata14refinthr.htm>

¹⁷ Rule 17 of Beijing Rules, https://www.unodc.org/pdf/criminal_justice/United_Nations_Rules_for_the_Protection_of_Juveniles_Deprived_of_their_Liberty.pdf

¹⁸ Article 3 of the Beijing Rules, 1985 <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard-minimum-rules-administration-juvenile>

¹⁹ Article 7 of the Beijing Rules, 1985 <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard-minimum-rules-administration-juvenile>

²⁰ Article 9 of the Beijing Rules, 1985, <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard-minimum-rules-administration-juvenile>

²¹ Article 14 of the Beijing Rules, 1985, <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard-minimum-rules-administration-juvenile>



Through these provisions, the Beijing Rules guide states in designing juvenile justice systems that are humane, proportionate, and developmentally appropriate, ensuring that children are treated with dignity while safeguarding the interests of society.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHT (1976)

The International Covenant on Civil and Political Rights (ICCPR), ratified by India in 1979, imposes significant constraints on the imposition of punishments.

- Article 7²² prohibits torture and cruel, inhuman, or degrading treatment or punishment, mandating that all penal measures respect human dignity.
- Article 9²³ guarantees liberty and security of the person, restricting arbitrary detention.
- Article 14²⁴ ensures the right to a fair trial and due process.
- Article 10²⁵ requires that persons deprived of liberty be treated humanely and provided with opportunities for rehabilitation. Complementary instruments, such as the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)²⁶, provide detailed safeguards regarding treatment, legal aid, and procedural fairness.

These principles collectively support the use of non-custodial alternatives, minimize reliance on imprisonment, and promote reintegration into society. Additionally, restorative justice principles emphasize repairing harm, encouraging reconciliation between offenders and victims, and addressing the underlying causes of criminal behavior. By incorporating these international safeguards into domestic law, India ensures that sentencing practices are consistent with human rights obligations, emphasizing rehabilitation over retribution. The integration of ICCPR standards and complementary guidelines into Indian jurisprudence reflects a commitment to a humane, equitable, and proportionate criminal justice system, aligning national practices with global best practices in alternatives to imprisonment.

PUNISHMENTS UNDER THE BHARATIYA NYAYA SANHITA, 2023

Punishments were earlier discussed under section 53²⁷ of the Indian Penal Code, 1860 and in the new code i.e., the Bharatiya Nyaya Sanhita, 2023, punishments are discussed in section 4²⁸ under Chapter II of the same.

The punishments to which offenders are liable under the provisions of this Sanhita are:

- (a) Death;
- (b) Imprisonment for life, that is to say, imprisonment for remainder of a person's natural life;
- (c) Imprisonment, which is of two descriptions, namely:
 - (1) Rigorous, that is, with hard labour;
 - (2) Simple;

²²Article 7 of the International Covenant on Civil and Political Rights (ICCPR), 1976, <https://www.globalhealthrights.org/wp-content/uploads/2013/10/HRC-General-Comment-No.-20-Article-7-Prohibition-of-Torture-or-Other-Cruel-Inhuman-or-Degrading-Treatment-or-Punishment.pdf>

²³Article 9 of the International Covenant on Civil and Political Rights (ICCPR), 1976, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

²⁴Article 14 of the International Covenant on Civil and Political Rights (ICCPR), 1976, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

²⁵Article 10 of the International Covenant on Civil and Political Rights (ICCPR), 1976, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

²⁶Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988) <https://www.ohchr.org/en/instruments-mechanisms/instruments/body-principles-protection-all-persons-under-any-form-detention>

²⁷Section 53 of the Indian Penal Code, 1860, <https://indiankanon.org/doc/543586/>

²⁸Section 4 of Bharatiya Nyaya Sanhita, 2023, <https://devgan.in/bns/section/4/>



- (d) Forfeiture of property;
- (e) Fine;
- (f) Community Service.

OBJECTIVES

1. Reform and integrate offenders.
2. Prevent first time offenders from becoming hardened criminals.
3. Reduce burden on prisons.
4. Protect victims through compensation or restoration.
5. Promote community responsibility.
6. Ensure speedy justice.

Several alternatives to imprisonment or traditional punishment are available under Bharatiya Nyaya Sanhita, 2023 (then Indian Penal Code, 1860),

- Bharatiya Nagarik Suraksha Sanhita, 2023 (then Code of Criminal Procedure, 1973)²⁹,
- Probation of Offenders Act, 1958³⁰ and various other special laws.

IMPORTANCE OF ALTERNATIVES

- Reduces overcrowding in prisons.
- Saves government costs.
- Focuses on correcting behaviour.
- Helps retain family ties, job and community ties.
- Promotes restorative and preventive justice.

VI. ALTERNATIVES TO PUNISHMENT

PROBATION

It was earlier discussed under section 360³¹ of the code of criminal procedure, 1974, and now was discussed under section 401³² of the Bharatiya Nagarik Suraksha Sanhita, 2023 as well as section 3³³ and 4³⁴ of the Probation of Offenders Act, 1958.

ESSENTIALS

- The offender must be below 21 years of age.
- He must be punishable with fine or seven years imprisonment or less,
- or in case of a woman, she should not be convicted for an offence punishable with death or imprisonment for life.

²⁹Bharatiya Nagarik Suraksha Sanhita, 2023 (then Code of Criminal Procedure, 1973)
<https://www.indiacode.nic.in/handle/123456789/20099>

³⁰Probation of Offenders Act, 1958

https://www.indiacode.nic.in/bitstream/123456789/15408/1/the_probation_of_offenders_act%20C_1958.

³¹Section 360 of Criminal Procedure Code, 1974, <https://devgan.in/crpc/section/360/>

³²Section 401 of the Bharatiya Nagarik Suraksha Sanhita, 2023, <https://kanoongpt.in/bare-acts/the-bharatiya-nagarik-suraksha-sanhita-2023/arrangement-of-sections-chapter-xxix-section-401-708f7ae300f0e523>

³³Section 3 of the Probation of Offenders Act, 1958,
https://highcourtchd.gov.in/sub_pages/left_menu/Rules_orders/high_court_rules/vol-III-pdf/chap21.pdf

³⁴Section 4 of the Probation of Offenders Act, 1958

https://highcourtchd.gov.in/sub_pages/left_menu/Rules_orders/high_court_rules/vol-III-pdf/chap21.pdf



- He or she must be a first time offender and committed a minor offence.

If all these criteria are fulfilled, he shall be released on probation of good conduct after entering into a bond to keep their good behaviour.

FEATURES

- The offender is released under supervision for a specific period.
- Conditions are imposed, example, good behaviour, reporting to probation officer.

Ratan Lal v. State of Punjab (1965) AIR 444³⁵

The accused Rattan Lal, aged 16 years, was convicted for an offence under Section 380³⁶ IPC (theft). He was alleged to have stolen a small amount of money from a house. The trial court convicted him and sentenced him to rigorous imprisonment.

The Sessions Court and High Court upheld the conviction and sentence. During the pendency of appeal before the Supreme Court, the Probation of Offenders Act, 1958 came into force in Punjab. The defence argued that since he was a child or youthful offender, the Act should apply and he should be released on probation instead of being sent to prison. The Supreme Court allowed the appeal in part and directed that Rattan Lal be released on probation instead of imprisonment. The Court held that the Probation of Offenders Act, 1958³⁷ is a beneficial legislation, intended for the reformation of young offenders, and therefore should be applied retrospectively to pending cases. The conviction was upheld, but the sentence of imprisonment was set aside, substituting it with a probation order under Section 6³⁸ of the Act.

RELEASE AFTER ADMONITION

The term admonition means warning. It was earlier discussed under section 360 of the code of criminal procedure, 1974, and now was discussed under section 401 of the Bharatiya Nagarik Suraksha Sanhita, 2023 as well as section 3 and 4 of the Probation of Offenders Act, 1958.

ESSENTIALS

- The offender must be below 21 years of age.
- He must be punishable with fine or seven years imprisonment or less,
- or in case of a woman, she should not be convicted for an offence punishable with death or imprisonment for life.
- He or she must be a first time offender. If all these criteria are fulfilled, he shall be released after due admonition after entering into a bond to keep their good behaviour.

³⁵Ratan Lal v. State of Punjab (1965) AIR 444,
<https://testbook.com/landmark-judgements/ratanlal-vs-state-of-punjab#:~:text=The%20Supreme%20Court%20in%20Ratanlal,the%20punishment%20for%20an%20offender.>

³⁶Section 380 of the Indian Penal Code, 1860, <https://devgan.in/ipc/section/380/>

³⁷Probation of Offenders Act, 1958,
https://www.indiacode.nic.in/bitstream/123456789/15408/1/the_probation_of_offenders_act%2C_1958.pdf

³⁸Section 6 of the Probation of Offenders Act, 1958,

https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_24_00003_195820_1517807319214§ionId=39770§ionno=6&orderno=6



If a person is convicted of theft, theft in building, dishonest misappropriation, cheating on any office under the Bharatiya Nyaya Sanhita, 2023 punishable with not more than two years or any fine and no previous conviction is present. Instead of sentencing, he shall be released after due admonition, the court releases the offender after warning or admiration instead of giving a sentence when the offence is minor in nature.

State of Rajasthan v. Balchand (1977) 4 SCC 308³⁹

The Supreme Court observed that for first-time and youthful offenders involved in minor offences, courts should prefer release after due admonition or probation rather than imprisonment, reinforcing the reformatory object of criminal justice.

COMPOUNDING OF OFFENCES

Section 320⁴⁰ of the Code of Criminal Procedure, 1973 deals with the compounding of offences and now it is dealt under section 359 of Bharatiya Nagarik Suraksha Sanhita, 2023⁴¹. This compounding of offences is done mostly for minor offences or those affecting individuals rather than the society which can be settled between them, leading to closure of a criminal case without punishment. Hurt, defamation, adultery (when previously was an offence), trespass, etc are considered as minor offences and these shall be compounded.

Gian Singh v State of Punjab (2012) 10 SCC 303⁴²

The appellant Gian Singh faced criminal charges arising from a private dispute. The parties later settled the matter amicably and jointly requested that the FIR be quashed. The High Court refused, holding that certain non-compoundable offences cannot be quashed even if the parties decide to settle after compromising.

The Supreme Court held that the High Courts can quash criminal proceedings in non-compoundable offences if the dispute is private, personal and does not affect the society at large. However serious offences such as murder, rape, dacoity, corruption or offences involving public trust cannot be quashed on the basis of compromise. The court emphasised that the power under section 482⁴³ of the Code of Criminal Procedure, 1973 is extraordinary, must be used sparingly and not only to prevent abuse of process or to secure the ends of justice.

PLEA BARGAINING

Section 289 to section 300 deals with plea bargaining under the Bharatiya Nagarik Suraksha Sanhita, 2023. Previously it was discussed under section 265A- 265L⁴⁴ of Chapter XXIA of Code of Criminal Procedure Code, 1973 introduced in the amendment of 2005. It is applicable mainly for offences punishable up to 7 years and not affecting socio-economic conditions. The accused pleads guilty in exchange for a lesser sentence, compensation arrangement or release in plea bargaining.

³⁹State of Rajasthan v. Balchand (1977) 4 SCC 308,
<https://indiankanoon.org/doc/8258/>

⁴⁰Section 320 of the Code of Criminal Procedure, 1973, <https://devgan.in/crpc/section/320/>

⁴¹Section 359 of Bharatiya Nagarik Suraksha Sanhita, 2023,
<https://www.advocatehoj.com/library/bareacts/bharatiyanagarik2023/359.php?Title=Bharatiya%20Nagarik%20Suraksha%20Sanhita,%202023&STitle=Compounding%20of%20offences>

⁴²Gian Singh v State of Punjab (2012) 10 SCC 303,
<https://www.drishtijudiciary.com/landmark-judgement/code-of-criminal-procedure/gian-singh-v-state-of-punjab-&-anr-2012>

⁴³Section 482 of the Code of Criminal Procedure, 1973, <https://indiankanoon.org/doc/1679850/>

⁴⁴265A- 265L of Chapter XXIA of Code of Criminal Procedure Code, 1973, https://devgan.in/crpc/chapter_21a.php



Section 289⁴⁵- Application

Plea bargaining applies after a police report under Section 193 of BNSS is filed or after a magistrate takes cognizance of an offense.

Exclusions

The process is not available for

- Offenses punishable with death or life imprisonment,
- Socio- economic offenses, as defined by government notification,
- Offenses against women and children,
- Juveniles.

Section 290⁴⁶- Application for plea bargaining

- An application must be filed by the accused within 30 days of the charge being framed.
- The application must include an affidavit from the accused stating they are voluntarily pursuing plea bargaining and have not been previously convicted for the same offense.

Section 291- 293⁴⁷- Court proceedings

- The court will notify the Public Prosecutor and the complainant of the application.
- The court will then hold a private meeting with the accused to ensure the plea is voluntary.
- If a mutually satisfactory resolution is reached, the court will pass a judgment.

Section 299⁴⁸- Statements during negotiations

Any statements made by the accused during the plea bargaining process are inadmissible in any other legal proceeding.

Section 295⁴⁹- Compensation

The court may order the accused to pay compensation to the victim as part of the plea bargain.

State of Gujarat v Natwar Harchandji Thakar (2005)

The case arose soon after plea bargaining was introduced in India through the Criminal Law (Amendment Bill, 2005⁵⁰) later inserted as Chapter XXIA, Code of Criminal Procedure, 1973 in 2006. The accused, Natwar Harchandji Thakar, sought plea bargaining in a criminal case involving minor offences. The trial court rejected it, stating that plea bargaining had no statutory recognition at that time. The matter reached the Gujarat High Court to a petition questioning whether plea bargaining could be permitted as a judicial innovation or not. The Gujarat High Court recognised plea bargaining as a valid and pragmatic tool for criminal justice reform. The court held that plea

⁴⁵Section 289 of Bharatiya Nagarik Suraksha Sanhita, 2023, <https://kanoongpt.in/bare-acts/the-bharatiya-nagarik-suraksha-sanhita-2023/arrangement-of-sections-chapter-xxiii-section-289-9716ca0320893ecd>

⁴⁶Section 290 of Bharatiya Nagarik Suraksha Sanhita, 2023, <https://indiankanoon.org/doc/50707788/>

⁴⁷Section 291- 293 of Bharatiya Nagarik Suraksha Sanhita, 2023, <https://bprd.nic.in/uploads/pdf/202401290624581538333Pleabargaining-BNSS.pdf>

⁴⁸Section 299 of Bharatiya Nagarik Suraksha Sanhita, 2023, <https://bprd.nic.in/uploads/pdf/202401290624581538333Pleabargaining-BNSS.pdf>

⁴⁹Section 295 of Bharatiya Nagarik Suraksha Sanhita, 2023, <https://bprd.nic.in/uploads/pdf/202401290624581538333Pleabargaining-BNSS.pdf>

⁵⁰ Amendment Bill, 2005, 2005, <https://www.indiacode.nic.in/bitstream/123456789/6799/1/criminalawamendmendact%2C2005.pdf>



bargaining, if conducted fairly and voluntarily, does not violate any constitutional right under Articles 14⁵¹ and 21⁵². It observed that the criminal justice system was overburdened with delays and plea bargaining could ensure speedy disposal of cases.

OPEN PRISON SYSTEM

The concept of an open prison system in India began with its first facility in the Bombay presidency in 1905. Post-independence, the first open prison annexe was established in Lucknow in 1949, with a full-fledged facility following in 1953. The prison system has grown to include over 80 such prisons across the country and now it is spread across 17 states with 91 open prisons. The prisoners of an open prison will generally do activities like animal husbandry, farming, poultry, etc. Purasadai Udaippu in Sivangangai District, Salem Farm, Singanallur open prison are a few open prisons in Tamil Nadu.

Ramamurthy v. State of Karnataka (1997 2 SCC 642)⁵³

The Supreme Court recognized open prisons as a reformatory measure consistent with human dignity and directed states to expand open prison facilities to reduce overcrowding and promote rehabilitation.

BONDS FOR GOOD BEHAVIOUR

This is more like a preventive approach in the criminal justice system. Section 106- 110⁵⁴ of Code of Criminal Procedure Code, 1973 deals with bonds for good behaviour. Section 127-129⁵⁵ of the Bharatiya Nagarik Suraksha Sanhita, 2023 deals with bonds for good behaviour under the new criminal law.

- Section 127⁵⁶- Security for good behaviour from persons disseminating seditious matters allows an Executive Magistrate to require a bond for up to one year from individuals spreading prohibited material, including obscene content.
- Section 128⁵⁷- Security for good behaviour from suspected persons permits an Executive Magistrate to order a bond for up to one year if there is information that a person is concealing their presence to commit a cognizable offense like rape, murder, etc.
- Section 129⁵⁸- Security for good behaviour from habitual offenders targets repeat offenders involved in serious crimes, allowing a Magistrate to require a bond with sureties for up to three years.

⁵¹ Article 14 of the Indian Constitution, <https://indiankanoon.org/doc/367586/>

⁵² Article 21 of the Indian Constitution, <https://indiankanoon.org/doc/1199182/>

⁵³ Ramamurthy v. State of Karnataka (1997 2 SCC 642), <https://indiankanoon.org/doc/748775/>

⁵⁴ Section 106- 110 of Code of Criminal Procedure Code, 1973, https://devgan.in/crpc/chapter_08.php

⁵⁵ Section 127-129 of the Bharatiya Nagarik Suraksha Sanhita, 2023, <https://www.advocatekhaj.com/library/bareacts/bharatiyanagarik2023/a14.php?Title=Bharatiya%20Nagarik%20Suraksha%20Sanhita,%202023&STitle=Bond%20for%20Good%20Behavior>

⁵⁶ Section 127 of the Bharatiya Nagarik Suraksha Sanhita, 2023, https://www.indiacode.nic.in/bitstream/123456789/21544/1/the_bharatiya_nagarik_suraksha_sanhita%2C_2023.pdf

⁵⁷ Section 128 of the Bharatiya Nagarik Suraksha Sanhita, 2023, <https://vidhiadda.com/section-128-of-the-bharatiya-nagarik-suraksha-sanhita-2023-bnss/>

⁵⁸ Section 129 of the Bharatiya Nagarik Suraksha Sanhita, 2023,

<https://indiankanoon.org/doc/106164203/>



Madhu Limaye v. Sub-Divisional Magistrate (1971)⁵⁹

The Court upheld preventive bonds under CrPC as constitutional, provided they are imposed with procedural safeguards and not used arbitrarily to curb personal liberty.

LOK ADALAT

Lok Adalat is an out of court settlement. It aims to facilitate settlement rather than awarding punishments to the offenders by settling the disputes between the offender and the victims. The legal basis of Lok Adalat are section 19⁶⁰ and 20⁶¹ of the Legal Services Authorities Act, 1987.

The features of Lok Adalat include

- the awards of final and binding.
- There can be no appeals.
- Lok Adalat can take up cases pending before the courts or disputes at pre-litigation stage itself.

Lok Adalat also works as an alternative to punishment by focusing on compromise and not conviction. It aims at mutual settlement, and restoring peace between the parties.

It also gives a restorative justice approach to the disputes, meanwhile prevents criminalisation of minor offenders by stopping them from entering into criminal networks, giving them an opportunity to reform and to reintegrate into the society and avoids harsh consequences like jail, financial penalties, and criminal courts.

K N Govindan Kutty Menon v C D Shaji (2012)⁶²

The Supreme Court in the case held that the criminal compoundable offences like her defamation, motor accident compensation cases and matrimonial disputes including family disputes, maintenance claims and domestic claims can be settled in Lok Adalat and make the award enforceable.

COMMUNITY SERVICES

Community services are unpaid work for the benefit done by offenders. The term community services is introduced under section 4(f)⁶³ of the Bharatiya Nyaya Sanhita, 2023. The concept of community services was existing and applicable for juveniles earlier and now it is also applicable for other offenders too.

OBJECTIVE

- To promote rehabilitation and reintegration
- To reduce the burden of present system
- To make the offender contribute to society.

ELIGIBILITY

- Minor offences like not wearing a seat belt, two-wheeler overload, not providing a way for emergency vehicles.

⁵⁹Madhu Limaye v. Sub-Divisional Magistrate (1971), <https://indiankanoon.org/doc/497252/>

⁶⁰Section 19 of the Legal Services Authorities Act, 1987, https://www.indiacode.nic.in/show-data?actid=AC_CEN_3_46_00003_198739_1517807322718§ionId=27592§ionno=19&orderno=23

⁶¹Section 20 of the Legal Services Authorities Act, 1987, <https://lawgist.in/legal-services-authorities-act/20>

⁶²K N Govindan Kutty Menon v C D Shaji (2012), <https://indiankanoon.org/doc/236954039/>

⁶³Section 4(f) of Bharatiya Nyaya Sanhita, 2023, <https://devgan.in/bns/section/4/>



- Non- violent crimes.
- First time offenders,

but granting communication services is within the discretion of the court.

PROVISIONS

- Section 202⁶⁴- Public servants unlawfully engaging in trade.
- Section 209⁶⁵- Non-appearance in response to a proclamation under section 84 of Bharatiya Nagarik Suraksha Sanhita, 2023.
- Section 226⁶⁶- Attempt to commit suicide.
- Section 303(2)⁶⁷- Theft, if the value of the property stolen is less than Rs. 5,000. If the offender, by nature being a first- time offender or promises to return or restore the value of the property.
- Section 355⁶⁸- Misconduct in public by a drunken person.

Manoj Kumar v State (Government of NCT, Delhi) (2022)⁶⁹

The accused was charged under the Arms Act. The prosecution failed to establish beyond reasonable doubt. The Court directed the accused to do community service at Lok Nayak Jai Prakash Narayan Hospital every saturday and sunday for one month.

FINES

A fine is a monetary penalty imposed upon a convicted person. The Indian Penal Code contains numerous provisions where fines may be levied along with imprisonment for instance, offences such as public nuisance (Section 290⁷⁰ of IPC), obscenity (Section 292⁷¹ of IPC), or cruelty (Section 498A⁷² of IPC).

The general provisions on fines are covered under Sections 63–70 IPC.

- Section 63⁷³ the Indian Penal Code, 1860 clarifies that no fine can exceed the amount prescribed in the Penal Code.
- Section 64⁷⁴ of the Indian Penal Code, 1860 allows imprisonment in default of payment of fine.
- Section 67⁷⁵ of the Indian Penal Code, 1860 prescribes limits on default imprisonment for offences punishable with fine only.
- The concept of fine is retained, but Sections are renumbered and rationalized.

⁶⁴Section 202 of Bharatiya Nyaya Sanhita, 2023, <https://devgan.in/bns/section/202/>

⁶⁵Section 209 of Bharatiya Nyaya Sanhita, 2023, <https://devgan.in/bns/section/209/>

⁶⁶Section 226 of Bharatiya Nyaya Sanhita, 2023, <https://testbook.com/judiciary-notes/section-226-bns>

⁶⁷Section 303(2) the Bharatiya Nyaya Sanhita, 2023, <https://devgan.in/bns/section/303/>

⁶⁸Section 355 of Bharatiya Nyaya Sanhita, 2023, <https://www.legalkart.com/legal-blog/understanding-section-355-of-bharatiya-nyaya-sanhita-2023-key-legal-provisions-and-insights>

⁶⁹Manoj Kumar v State (Government of NCT, Delhi) (2022), <https://www.casemine.com/judgement/in/62939694b50db9770b94c76c/amp>

⁷⁰Section 290 of Indian Penal Code, 1860, <https://devgan.in/ipc/section/290/>

⁷¹Section 292 of Indian Penal Code, 1860, https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=326

⁷²Section 498A of Indian Penal Code, 1860, <https://indiankanoon.org/doc/538436/>

⁷³Section 63 of Indian Penal Code, 1860, <https://devgan.in/ipc/section/63/>

⁷⁴Section 64 of Indian Penal Code, 1860, <https://devgan.in/ipc/section/64/>

⁷⁵Section 67 of the Indian Penal Code, 1860, <https://www.ncib.in/pdf/indian-penal-code.pdf>



- Sections 59–66 of Bharatiya Nyaya Sanhita, 2023 correspond to former Sections 63–70 of the Indian Penal Code, 1860.
- Minor refinements include
 - Clearer language on default imprisonment.
 - Higher fines in several offences (e.g., corruption, organized crime, sexual offences).
 - In economic offences, fines are made proportional to wrongful gain or loss.

BNS introduces higher fines for cybercrimes, corruption, terrorism, and sexual offences, reflecting a policy shift toward deterrence.

Shahejadhkhan Maheubkhan Pathan v. State of Gujarat (2013) 1 SCC 570⁷⁶

The Supreme Court has emphasized proportionality in imposing fines. In, the Court held that fines must not be excessive and should reflect the financial condition of the accused.

COMPENSATION

Section 357⁷⁷ of the Criminal Procedure Code deals with the orders to pay compensation and now it is dealt under section 395⁷⁸ of Bharatiya Nagarik Suraksha Sanhita, 2023. Orders to pay compensation include prosecution expenses, loss or injury caused by offence, caused death or abetting the commission of offence or theft, criminal misappropriation, criminal breach of trust or cheating. Section 357A⁷⁹ deals with the victim compensation scheme under the code of criminal procedure, 1973. While fines serve the purpose of punishment, compensation represents restorative justice offering relief directly to the victim. This principle is contained in Section 357 of CrPC, one of the most progressive victim-centric provisions.

- Section 357(1)⁸⁰ CrPC empowers courts to direct that the whole or a part of the fine imposed be applied as compensation to the injured party.
- Section 357(3)⁸¹ CrPC authorizes courts to award compensation even when no fine is imposed.
- Section 357A CrPC introduces a Victim Compensation Scheme, requiring State Governments to provide rehabilitation funds to victims of crime, including acid attack survivors and victims of sexual offences.
- BNSS retains and strengthens CrPC's framework:
 - Sections 394–396 BNSS, 2023, correspond to Section 357, 357A CrPC.
 - Makes it clearer that
 - i. Courts must record reasons if they do not award compensation.
 - ii. Compensation orders can be made even in the absence of fine, continuing Section 357(3) CrPC, 1973.
 - Introduces better coordination with victim compensation schemes of states.
 - Enhanced focus on rehabilitation funds, especially for sexual offences, trafficking, and acid attacks.

BNSS does not radically alter the CrPC, 1973 but strengthens mandatory consideration of compensation and places greater emphasis on victim rehabilitation.

Hari Singh v. Sukhbir Singh (1988) 4 SCC 551⁸²

⁷⁶Shahejadhkhan Maheubkhan Pathan v. State of Gujarat (2013) 1 SCC 570, <https://indiankanoon.org/doc/24987491/>

⁷⁷Section 357 of the Criminal Procedure Code, <https://devgan.in/crpc/section/357/>

⁷⁸Section 395 of Bharatiya Nagarik Suraksha Sanhita, 2023, <https://www.indiacode.nic.in/handle/123456789/20099>

⁷⁹Section 357A of the Criminal Procedure Code, <https://devgan.in/crpc/section/357A/>

⁸⁰Section 357(1) CrPC, <https://devgan.in/crpc/section/357/>

⁸¹Section 357(3) CrPC, <https://devgan.in/crpc/section/357/>



The court directed courts to use Section 357 liberally, noting that compensation plays a crucial role in helping victims regain dignity and stability.

Ankush Shivaji Gaikwad v. State of Maharashtra (2013) 6 SCC 770⁸³

The Supreme Court held that recording reasons for non-grant of compensation is mandatory, reinforcing the victim-centric nature of criminal justice.

FORFEITURE OF PROPERTY

Forfeiture refers to the loss of property to the State as a consequence of criminal conduct. While the IPC itself contains only limited forfeiture provisions. Section 53⁸⁴ of the Indian Penal Code, 1860 recognizes “forfeiture of property” as a punishment, though it is rarely imposed various special statutes have expanded the concept significantly.

Under the Code of Criminal Procedure, 1973 Sections 451⁸⁵, 452⁸⁶, and 453⁸⁷ CrPC empowers courts to order disposal, destruction, or confiscation of property connected with the offence.

- Sections 105–111 BNSS expand and modernize confiscation procedure
 - Detailed provisions for attachment, seizure, freezing, and forfeiture.
 - Recognizes proceeds of crime (inspired by PMLA).
 - Allows confiscation even when
 - The offender absconds.
 - The property is in someone else’s possession.
 - Introduces procedure for interim release, disposal, auctioning of seized property.

Modern criminal law statutes dealing with organized crime, corruption, money laundering, and narcotics include stringent forfeiture regimes

- Prevention of Corruption Act, 1988 – allows attachment of ill-gotten assets.
- Prevention of Money Laundering Act (PMLA), 2002 – provides for attachment and confirmation of proceeds of crime under Sections 5 & 8.
- NDPS Act, 1985 – Sections 60–63 provide for confiscation of vehicles, buildings, and materials used in drug trafficking.
- Unlawful Activities (Prevention) Act (UAPA), 1967 – enables seizure/forfeiture of terrorist-related assets.

Key changes

1. The confiscation regime expanded substantially aligning with PMLA/NDPS style models.
2. Police and magistrates get stronger statutory backing to seize proceeds of crime.
3. Focus on economic offences, cyber fraud, terror financing, and organized crime.

Assistant Commissioner v. Velliappa Textiles Ltd. (2003) 11 SCC 405⁸⁸

The Supreme Court acknowledged Parliament’s power to introduce forfeiture as a penal measure. The Court also emphasized strict adherence to procedural safeguards, given the serious consequences of confiscation.

Directorate of Enforcement v. Deepak Mahajan (1994) 3 SCC 440⁸⁹

⁸² Hari Singh v. Sukhbir Singh (1988) 4 SCC 551, <https://indiankanoon.org/doc/212245/>

⁸³ Ankush Shivaji Gaikwad v. State of Maharashtra (2013) 6 SCC 770, <https://indiankanoon.org/doc/61901185/>

⁸⁴ Section 53 of the Indian Penal Code, 1869, <https://indiankanoon.org/doc/543586/>

⁸⁵ Section 451 of Code of Criminal Procedure, <https://blog.ipleaders.in/section-451-crpc/>

⁸⁶ Section 452 of Code of Criminal Procedure, <https://devgan.in/crpc/section/452/>

⁸⁷ Section 453 of Code of Criminal Procedure, https://devgan.in/crpc/chapter_34.php

⁸⁸ Assistant Commissioner v. Velliappa Textiles Ltd. (2003) 11 SCC 405, <https://taxguru.in/income-tax/assistant-commissioner-vs-veliappa-textiles-ltd-supreme-court-analysis.html>



A notable case under the NDPS Act is where the Court upheld stringent confiscation measures in economic and narcotics-related offences to curb organized crime.

VII. COMPARISON WITH OTHER COUNTRIES

UNITED STATES

- Probation,
- Community Service,
- Electronic Monitoring and House Arrest,
- Restorative Justice Programs.

UNITED KINGDOM

Statutory Basis

- Criminal Justice Act, 2003.
- Community orders with requirements such as,
 1. Unpaid work,
 2. Curfew,
 3. Drug rehabilitation

WESTERN COUNTRIES

UNITED STATES

- Long- term imprisonment,
- Probation,
- Plea bargaining,
- Restorative justice programs emerging,
- Death penalty still in some states.

UNITED KINGDOM

- Abolished death penalty,
- Alternatives include community service, probation, suspended sentences.

SCANDINAVIAN COUNTRIES (Norway, Sweden)

- “Rehabilitation-first” model.
- Open Prisons, education, community sentences.
- Very low recidivism.

JAPAN

- Emphasis on remorse, apology, community reintegration.
- High conviction rate but humane prison system.

VIII. CONCLUSION

The historical journey of punishment demonstrates a clear transition from brutality to humanity in the administration of justice. Ancient and medieval punishments were deeply rooted in retribution, deterrence, and the preservation of authority, often sacrificing individual dignity for social control. With the emergence of modern legal systems, punishment began to serve broader social purposes beyond vengeance, including deterrence, rehabilitation, and restoration. In India, the evolution from customary and religious penalties to codified criminal law marked a significant milestone in ensuring consistency and fairness. Post-independence reforms further strengthened the rehabilitative philosophy, recognizing offenders as capable of reform rather than permanent threats to society. International human rights instruments such as the ICCPR and UN Rules have played a crucial role in shaping humane sentencing policies. The incorporation of alternatives like probation, plea bargaining, compensation, Lok Adalats, and community service

⁸⁹ Directorate of Enforcement v. Deepak Mahajan (1994) 3 SCC 440 <https://indiankanoon.org/doc/1013766/>



reflects a victim- centric and reform-oriented justice system. The Bharatiya Nyaya Sanhita, 2023 symbolizes this modern outlook by aligning domestic law with global best practices. Ultimately, the contemporary philosophy of punishment seeks a balanced approach protecting society, restoring victims, and reintegrating offenders. This shift underscores the realization that true justice lies not in cruelty, but in correction, proportionality, and social harmony.

SUGGESTIONS

- Expand Use of Community Service and Probation.
- Strengthen Restorative Justice Mechanisms.
- Judicial Guidelines for Sentencing Discretion.
- Wide Scope of Open Prisons and Semi-Custodial Institutions.
- Early Diversion and Decriminalisation of Minor Offences.
- Gender-Sensitive and Child-Centric Alternatives.
- Victim Compensation as a Central Sentencing Tool.
- Institutionalise Plea Bargaining with Safeguards.
- Capacity Building of Judiciary and Police.
- Data-Driven Sentencing and Recidivism Monitoring.

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