

## DEMYSTIFYING THE JUSTNESS OF RETRIBUTION FOR AN ‘ENVISIONED SOCIETY’

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**ABSTRACT**

*The essay focuses on Rawls' 'Envisioned Society' (dealt with in "A Theory of Justice") which due to the efficient institutionalization of justice does without punishments. This envisioned society instead of retribution subjects its dissonant citizens to self-introspection and rehabilitation giving them a fair chance to return to their original position within the State. It thereby reflects how it is the inefficiency of the legal and social institutions today that has resulted in the genesis of a society which is an obverse of Rawls' 'Envisioned Society'.*

*Retribution and not rehabilitation is promoted as a logical doctrine, without considering elements such as social conditioning, poverty or the lacunae in various legal institutions. By comparing the deterrence created by retribution with the long-term benefits of rehabilitation, the essay justifies rehabilitation to move towards the vistas of an 'Envisioned Society'.*

**I. RAWLS' SOCIETY: AN UNACHIEVABLE UTOPIA**

In 'A Theory of Justice',<sup>1</sup> John Rawls, a cognoscente of political and legal philosophy unravels the establishment of a well-ordered society (hereinafter referred as the 'Envisioned Society') where the individual and the authorities share a similar vantage point regarding the concept of justice. He aims to theorize the morality of relations and social institutions by assembling the theory of a just society in socio-democratic liberalism of a postwar moment, where he elaborates upon the concept of institutional justice.<sup>2</sup> The legal institutions in this setup respect the law of the land and follow 'pure procedural justice', which means that punishment is authorized under a fair penalty schedule. The fundamental social unit, that is, the family, ensures nurturing and development of citizens in a manner that justice and political virtues are deeply embedded in the individual and they constantly strive towards betterment in the Envisioned Society.<sup>3</sup> In such a society, all individuals aim to accord with what is best for their individual growth and responsibilities and therefore Rawls sees little need for a penal law.<sup>4</sup>

Rawls' 'Envisioned Society' does without punishment not because it is powerful enough to be magnanimous but because magnanimity becomes unnecessary due to the efficient institutionalization of justice. This modern state has a coercive authority on its citizens, having an effective impact on their prospects in life, where criminals, the dissonant citizens are subjected to

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<sup>1</sup> JOHN RAWLS, A THEORY OF JUSTICE (1999).

<sup>2</sup> KATRINA FORRESTER, IN THE SHADOW OF JUSTICE – POSTWAR LIBERALISM AND THE REMAKING OF POLITICAL PHILOSOPHY 1-3 (2019).

<sup>3</sup> JOHN RAWLS, THE LAW OF PEOPLES 157 (1<sup>st</sup> ed. 2001).

<sup>4</sup> *Id.*

introspection by means of rehabilitation and reconciliation – a fair and just chance to return to their original position within the State – instead of retribution. 12

In short, Rawls across six hundred pages and three parts constructs a society wherein economic disparity and social divisions do not create the deep crevices for crimes and punishments as it happens outside this unachievable utopia. The reason is that in the standard society, there exist delinquent citizens, crimes and petty offences, social and political injustice and competing claims.

*“On November 27, 2019, brutal gang-rape and murder of a woman veterinary doctor, Priyanka Reddy shook the nation. The common masses demanded ‘instant justice’ to create deterrence in the society. As a result of the upheaval, authorities felt pressurized. Police encountered the rapists in broad daylight and were hailed as heroes as the legal procedure and institutions of justice stayed in deep slumber, awakening a question pertinent to law regarding retributive justice and the society that we live in.”*<sup>5</sup>

Instances such as these evince how our society is an obverse of the Envisioned Society in more ways than one.

### ***A. Discord between Opinions on Justice***

The above is a classic example of how the legislatures, law enforcement agencies and the people of the society have differing views on justice. This ‘instant justice’ made the Hyderabad police overnight heroes and satisfied the people while ‘pure procedural justice’ was conveniently ignored. In the Envisioned Society, the mass’ drive to retaliate does not dictate the justice mechanism, as it does in its obverse society. It is most desirable to strike the right balance to create an amicable and satisfied society where laws are made and respected because they are in compliance with not only what society thinks is best but also are in accordance with standards of human rights and international conventions.

### ***B. Social Conditions and the Conditioning***

Punishing the offenders from the barrel of the gun does not guarantee deterrence. Crimes generally take place because of the breakdown of social control.<sup>6</sup> A number of offenders grow up in a violent environment in our society and through such kind of retributive justice, the cycle of violence perpetuates instead of halting it. Rawls does not delve deep into the reasons for crimes which are upshot of poverty, patriarchal mindset, disparity in income and education, gender sensitivity, deficiency of moral framework and ignorance of law, most probably because his Envisioned

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<sup>5</sup> Abhinay Deshpande, *All Four Accused In Hyderabad Vet Rape And Murder Case Shot Dead*, THE HINDU (Dec. 06, 2019), <https://www.thehindu.com/news/cities/Hyderabad/four-accused-in-hyderabad-vet-rape-and-murder-case-shot-dead/article30202752.ece>.

<sup>6</sup> Molly Cheang, *Sentencing Criminals*, 16 MALAYA LAW REVIEW 204 (1974).

Society is perfectly well-ordered, where even the people inclined to delinquency are intimidated to be doing what is good.

### *C. Inefficiency of Law Enforcement Agencies*

Law and its implementation require patience, which the common masses lack and that is why the society that we reside in has law enforcement agencies. In the mentioned case, it should have been the Court of Justice to decide the proportionality of crime and punishment.<sup>7</sup> Justice does not only imply that due treatment be rendered to the offender but also the said due treatment be rendered in accordance with the procedure established by law. Punishment may not be a requirement in a quixotic envisioned world but is indispensable in our society.

## II. PUNISHMENT

Punishment is a form of revenge by society that fulfils the human need for a moral equilibrium and the need to demonstrate to offenders that some behaviors are unacceptable. Since early times punishing the dissonant citizen(s) of the society was considered a clan's common matter. Later, in civilized modern societies, crimes were said to be done against the state and not the individuals. Criminal law took the power of vengeance from private hands by penalizing the offenders in a lawful way. Justice is sought by way of vengeance, antipathy, amendment, disablement, determent, self-defense, preservation, compulsion, torture, compensation etc. as a result of some evil committed by a person.<sup>8</sup> Desire for revenge, therefore, has a more legitimate place in our emotions, society and the laws that we make.<sup>9</sup> This desire finds illustrations in the most important texts of our religions, blockbuster movies, bestseller novels and political narratives carried on from times unknown.

Plato lays down three aims of penology namely, to reform, to deter or to eradicate the offender-in accordance with the intensity of the offence that one has committed.<sup>10</sup> HLA Hart, in his book- "Prolegomenon to the Principles of Punishment",<sup>11</sup> theorizes the justification of punishments in criminal law. According to him, the key elements in the concept of punishment involve pain, inconvenience or other unpleasant consequences. This punishment is a result of an action of a delinquent against legal rules corresponding to a specific criminal offence (i.e. *Nullum crimen sine lege*), administered by a human agency following the legal practices and procedure against which

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<sup>7</sup> RANI DHAVAN SHANKARDASS, PUNISHMENT AND THE PRISON INDIAN AND INTERNATIONAL PERSPECTIVES (1<sup>st</sup> ed. 2000).

<sup>8</sup> JEREMY BENTHAM, THE RATIONALE OF PUNISHMENT 279 (LONDON: R. HEWARD, 1830).

<sup>9</sup> GURCHARAN DAS, THE DIFFICULTY OF BEING GOOD: ON THE SUBTLE ART OF DHARMA, 222 (2009).

<sup>10</sup> Virginia Hunter, *Plato's Prisons*, 55 GREECE & ROME 195-197 (2008).

<sup>11</sup> H. L. A. Hart, *Prolegomenon to the Principles of Punishment*, 60 PROCEEDINGS OF THE ARISTOTELIAN SOCIETY 23 (1959-60).

the offence is committed.<sup>12</sup> To stop the recurrence of similar offences in the society, Bentham<sup>13</sup> points out three ways by which the societal institutions choose to punish an offender- physical check, moral check and mental check.

- a. **Physical check**- Physical checks ensure that the convict is physically disabled to repeat similar acts;
- b. **Moral checks**- Moral checks ensure that the convict gets schooled in such a way that the inner desire of the convict to commit offences in future is taken away and;
- c. **Mental check**- Mental check creates in mind the terror of law making them afraid to offend further. These are ways of deterrence. These serve as examples to other agencies of society.

Among the three, physical check pre-dominates the norms of the legal order in the form of retribution.

### III. RETRIBUTIVE JUSTICE

Retributivism is defined by the Black's Law dictionary as a theory that justifies criminal punishment in terms of the ill-desert of the offender, regardless of whether deterrence or other good consequences would result.<sup>14</sup> Retributive punishment is a punishment that is intended to satisfy the community's retaliatory sense of indignation that is provoked by injustice.<sup>15</sup> Retributive Justice is the method where criminal justice is achieved through retribution.

Justice, the first virtue of social institutions,<sup>16</sup> is an abstract that extends itself in the canvas of criminal law and punishments. *Justice can be understood as the maintenance or administration of what is just especially by the impartial adjustment of conflicting claims or the assignment of merited rewards or punishments*.<sup>17</sup> Though a lot has been elaborated by Rawls on the subject of distributive justice and its compulsory compliance, his theory also makes a little space by words and an infinite room for thoughts on the subject of retributive justice.

According to idealists such as F.H. Bradley, retributivism should be incorporated in penal code as it promotes penal pluralism, that is, it succeeds to fulfill various penal goals and objectives.<sup>18</sup> Kant, Nietzsche and Foucault express concurring views with Bradley. Kant, an absolute moralist believed

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<sup>12</sup> *Id.*

<sup>13</sup> BENTHAM, *supra* note 8, at 20.

<sup>14</sup> *Reductivism*, BLACK'S LAW DICTIONARY: (9<sup>th</sup> ed. 2009).

<sup>15</sup> BENTHAM, *supra* note 8, at 1511.

<sup>16</sup> RAWLS, *supra* note 1, at 3.

<sup>17</sup> *Justice*, MERRIAM WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/justice>.

<sup>18</sup> Thom Brooks, *On F. H. Bradley's "Some Remarks on Punishment"*, 125 ETHICS 223-225 (2014).

that punishments act as incentives for not committing a crime. Nietzsche<sup>19</sup> and Foucault deduced that no other conception of deserved punishment can be defended as humans need to feel even by penalizing a criminal through an authority, despite being aware that that punishment has a largely symbolic rather than intrinsic value.

Anthony Quinton defended retributivism as a logical doctrine and does not provide a moral justification of the infliction of punishment.<sup>20</sup> Many other prominent thinkers who have believed in the legitimacy of retributive justice like Adam Smith, Montesque, Beccaria stood firm on establishing a proportion between crimes and the punishments.<sup>21</sup>

Jean Hampton puts forth how the aim of punishment is not to avenge or to impose pain or injury on the offender, but to annul the offender's claim of superiority<sup>22</sup>. All theories of punishment are theories of power and claim to exercise their powers.<sup>23</sup> Retributive justice is considered the most proportional form of punishment as it gives back the offender what it took from the society. Retribution has now become the *sine qua non* of our legal and social lives that we cannot possibly imagine a society without it.

Retribution gives immediate satisfaction towards the interest of two parties and to the public at large. But the real profit of punishment must be the prevention of crime.<sup>24</sup> It is imperative to understand that the delinquent is also a member of the society and while rendering retributive justice his interests and rights are sacrificed to secure the larger interests of the general public.

In some extraordinary cases, no other alternative to punishment rather than capital punishment seems appropriate as a form of retributive justice. Capital punishments are justified as a form of retribution due to the following reasons:

- i. Capital Punishments may have the perfection to impede the offender forever.<sup>25</sup> For example, in cases of institutionalized crimes like terrorism, killing the head of such an institution will end the very hope of continuing the organization and further crimes can be prevented.
- ii. It seems most proportional and analogous if the offence of murder is committed.<sup>26</sup>

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<sup>19</sup> FRIEDRICH NIETZSCHE, ON THE GENEALOGY OF MORALITY 54 (Keith A. Pearson, 1996).

<sup>20</sup> James P. Sterba, *Retributive Justice*, 5 Political Theory 349 (1977).

<sup>21</sup> BENTHAM, *supra* note 8, at 32.

<sup>22</sup> GURCHARAN DAS, *supra* note 9, at 223.

<sup>23</sup> PHILIP BEAN, PUNISHMENT 191 (Martin and Robinson, 1987).

<sup>24</sup> *Id.*

<sup>25</sup> BENTHAM, *supra* note 8, at 177.

<sup>26</sup> *Id.*

- iii. It is exemplary as it is deeply entrenched in the human psyche that if a good person suffers, the bad must suffer more.<sup>27</sup> The US Supreme Court employed this logic in legitimizing the death penalty in 1976 for terrible crimes.<sup>28</sup>

Retributive proportionality tends to have its own utility as an important part of a community's sense of justice. Punishing crimes of a lesser degree with less severity provides the criminal with some incentive to commit the lesser of two crimes. For example, many activists are of the opinion that the recent surge in the intensity of punishments for rape has increased the incidence of rape and threatened the life of the victim as the offender also ends up murdering and destroying their body after the act is committed.

Where there is a legal gradation of crimes and the relative severity of penalties is arbitrarily applied, there is a risk of confusing common morality and its contravention.<sup>29</sup> The moot question remains how far these punishments have been effective in deterring criminals from committing heinous crimes.

#### IV. DETERRENCE BY RETRIBUTION

To deter commission of offences, punishments are used as instruments. Punishments tend to take away liberties or even the life of a human. They are powerful instruments affecting human life and potential. Not just that, in cases of life imprisonment or death penalty, the family of the criminal has bearings too. The following aspects determine how penalty creates deterrence:

##### *A. Probability of Incurring Penalty*

The probability of incurring a liability compels a person to weigh the cost paid and benefit of committing a crime. The principle of deterrence fails when one is convinced that his or her actions are not being noted by the authority and the probability of getting caught or bearing the brunt of one's own action seems negligible. Criminals tend to muster enough courage to commit grave crimes like rape or dacoity only when they walk scot-free with smaller crimes like eve teasing or petty theft.

##### *B. Total amount of punishment threatened*

Quantum of punishment also helps to create a system of deterrence.<sup>30</sup> An effective deterrence system categorizes crimes according to the crime committed and in terms of its severity. It does

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<sup>27</sup> GURCHARAN DAS, *supra* note 9, at 221.

<sup>28</sup> *Gregg v. Georgia*, 428 U.S. 153 (Ga. 1976).

<sup>29</sup> Alan Wertheimer, *Should Punishment Fit The Crime?*, 3 Soc. Theor. Pract. 403 (1975).

<sup>30</sup> PAUL H. ROBINSON, *DISTRIBUTIVE PRINCIPLE OF CRIMINAL LAW: WHO SHOULD BE PUNISHED HOW MUCH?* 73-98 (2008).

not award the same amount of punishment or imprisonment for every crime except in some exceptional cases. The efficiency of a deterrence system is not just to give punishment but to award it in an accurate and discrete way.

### ***C. Adaptation to Intensity of Punishment***

According to this theory, when an offender is punished mildly for the first crime or for petty crimes it does not necessarily deter him from committing further crime. The reason for not penalizing small criminals is that they might become hardened criminals if they get in touch with other criminals. 'Hardening of Punishment' tends to condition an offender to tolerate the increasing punishment.<sup>31</sup>

### ***D. Time Frame within which Punishment is Awarded***

An experiment was conducted on dogs where they were beaten for eating as a punishment.<sup>32</sup> It was observed that the dogs which were immediately punished after eating refrained from eating for two weeks, dogs which were punished after five minutes ate food after two hours while the dogs which were punished after ten minutes ate food after five minutes only. This shows how a delay in giving punishment mitigates deterrence and destroys the whole motive of awarding justice. The immediate benefit outweighs the remote consequences and, in this way, the criminals keep on committing crimes. Delay in punishment instills the belief that immediate gains are more important than the latter consequences of it, no matter how grotesque.

## **V. FAILURE OF RETRIBUTION IN CREATING DETERRENCE**

Deterrence is termed as the 'primary purpose' and 'core purpose' of criminal law.<sup>33</sup> The advocates of retributive justice assert its importance through deterrence but deterrence as a principle of retributive justice has not curbed crimes due to unilateral focus only on penalizing.

It is doubtful whether an increase in the quantum of punishment deters criminals, as it is observed that one adapts to the increasing intensity of punishments.<sup>34</sup> An experiment was conducted on a pigeon where 80 volt shock level was used to produce response suppression for the first time as a punishment.<sup>35</sup> Later, when the shock was decreased to 60 volts little behavior suppression effect could be witnessed. However, when their shock level started at 60 volts and later gradually increased up to 300 Volts, pigeons continued with the punished response, far beyond the initial

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<sup>31</sup> PAUL H. ROBINSON, *supra* note 31.

<sup>32</sup> *Id.*

<sup>33</sup> GLANVILLE WILLIAMS, *CRIMINAL LAW: THE GENERAL PART* (2<sup>nd</sup> ed. 1961); WAYNE R LAFAVE & AUSTIN W. SCOTT, *SUBSTANTIVE CRIMINAL LAW* (1986).

<sup>34</sup> PAUL H. ROBINSON, *supra* note 31.

<sup>35</sup> *Id.*



80 volt complete deterrence level! Applying the outcome in the human psyche, one can easily deduce that increased punishment makes a person only obdurate and does not deter him or her from the criminal activity any longer.

It's often assumed that knowledge of criminal punishment imbues rationality in us but similar psychological tests like given above, proves otherwise. Knowledge of the quantum of punishment due to a crime does not prevent a person from committing it instead people who know the consequences are more likely to have crime tendencies. In India, severity of punishment for rape has been increased to that of capital punishment but it is still not resulting in the reduction of rape cases. The number of cases reported of child rapes especially after legislation of The Protection of Children from Sexual Offences Act, 2012 has only increased from 15950 in 2014,<sup>36</sup> to 17473 in 2016.<sup>37</sup>

Delay in punishment changes deterrence behavior. In India, criminal laws are not successful in deterring crimes because of this impediment. The judiciary in India is overburdened with cases, the Supreme Court has 61,000 pending cases, high courts have 40 lakh pending cases, whereas the subordinate courts have 2.85 crore pending cases.<sup>38</sup> According to National Crime Record Bureau, rape conviction in India is 32.2 percent whereas the conviction rate of rape in metropolitan cities is 27.2 percent only.<sup>39</sup> Conviction rate has steadily risen but the increase is minuscule compared to the quantum of crimes happening.<sup>40</sup>

Numbers are only a reflection of how retribution is not the most reasoned method of deterring humans to commit crimes. Where Rawls' Envisioned Society aces is in its trust in the judicial process and the impeccable role of rehabilitation in combating criminal tendencies in the state subjects. Rehabilitation is not only a moral instrument but a practical one because it is not only instrumental in creating a utopian society but a safer society, where a delinquent is reformed before stepping into the world of crime.

## VI. REHABILITATION

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<sup>36</sup> Indiatat, *State-Wise Number of Cases Reported/Chargesheet/Convicted and Persons Arrested/Chargesheet/ Convicted under Child Rape (Section 4/6 of POSCO Act/ Section 376 of IPC) in India* (2014) <https://www.indiatat.com/table/crime-and-law/6/rape-victims-cases/477185/1185842/data.aspx>.

<sup>37</sup> Indiatat, *State-wise Number of Cases Reported/ Chargesheet/ Convicted and Person Arrested/ Chargesheet/ Convicted under Child Rape (Section 4/6 of POSCO Act/ Section 376 of IPC) in India* (2016), <https://www.indiatat.com/table/crime-and-law/6/rape-victims-cases/477185/1188927/data.aspx>.

<sup>38</sup> Arghya Sengupta, *Hidden Factors That Slow our Courts and Delay Justice*, THE ECONOMIC TIMES, (Mar. 29, 2017), <https://economictimes.indiatimes.com/news/politics-and-nation/hidden-factors-that-slow-our-courts-and-delay-justice/articleshow/57887726.cms>.

<sup>39</sup> National Crime Records Bureau, *Crime in India, Crime Against Women (States/UTs)* (2017).

<sup>40</sup> Harikrishna Sharma, *32 per cent conviction rate in rape cases: NCRB*, THE INDIAN EXPRESS (Dec. 4, 2019), <https://indianexpress.com/article/india/32-per-cent-conviction-rate-in-rape-cases-ncrb-6149331/>.

All punishments tend to create fear in the minds of the delinquent person but not necessarily change the moral disposition and improve the character of the delinquent, in other words, fail to reform them. Rehabilitation is defined as the restoration especially by therapeutic means to an improved condition of physical function.<sup>41</sup> If only imprisoned, especially in the case of juveniles, the indiscriminate associations in the prisons will only lead to prisons becoming schools of crime rather than places of reforms. Expansion and intensity of penal codes do not make them effective measures to curb crimes as penal codes often progress according to penal populism and not according to the changing need of society or dimension of crime.<sup>42</sup> Punishment becomes too expensive when it produces more evil than good.

Rehabilitation is a utilitarian model which is centered not only on individual treatment but also tries to bring social benefit. When the ultimate intention of the law enforcement authorities is to amend or reform the moral constitution of a person, punishment can be termed as a correction. Concept of correction is more productive in modern civil democratic societies rather than prisons. Sophronesterion or Institute of Reforms were recommended to be important corrective homes by Plato for curing negative thoughts and reintroducing the delinquent as a better person in the society.<sup>43</sup>

There have been instances where criminal tendencies have arisen in a person due to the sheer injustice meted out to him. Where there are cases of a criminal himself being the victim of another crime, it will be clearly in contravention to the concept of justice to punish such a person mechanically. It becomes imperative to understand the mitigating circumstances, aggravating circumstances, psychological aspects, past trauma etc. rather than making culpability the only criteria to punish. Thus, in a modern civil society where draconian punishments are clear violations of human rights and personal liberties, the interplay of justice and punishment make the judicial creativity and credibility possible in criminal courts of the nation.

The end results of punishments should not be eliminating the criminals but the crime in the society and for that rehabilitation may be the most humane goal of punishment making it seem ideal in a utopian society. The process of the criminal justice system does not end with conviction; it extends beyond that till the release of prisoners and their social reintegration and re-education. Such models are effectively practiced in Spain.<sup>44</sup> A slightly upgraded model exists in the Scandinavian countries where correctional homes are not an economic burden on the government; on the

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<sup>41</sup> *Rehabilitation*, MERRIAM WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/rehabilitation>.

<sup>42</sup> NICOLAS LACEY, *THE PRISONER'S DILEMMA: POLITICAL ECONOMY AND PUNISHMENT IN CONTEMPORARY DEMOCRACIES* 34 (2008).

<sup>43</sup> PAUL H. ROBINSON, *supra* note 31.

<sup>44</sup> *RELEASE FROM PRISON: EUROPEAN POLICY AND PRACTICE* 362 (Nicola Padfield et al, 1<sup>st</sup> ed. 2010).

contrary, they effectively contribute to the country's economy as the prisoners through productive labor receive wages sufficient to provide for their homes and also to compensate their victims for crimes.<sup>45</sup>

## VII. THE ENVISIONED SOCIETY VERSUS THE INDIAN REALITY

In India, penal sanctions are based majorly on the proportion of severity of terror a delinquent produced, mainly opting for the repressive rather than restitutive method of penalizing. Criminal trials are cumbersome, prolonged and non-productive of the desired result. The purpose of criminal law is to effectively reduce the incidences of crime that are clearly not served.

Statistics disclose a sorry state of prisoner rehabilitation in India where in the year 2018, a total of only 2250 convicted criminals were rehabilitated. Over 25 states and UTs in India have less than 10 convicted persons who have been rehabilitated.<sup>46</sup> The experience of a prisoner in prison also determines their role in society once they move out the negative experience during their imprisonment does not help in deterrence. But the problems associated with retributive justice system in India are:

### *A. No Follow-up for Justice*

Retributive justice concerns itself only with punishment and not with its after effect on prisoners. The quality of justice can only be maintained when its course does not end with conviction. Therefore, justice should be followed beyond conviction.

### *B. Punishment-Centric*

Punishment centric model of justice neither reforms the individual nor improves the society. For creating an envisioned society, at times it is important to treat criminals as victims of social conditions and their conditioning. It was observed in the case of a woman prisoner who after being imprisoned for 12 years for the crime of scarifying a child's life due to superstition still firmly believed in sacrifices and had no remorse whatsoever.

### *C. Addressing Inequality*

This system does not care to address the social deficit. Laws are made by people in power and political systems. Thus, it is important that law considers the poor background and conditioning of a person.

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<sup>45</sup> Justice M.N. Venkatachaliah, *Foreword to RANI DHAVAN SHANKARDASS, PUNISHMENT AND THE PRISON INDIAN AND INTERNATIONAL PERSPECTIVES* (2000).

<sup>46</sup> Indiastat, *State-wise Rehabilitation and Other Support to Prisoners in India* (2018), <https://www.indiastat.com/table/crime-and-law-data/6/educational-facilities-rehabilitation-of-prisoners/478342/1311506/data.aspx>.

***D. Utility Problem:***

This system uses punishment as an end. It thinks that prisoners committing the same crime should be punished uniformly as differential treatment would amount to injustice. It does not support individualized treatment irrespective of the reason for crime and only focuses on utility.

All this and more maps our society far away from the Envisioned Society. But that in no way undermines the work done by Rawls as he has single handedly given to us a goal to reach. Testing the reality of our society in the light of this utopia aids us to diagnose the bugs in our system and catalyzes our growth towards the vistas of the envisioned society.

**VIII. TOWARDS THE VISTAS OF AN ENVISIONED SOCIETY**

There is a clear interplay of justice and punishment in the criminal law of any land. Rehabilitation is not only a process but a humanitarian way of helping criminals to get into the mainstream and prevent them from returning to the crime world. This non-offence centric theory helps to punish the offender's according to their unique needs and not by a rigid uniform method. Severity of punishment is supported by the idea of social hygiene. Too light a punishment will not be conducive to institutional discipline. Too harsh a punishment will not be consistent with norms of justice. Therefore, the doctrine of proportionality is an established ground of judicial review in the Indian Constitutional jurisprudence.

The critics of rehabilitation theory say that this mechanism requires remaking of the society itself.<sup>47</sup> The collective goal should be to move towards the vistas of the Envisioned Society, a cumulative approach where retributivism is in tandem with rehabilitation.

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<sup>47</sup> P.D. SHARMA, CRIMINAL JUSTICE ADMINISTRATION 19 (1998).