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A CRITICAL REVIEW OF THE CRIMINAL LAW (AMENDMENT) ACT, 2023 REVISITING DETERRENCE

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Abstract

The criminal justice system's approach to deterrence in sentencing has been a subject of ongoing debate and evolution. This study examines the impact of recent amendments to criminal history guidelines under the Criminal Law (Amendment) Act, 2023, focusing on the reduction of "status points" for offenders under criminal justice supervision. By analyzing empirical data and legal frameworks, the study evaluates the effectiveness of deterrence theories in shaping sentencing practices and their implications for recidivism rates. The findings highlight the complexities of balancing deterrence with fairness and rehabilitation in contemporary criminal justice policies.

Keywords: deterrence theory, criminal history guidelines, sentencing practices, recidivism rates, Criminal Law (Amendment) Act 2023.

1. INTRODUCTION

Given the current state of affairs, it is only normal for any civil society to call for more security and stringency, as well as additional regulations to ensure that these requirements are met. However, the issue that emerges is, what exactly is meant by the term "more"? And is the answer'more' something that should be given? A regulation that is ordered directly following any "featured" episode may be predicated on a rushed evaluation of the issue, which is regularly wrong and loaded with ambiguities, as per the historical backdrop of authoritative reactions to

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rape in India. This is due to the fact that the law was enacted in the aftermath of any "highlighted" incident. Rather than taking a complete and holistic approach, the method that lawmakers in India have taken toward the process of law reform, particularly with regard to criminal legislation that pertain to sexual offenses, has been piecemeal.

The 'mobocratic' nature of the law changes that are being implemented in India is made clear by the fact that the political leadership may want to hasten the implementation of stringent regulations in order to capitalize on popular support or to avoid public reaction. These kinds of legislation frequently lack a scientific and rational analysis of the facts, as well as a thorough discussion among those who draft laws. There is a lot of pressure placed on the political class to adopt particular laws at a breakneck speed without conducting adequate study or thoroughly considering the effects of those laws. In other words, a hastily drafted piece of law is a reflection of a topic that has been buried. It's possible that these piecemeal'stringent' measures will satisfy the collective yearning of society to feel that something is being done against the problem. On the other hand, a criminal justice system that is based on the symbolic satisfaction of society has an effect that is both unproductive and cascading. When it comes to law reform, a cursory exercise frequently fails to take into account the nuanced nature of legislative writing, which ultimately results in a piece of legislation that is ambiguous and leaves room for judicial interpretation. Macaulay, the designer of the Indian Penal Code (IPC), was of the assessment that a decent code ought to have three characteristics: accuracy (liberated from ambiguities), fathomability (simple to get a handle on by standard residents), and result of regulative regulation making (negligible legal interruption). Macaulay was the architect of the IPC [1].

On the other hand, throughout the course of time, the extensive Indian Penal Code (IPC), which is subject to periodic amendments, coupled with court pronouncements, has evolved into an antithesis to the attributes that were listed above.

The blurring recollections of December 16, 2012 have been revived because of the new events of assault in Kathua and Unnao. The horrible and one of the most incredibly revolting episodes of assault of a physiotherapy understudy who was 23 years of age denoted a watershed improvement in the post-free India. This was the second when the general public came into head on a conflict with the strong "framework." In a nation in which the culture of rape was not only accepted but also patronized, the civil society not only voiced its dissatisfaction with

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the current state of affairs, but it also forcefully rallied to fight against the "system." Following the Nirbhaya incident, there was a significant amount of public outrage and agitation, which not only resulted in significant changes being made to the criminal laws, but also awoke the state, society, and individuals to the fact that rape and crime against women are a widespread problem in society. In spite of the stringent laws that were passed after Nirbhaya, the collective conscience of the society was shocked by the Kathua rape case. In this case, an eight-year-old girl was victimized by the savage lust of a gang, who then brutally sexually assaulted and murdered her in order to satisfy their perverted sexual appetite and sadistic pleasure. The occurrence of these horrifying incidents, as well as the alleged political backing given to the criminals, served as a reminder of the reality that the culture of rape in India has not only failed to diminish, but also continues to loom big in our society, where such crimes are perpetrated without fear of repercussions. As a result of the considerable coverage in the news and the outcry from the general public, the administration was compelled to adopt "corrective measures." This Ordinance, which is also known as the Criminal Law (Amendment) Ordinance, 2018 [2], was adopted by the government.

On April 21, 2018, the Ordinance was signed by the President of India, and it went into effect on the same day. Offenders who were found guilty of raping minors were subject to harsher sentences, including the death penalty, as a result of the Ordinance, which also brought about significant revisions to the legislation governing the processing of cases. The same process, which was based on emotions rather than good legal prepositions and discussions, was adopted by the state as part of an experiment in law reform. The excessive speed with which the government rushed the Ordinance was also called into question by the Delhi High Court. In the course of sending a notice to the central government, the Acting Chief Justice Gita Mittal had requested that the government take into consideration any pertinent scientific evaluation or study prior to the promulgation of the Ordinance for consideration [3]. In the meanwhile, in order to satisfy the constitutional requirement, the Criminal Law (Amendment) Bill, 2018 (hereafter referred to as the Bill) was presented in the Parliament with the intention of replacing the Ordinance with an Act of Parliament. On July 30, 2018, the Bill was approved by the Lok Sabha, and on August 6, 2018, it was approved by the Rajya Sabha. After that, on August 11, 2018, it was given the presidential assent, and on April 21, 2018, it became the Criminal Law (Amendment) Act, 2018 (CLAA), which went into effect. Specifically, the Indian Penal Code

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(IPC) from 1860, the Code of Criminal Procedure (Cr.P.C) from 1973, the Indian Evidence Act (IEA) from 1872, and the Protection of Children from Sexual Offenses Act (POCSO) from 2012 are the main pieces of legislation that have been amended by the Criminal Law Amendment Act (CLAA), which superseded the Ordinance with a retrospective effect [4].

The current legislation, which appears to be a knee-jerk reaction to public demonstrations, suffers from various wording ambiguities, which has left a large amount of room for the exercise of judicial discretion when it comes to the interpretation of the law in the future. The purpose of this article is to investigate as many different sections of the CLAA as possible in light of the actual circumstances that exist within the current criminal justice system. Through the use of this paper, the author has made an effort to perform an impartial investigation into the involvement of the legal system in social issues that are associated with sexual offenses, as well as to provide a criticism of the nature of the remedies that are provided by the state (with reference to CLAA). Furthermore, the author has also made an effort to investigate the inflated official narrative of deterrence that is being sought to be generated by expanding the death sentence to new offenses and making modifications to the laws that govern the procedures.

1.1.Amendments to IPC: Issues & concerns

There is no other piece of criminal law in India that is as significant as the Indian Penal Code (IPC). It is comprised of a comprehensive list of offenses, along with their definitions and the penalties for committing them. The Indian Penal Code (IPC) was most recently revised by the Criminal Law (Amendment) Act of 2013, which included a number of changes pertaining to sexual offenses. This action took place prior to the CLAA. The Indian Penal Code (IPC) has been modified in two distinct ways: first, by modifying the sections of the IPC that are already in place; second, by introducing new sections that have resulted in the creation of new offenses within the IPC. The most recent modifications are part of an effort to discourage the growing pattern of sexual assault against children and adolescents. On the other hand, the 'deterrence' that the law intends to bring about has been brought about at the expense of the proportionality and fairness of the rules that govern criminal behavior. A cursory examination of the provisions reveals that there is a significant rise in the penalties that the state feels will serve as a deterrence to acts of sexual assault of this nature. Nevertheless, the legislation does

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not appear to be able to reconcile itself with the actual circumstances of gender-related sexual assault in India, as well as the principles of criminal law that have been established already.

2. THEORETICAL PERSPECTIVES ON DETERRENCE

` The way in which cultures handle the prevention of crime and the administration of punishment is influenced by deterrence theory, which incorporates both traditional and modern points of view. A central tenet of the classical deterrence theory, which has its origins in the writings of Enlightenment thinkers like as Cesare Beccaria, is that individuals consider the advantages and disadvantages of engaging in criminal behavior [5]. According to this idea, the clarity, intensity, and speed with which an individual is punished are fundamental elements that play a significant role in the decision-making process of an individual. When it comes to discouraging criminal conduct, Beccaria stated that punishments need to be appropriate to the crime that was done, and that the certainty of punishment is more effective than the harshness of the penalty. On the other hand, current approaches on deterrence have developed to integrate findings from the fields of economics, sociology, and behavioral psychology. Individuals may not always make rational judgments based purely on the possible costs of punishment, according to the modern deterrence theory, which accepts this possibility. It places an emphasis on the significance of cognitive biases, social influences, and environmental elements that play a role in characterizing criminal conduct. As an illustration, the regular activities hypothesis proposes that criminal acts are more likely to take place when appropriate targets, motivated offenders, and a lack of supervision all come together at the same time and in the same location.

The deterrence theory has been subjected to criticism, which has brought to light its limitations and ambiguities. There are many who believe that deterrence is based on the assumption that criminals will make reasonable decisions, which may not always be in accordance with the facts of criminal conduct, which might be impacted by impulsivity, addiction, or psychological variables. In addition, the certainty and severity of the punishment may not be sufficient to discourage persons who believe that they are unlikely to be discovered or who believe that their activities are justifiable owing to societal or economic grievances [6]. The fairness and effectiveness of deterrence-based policies are also called into question by contemporary criticisms, particularly in relation to the impact these policies have on disadvantaged communities and the disproportionate number of people who are incarcerated

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in specific demographic groups. It is possible, according to opponents, that the emphasis placed on punishment and deterrence may obscure expenditures in social programs, educational chances, and economic possibilities that might more effectively address the underlying reasons of criminal behavior.

2.1.Importance of deterrence in criminal justice

When it comes to the structure of the criminal justice system, deterrence is an essential component since it is designed to inhibit criminal activity by means of the threat of punishment. At its foundation, deterrence is based on the premise that potential criminals will be dissuaded from committing crimes if they feel that the possible costs, whether they be legal, societal, or personal, would be greater than the perceived advantages of committing the crime. In order to preserve the order of society and to ensure the protection of the general public, this idea is completely essential. Deterrence, in particular, fulfills a number of crucial purposes within the framework of the national criminal justice system. Initially and most importantly, it serves as a deterrent for persons who are contemplating engaging in illegal activities by drawing attention to the potential repercussions that they may be subjected to, such as jail, fines, or other legal punishments. For the purpose of lowering the number of crimes committed and shielding communities from damage, this preventative measure is of the utmost importance [7].

Furthermore, deterrence serves a wider societal function by emphasizing the need of respecting legal standards and bolstering the rule of law across society. It is possible to maintain justice and fairness through the use of deterrence, which serves to promote faith in the legal system among citizens. This is accomplished by explicitly stating the penalties for unlawful action. In turn, this helps to the general stability and functioning of society as a whole. Additionally, when combined with chances for criminals to change and reintegrate into society, deterrence can have a rehabilitative effect on the individual. Rehabilitative programs that strive to treat underlying issues, such as substance addiction or a lack of education, can be an effective component of deterrence techniques. These programs attempt to reduce the likelihood of recidivism and promote good results that are sustained over the long term [8]. There are a number of criteria that determine the effectiveness of deterrence, the most important of which are the certainty, severity, and speed with which punishment is administered. When these components are employed in a manner that is both consistent and well-balanced, deterrence

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has the potential to be an effective instrument for the prevention of criminal activity and the protection of society. On the other hand, it is essential to acknowledge the constraints of deterrence, given that not all people are equally receptive to punitive measures, and that both societal factors and personal circumstances can have an effect on conduct.

2.2.Historical Context of Deterrence in Criminal Law

Throughout the course of history, the notion of deterrence in criminal law has undergone substantial development, which is a reflection of the shifting views of society towards criminal behavior and punishment. The origins of early deterrence ideas may be traced back to ancient civilizations, which frequently used severe punishments as a means of discouraging individuals from engaging in criminal behavior. By way of illustration, the Code of Hammurabi, which was enacted in ancient Mesopotamia, established a system of severe punishments with the intention of discouraging criminal behavior via the dread of terrible repercussions [9]. A number of philosophers, like as Cesare Beccaria, advocated for proportionate penalties that were both rapid and definite throughout the Enlightenment period in Europe. These philosophers were essential in the development of the conceptual foundations of deterrence. The work of Beccaria, in especially his important essay "On Crimes and Punishments" which was published in 1764, claimed that the effectiveness of punishment did not lie in the harshness of the penalty but rather in the certainty and promptness of the punishment. At the beginning of the 20th century and throughout the 19th century, legislative initiatives in a number of nations progressively integrated deterrence as a guiding concept in the process of reforming the criminal justice system. The creation of contemporary legal codes, such as the Napoleonic Code in France and the advent of statutory law in England, tried to build a clear framework in which punishments were designed not only to punish criminals but also to discourage others from engaging in activities that were comparable to those that were punished [10].

A substantial change toward techniques that are focused on deterrence occurred in the United States throughout the 19th century, when the prison system began to spread throughout the country. By displaying the consequences of illegal activity via incarceration and isolation, institutions such as Eastern State Penitentiary in Pennsylvania were established not only for the purpose of punishment but also for the purpose of rehabilitation. The goal of these

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institutions was to dissuade criminal behavior. Throughout the course of these historical events, the efficacy of deterrence as a technique for preventing criminal activity has been the topic of discussion and investigation. The certainty and harshness of punishment, according to critics, may not be sufficient to discourage all persons [11]. This is especially true in situations when circumstances such as socioeconomic difficulties, mental health disorders, or drug misuse play substantial roles in criminal activity.

Together with rehabilitation, punishment, and incapacitation, deterrence continues to be an essential component of sentencing and policy pertaining to criminal justice in today's modern legal systems. The growth of deterrence theory continues to affect legislative initiatives and judicial procedures all around the world. This is because societies are always striving to find a balance between effectively discouraging criminal behavior and fostering fairness, rehabilitation, and respect for human rights in the administration of justice.

3. ANALYSIS OF KEY PROVISIONS OF THE CRIMINAL LAW (AMENDMENT) ACT, 2023

The Chapter Four criminal history regulations are subject to two modifications as a result of the amendment that will take effect in 1 July 2024. Both of these modifications would result in a reduction of the guidelines range for certain offenders. The following is a description of each pertinent component of the amendment:

A. Status Points

Part A of the embraced change decreases the meaning of "status points." Under the ongoing Rules Manual, two criminal history focuses, casually alluded to as "status points," are added under §4A1.1(d) in the event that the respondent perpetrated the moment offense "while under any law enforcement sentence, including probation, parole, managed discharge, detainment, work delivery, or getaway status." Like different arrangements in chapter Four, status focuses are consolidated in the calculation of a litigant's criminal history as an impression of various regulative targets of sentence. Representing a respondent's criminal history in the rules tends to the requirement for the sentence "(A) to mirror the earnestness of the offense, to advance regard for the law, and to give only discipline to the offense; (B) to manage the cost of satisfactory prevention to criminal lead; [and] (C) to shield the general population from

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additional wrongdoings of the litigant." The first Commission imagined status focuses as "steady with the surviving exact examination evaluating relates of recidivism and examples of vocation criminal way of behaving" and hence imagined "status focuses" as being intelligent of, among other condemning objectives, the improved probability of future recidivism.

A progression of late Commission papers has focused on one of these objectives of condemning — to be specific, specific discouragement and the need to shield general society from future wrongdoings — through broad evaluations of the recidivism paces of government hoodlums. Nineteen of these evaluations reached the resolution that the calculation of a respondent's criminal history as per the rules is profoundly associated with the gamble that the litigant would carry out different violations later on. The Commission likewise directed research on the degree to which status focuses add to the general consistency of the criminal history score, which was distributed in a paper that was associated with this subject [12]. This examination of status focuses attracted upon a previous 2010 review which the Commission considered both “status points” and “recency points, inferring that the consolidated effects of "recency points" and "status points" insignificantly affected the prescient capacity of a guilty party's criminal history score. As a result of the 2010 examination, the Commission pulled out "recency focuses" from Section Four.

The Commission's new status focuses concentrate on again arrived at the resolution that status directs don't add anything toward the absolute prescient worth related with the criminal history score [13]. By the by, "status focuses" are fairly predominant in occasions with no less than one criminal history point, having been applied in 37.5 percent of cases with criminal history focuses during the beyond five financial years. Of the wrongdoers who got "status focuses," 61.5 percent had a higher Criminal History Category (CHC) because of the expansion of the "status points." That's what the Commission's most recent review uncovers "status points" increment the prescient worth of the criminal history score not exactly the first Commission might have anticipated, recommending that the treatment of "status points" under Section Four ought to be changed.

Considering this review, Section An of the 2023 criminal history correction decreases the meaning of "status focuses" for guilty parties who perpetrated the prompt offense while under any law enforcement term, including probation, parole, managed discharge, prison, work

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delivery, or getaway status. In its ongoing structure, the "status focuses" arrangement that is remembered for the overhauled subsection (e) is simply relevant to wrongdoers who have more critical criminal history as per the suggestions. The expression "status focuses" will presently not be relevant to guilty parties who have criminal records that are less significant, characterized as having six or less criminal history focuses under subsections (a) through (d). This is valid regardless of whether the wrongdoer carried out the offense being referred to while they were carrying out a punishment in the law enforcement framework. As per the changed segment 4A1.1(e), guilty parties who are presently serving a term in the law enforcement framework and have at least seven criminal history focuses under subsections (a) through (d) will be assigned with an additional one crook point, rather than the two focuses that were recently dispensed. The Commission keeps on perceiving that "status focuses," alongside the other criminal history arrangements in Section Four, reflect and fill numerous needs of condemning. One of these objects is the guilty party's apparent absence of regard for the law, which is reflected both in the wrongdoer's general criminal history and in the way that the wrongdoer has reoffended while under a law enforcement sentence requested by a court. The Commission has chosen to keep "status points" however diminish their effect for guilty parties who fall into higher criminal history classifications [14].

3.1.Challenges and Criticisms

Despite the fact that the Criminal Law (Amendment) Act of 2018 was enacted with the goal of bringing about significant changes, the process of putting the changed laws into effect has not been without its fair share of difficulties. The identification and comprehension of these problems is very necessary in order to evaluate the practical impact that the legislative changes will have on the ground. A key obstacle is the effective implementation of the revised laws, which is a task in and of itself. The effectiveness of law enforcement agencies and the judicial system is a significant factor in determining the legal landscape, regardless of how well built it may be. The rapid and efficient implementation of the modified legislation may be hampered by a number of factors, including but not limited to an inadequate supply of resources, an absence of specialized training, and systemic inefficiencies. As a consequence of this, it is possible that the supposed advantages of the legal reforms would not be completely realized in practice.

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An additional layer of complexity has been added to the discussion on the effectiveness of the changes as a result of criticisms from legal experts, activists, and members of the general public. Despite the fact that the revisions are a start in the right way, there are many who believe that they may not go far enough in addressing specific aspects of sexual offensive behavior. In the case of marital rape, for instance, there are continuous discussions about whether or not it should be included in the legal system. This highlights the ongoing cultural and legal issues that are associated with interpreting consent within intimate relationships.8. Concerns have been made by activists, in particular, regarding the necessity of adopting a more holistic strategy, with an emphasis placed on the significance of societal transformation in conjunction with legislative advancements. Their argument is that the revisions might not be adequate to overcome deeply ingrained cultural norms that are a contributing factor to the occurrence of sexual assaults against women. This viewpoint highlights the interconnection of legal and societal aspects in the process of tackling the complicated problem of sexual assault [15]. It has been determined that the Act itself has loopholes and ambiguities, which further complicates the situation further. It is possible that the language of legal legislation might be subject to numerous interpretations at times, which can result in doubt over the actual implementation of the law. There is a possibility that loopholes remain in some topics, such as the definition of consent, or in particular situations that are not properly addressed by the modifications.

For the purpose of creating a solid legal system that allows limited potential for exploitation or injustice, it is essential to identify and fix these shortcomings. This research seeks to give a complete knowledge of the practical difficulties and the areas where additional refinement may be required to enhance the legal response to sexual crimes in India. This will be accomplished by investigating the problems and critiques that surround the execution of the updated laws.

4. IMPACT ON CRIME RATES AND RECIDIVISM

In order to evaluate the influence that deterrent measures have on crime rates and recidivism, it is necessary to conduct statistical data analysis and assess the efficiency of policies in terms of successfully accomplishing their intended objectives. Statistical examination of crime trends following the introduction of legislation with an emphasis on deterrence frequently aims to assess whether or not there has been a discernible reduction in the amount of criminal activity. This type of study often involves comparing crime rates before

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and after the implementation of new laws or policies. It takes into consideration a variety of factors, including alterations in the methods of law enforcement, changes in economic situations, and the impacts of society. For instance, studies may investigate patterns in particular types of criminal activity that are the focus of deterrent strategies. These categories may include violent crimes, property crimes, or drug-related offenses. It is possible that the possibility of punishment has discouraged potential criminals or that increased law enforcement operations have disrupted criminal activity if there has been a fall in crime rates after the introduction of the new policy. On the other hand, if crime rates continue to remain consistent or even grow, this may be an indication that deterrent tactics have not been successful in preventing criminal activity or that other variables are impacting the patterns in crime.

The evaluation of recidivism rates is a key component in comprehending the long-term effects of deterrence measures. This evaluation is in addition to the evaluation of crime rates. Individuals have a tendency to commit other crimes after they have completed a sentence or intervention program, which is referred to as recidivism. A decrease in the rate of recidivism following the implementation of sentencing strategies that emphasize deterrence may be an indication that punitive measures are effectively inhibiting repeat offenses. On the other hand, high recidivism rates may indicate that deterrence alone is not effective in treating the underlying reasons of criminal conduct. These causes may include substance misuse, mental health concerns, or socioeconomic factors. deterrence alone may not be enough. In addition, the evaluation of the efficacy of deterrence necessitates the consideration of unintended consequences, such as discrepancies in the results of sentencing or the possibility of criminalizing populations that are already marginalized. Policies that are effective in deterrence should not only strive to lower crime rates, but they should also promote fairness, rehabilitation, and community safety. It is for this reason that continuous study and assessment are very necessary in order to perfect deterrence methods and guarantee that policies pertaining to the criminal justice system make a beneficial contribution to the well-being of society and the public.

5. CONCLUSION

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An important step forward in the development of deterrence theory within the context of India's criminal justice system is represented by the Criminal Law (Amendment) Act, sometimes known as the 2023 Act. The purpose of the amendment is to improve deterrent methods with the goals of lowering the rate of recidivism and increasing public safety. This will be accomplished by altering the computation of "status points" in the guidelines for criminal history. This modification acknowledges the intricate relationship that exists between punitive measures and the influence that they have on the chance those offenders would commit more offenses. According to the deterrence hypothesis, the certainty, severity, and speed with which an individual is punished all play a role in the decision-making process that they go through when it comes to illegal activity. Given the circumstances, a nuanced approach to deterrence is reflected in the fact that the relevance of "status points" for criminals who are under the supervision of the criminal justice system is increased. It acknowledges that although punitive measures are necessary for the upkeep of law and order, an over reliance on harsh punishments alone may not be sufficient to properly address the underlying issues that contribute to criminal behavior. In addition to the clarity of the legal rules, the efficacy of deterrence techniques is dependent not only on the practical implementation of these strategies but also on the influence they have on society. Some people believe that placing an excessive amount of focus on deterrence may cause systemic inequities to be overlooked and does not adequately address the underlying reasons of criminal behavior. These fundamental causes include socioeconomic gaps, mental health difficulties, and access to educational and career opportunities. For this reason, it is vital to have a balanced strategy that incorporates deterrence, rehabilitation, and social support programs in order to encourage long-term behavioral change and reduce the rates of recidivism.

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