Foundations: Theorising the origin and development of imprisonment

Knowledge and power are integrated with one another, and there is no point in dreaming of a time when knowledge will cease to depend on power; this is just a way of reviving humanism in a utopian guise. It is not possible for power to be exercised without knowledge, it is impossible for knowledge not to engender power.

--- Michel Foucault, *Power/Knowledge*

Modern societies exist through a series of exclusions; the exclusion of the bad from the good, the abnormal from the normal, the uncivilised from the civilised, and the delinquent from the disciplined. Such a network of exclusions plays a key role in maintaining what the exclusionists call the balance of the society. This balance, often called social order, although thought to be a collective responsibility, is to be actually ensured by the state as far as modern societies are concerned. The state, which replaced the sovereign in the democratic framework, came up with mechanisms that would maintain the status of what it acts upon thereby keeping its own existence safe. In the entire process, ideas and praxis underwent crucial changes. The visibility of authority is what changed the most. With the emergence of the state, authority did not vanish altogether, on the contrary, it became more authoritative and powerful in always being a hidden force. Hence, authority exists and evades existence at once in modern societies. Authority covers itself up with the responsibility of maintaining societal order.
It does away with the "physical" force which was the means of assertion that earlier systems had used, which both the scattered authority in the feudal system and the central authority which emerged during the Middle Ages in Europe resorted to. The most powerful of all the methods or schemes that state or even the sovereign before it used to safeguard its position was law. Law as a set of instructions or codes of social conduct which is enacted through the judicial system and the mechanics of punishment is what allows the continued functioning of the state. This ideal often projects itself as the central factor that is responsible for the peaceful living of individuals and the maintenance of societal balance. While it envisages upholding social order, it actually enacts state order. The most influential and powerful helping mechanism for the reign of the law in modern societies is the institution called prison. Prison is not a modern invention; it can be traced back to prehistoric times and could be seen to have existed through almost all the periods of history. What makes prison a central point of analysis within a centring system is the way in which the institution has evolved as the prime focus of the juridical system of punishment. This evolution is as complex as that of the state or a society that is controlled and maintained by law and hence is an obvious complexity. Whatever discourse happens within the framework of state authority being enforced through the power of law coincides with the history of the institution called prison. To add to this, an entire gamut of academic activity has been targeted solely at this institution from the viewpoint of diverse areas of learning. The amount of critical interests that is invested in prison testifies its significance within the state
legal apparatus. Though there has been an increase in the interest shown towards studying imprisonment in the latter half of the twentieth century, there had been serious approaches well before that. This recent increase in the amount of studies and analysis on prison could be ascribed to the general widening that academic learning has underwent in the last few decades of the twentieth century.

A major question arises when the complex evolution of prison as the central system of punishment is analysed. This relates to the idea of punishment in itself, which would bring one down to the emergence of the prison house as the most convincing method of legal action that seeks to ensure societal well-being. As mentioned earlier, the idea of imprisonment is much older than the first prison house. In fact, it dates back to the pre-historic times wherein kings are said to have kept their enemies in quarantine. During most periods in history, prison or imprisonment was a wait-list of convicts to be executed. It evolved into a punishment in itself during a much later period. To locate that evolution or emergence as some theorists would call, it is required to shorten the evolutionary period or the peak of it to the time between the late 16th century and the early 18th century. It is during this time, or so we can assume, that imprisonment emerged as a punishment in itself and the institution called prison was erected at the centre of social life. The developments that occurred during this period of about two centuries are at the core of the debate concerning the history of prison. A quick glance through the penal practices prior to this time would help in placing the carceral system in context. The Catholic
Encyclopaedia mentions the existence of imprisonment in the Hebrew legislation:

Many jurisconsultants and Scriptural interpreters include imprisonment among the number of penalties recognized in the Hebrew legislation, but the fact may well be questioned. However, on the coming of the Chaldeans under Nebuchadnezzar, there were at least three prisons at Jerusalem, and, about the same time, the names of the places of detention were expressive of the regime to which the culprits were subjected, (Collard)

This prison was way different from the prison system that is inquired into by the present study. Several Indian mythological texts including the epic Mahabharatha mentions the use of imprisonment as a form of punishment. Though these references do indicate the existence of prisons none of it places prison as the most crucial form of punishment. What is understood from the historical analysis of the punishment process is that punishment, as it existed in pre-prison era, had a predominantly physical character to it. The corporal punishment was a spectacle carried out at the market place or the city square, where people would see the cruel treatment; the purpose of which was to cleanse the society of criminal attitudes that were a threat to the very foundations of its existence. So the idea and praxis were transparent: to establish the supremacy of the sovereign and to cement its unquestionable nature to the mental make-up of the masses. This dual perspective, that of getting rid of the "enemy of the state" and in turn
strengthening the hold of the monarch, was intended to be served by the force of the spectacle that punishment was. The practice of carrying out executions or even minor punishments in public was not just the decision of the sovereign but it was also a deep rooted necessity in the popular conscience of that age. Hence, a transition from the spectacle to enclosed prison as the core of the punitive system would demand a simultaneous analysis of the change of the popular belief in the form and outcome of the system of punishment in general. This means that in both its forms, i.e., the spectacle and the concealed, punishment made sure that its justification was clear and concrete in the minds of the masses who were subjected to it. Mental attitude, of the sovereign reflected through the psychological construction of people who were governed, is what is the most important here. The complexity of the mechanism that governs the prison transfers itself to any study attempted on the system. Attempts to understand the history of prison i.e., the way in which it became the central unifying mechanism of the penal process and ensuring social order which in turn cements the position of the state, calls for separate analyses of a few major viewpoints.

**Genealogy of prison: Foucault on incarceration**

One of the most influential, though not the first, works on the evolution of prison is Michel Foucault's *Discipline and Punish*. Ever since it was published in French in the year 1975 as *Surveiller et Punir: Naissance de la prison*, the book has been a seminal part of any academic discussion on
prison; a reach that widened with the appearance of the English translation in 1977. Foucault presents a comprehensive analysis on the birth of the prison and puts forward his arguments as to how prison replaced all the punishment/correctional systems that existed prior to it and became the icon of the punitive process. The focus of the book is on the 18th and 19th centuries when public display of punishment slowly started disappearing favouring a more concealed form of punishment called the prison. It is only towards the end of the book that we find Foucault focus on the discussion of actual prison or penitentiary as he calls it. He finds the completion of the carceral system on "22 January 1840, the date of the official opening of the Mettary" (Discipline 293). But to reach this point the system of punishment did travel a long way, passing through a series of duplication and substitution, subjecting itself to diverse sources and systems of power.

Foucault offers a glimpse into the form of punishment as it existed in Europe before the advent of the carceral system in the opening chapters of the book. Corporal punishment which focussed on inflicting pain and that too in public was the key form in which justice acted upon the people. The dual purpose of law becomes evident here. When the offender is tortured to the highest possible degree and his body is broken apart into several pieces the law not only enacts its might upon him but also exhibits what it can do, thereby attempting the erasure of criminal tendencies from the minds of the subjects. It was a visible enforcement of law which intended to concretise legal supremacy each time it was practised. The fear that was generated among the people was supposed to keep them off violating the legal norms.
This, in turn, sought to solidify the authority of the sovereign or the state. This torture-centred approach to punishment was what the prison system replaced by the end of the 19th century. This was not a simple transition from one form of punishment into another but a complex shift from a single-faced enactment of power into a network of discourses where power administered itself in every form and structure. To sum up this complexity into its shortest would be to say that the body was replaced by the soul as the central focal point of punitive activity. Foucault himself has argued, "The history of this 'micro-physics' of the punitive power would then be a genealogy or an element in a genealogy of the modern 'soul'." (Discipline 29)

The end of the "gloomy festival of punishment" (Discipline 8) led to punishment leaving the domain of "everyday perception" and entering into an abstraction where its effectiveness was the result not of its horrifying spectacle but the fact that punishment was inevitable. Punishment moved from a terrible visual into an unseen fear. This shift introduced several additional factors into the scenario of punishment. All these new interventions can together be termed "technologies of power" that aid the punitive justice. The new mechanisms of power resulted in justice furthering itself out from the domains of the actual practice of what it preached. Passing the sentence was the final act of the judge and beyond this the practice of it was handed over to the new set of extra-judicial establishments. Judiciary in the modern society in the period between the late 18th and early 19th centuries, which Foucault considers as the key for reforms in various
Now the scandal and the light are to be distributed differently; it is the conviction itself that marks the offender with the unequivocally negative sign: the publicity has shifted to trial, and to the sentence; the execution itself is like an additional shame that justice is ashamed to impose on the condemned man; so it keeps its distance from the act, tending always to entrust it to others, under the seal of secrecy. It is ugly to be punishable, but there is no glory in punishing. (*Discipline* 9-10)

Hence, new technologists arrive into penal justice: bureaucrats and psychiatrists. The bureaucrats include magistrates, educationalists, and prison service personnel who "all fragment the legal service to punish." (*Foucault, Discipline* 21)

The psychiatrists, who in no way seem related to the legal structure, are the most dubious entrants of all. What exactly is the role that they play? Foucault says that the individual, which is now an entity different from the body that it represents, becomes a matter of not just direct legal action but also of a sociological investigation. The basic question that is asked is directly related to the so-called "danger" that he is said to pose for the society. Elsewhere, Foucault details the concept of the dangerous individual in an essay titled "About the Concept of the 'Dangerous Individual' in 19th Century Legal Psychiatry." It is within this notion of the individual being a
danger to the social functioning that the psychiatrists place themselves within the penal process. They, and the other extra-judicial mechanisms, are never integrated into the juridical system itself. The authority to sentence is always vested with the judiciary wherein the psychiatrists act as advisors on how punishable is the individual and to what degree is his soul corrigible. Foucault says the psychiatrist is "not an expert in responsibility, but an adviser on punishment; it is up to him to say whether the subject is 'dangerous', in what way one should be protected from him, how one should intervene to alter him, whether it would be better to try to force him into submission or to treat him." (Discipline 22) Thus punishment becomes a matter of the human sciences as much at is a legal discourse. The power to punish is justified by the newly emerged "corpus of knowledge, techniques, 'scientific' discourses" (Discipline 23).

Foucault approaches the birth of the prison from different angles, the basis of all of which remains the replacement of the crime with the individual, the man or the soul. The analysis of the genealogy of punishment which he undertakes presents an evolution or transformation of the punitive methods with a new interest in the "political technology of the body." (Discipline 24) Approaching penal leniency, for Foucault, is to reveal the way in which techniques of power make the individual or the so-called "dangerous individual" duplicate crime "as objects of penal intervention," whereby man becomes "an object for a discourse with a 'scientific' status." (Discipline 24) The entire socio-juridical elaboration on the evolution of the modern punitive system is centred on a body-politic which becomes the arena of interaction
for power relations and the technologies of power. Punishment is regarded as a complex social function and a political tactic which derives from the process of "epistemologico-juridical formation." (Discipline 23) Penalty justified itself with its economy – of being selective and precise.

Modern juridical practice placed the prison, and later the penitentiary, as the central mechanism of punitive action through a series of major shifts in its approach. The disappearance of the spectacle of punishment and the entrance of the extra-juridical mechanisms, mentioned above, were measures that resulted from or aided this shift in perspective. The two major concepts that contributed to the development of the "new" system were those of discipline and surveillance. These two form parts of the discourse on human knowledge that put the new power mechanisms into action.

Power mechanics used a series of measures for controlling the ways in which the forces of the body operated, making them docile and utilising them for the empowerment of the same mechanisms. There is a constant subjection that plays in this disciplining domain; a subjection that not only increases the efficiency of the body but also constraints it to specific tracks. Such a disciplining of the body was not new to the 18th century Europe or it was not an invention of that period. But, what interests Foucault are the new elements in the political anatomy of the docile bodies in the period. The exercise of discipline acted on the body individually, uplifting efficiency with economy and internal organisation of the body. There was an interrupted and constant coercion that supervised the process of the activity. So the scale of
control, object of control and the modality were all new to the emergent system of disciplining process. Though the disciplinary methods existed in institutions such as monasteries, armies and workshops before, by the 18th century, "disciplines became general formulas of domination." (Discipline 137) The historical moment of the disciplines for Foucault is when an art of human body was born which was directed "at the formation of a relation that in the mechanism itself makes it more obedient as it becomes more useful, and conversely." (Discipline 138)

A series of actions was carried out in order to fulfil the demands of the disciplinary mechanism. The first instance of disciplining measures was to distribute bodies in space. This was in itself done through a series of processes and techniques. The enclosure, "the specification of a place heterogeneous to all others and closed in upon itself," (Discipline 141) which went on to create a portioning where each individual occupied a specific place, is a crucial method in the generation of docile bodies. The enclosed individual who is partitioned into a "personal" space gave the chance for the creation of functional sites which sought to make the space not just for supervision and control but also for being put to use efficiently. So body was now beginning to be used efficiently through the process of discipline. The efficiency of the body was measured and dictated by the authorities of power. Such an efficient use of the body also introduced the system of rank which helped in the easy rearrangement of the space to which the body belonged. "Discipline," Foucault notes, "is an art of rank, a technique for the transformation of arrangements. It individualizes bodies by a location that
does not give them fixed position, but distributes them and circulates them in a network of relations." (Discipline 146) The distribution was made more effective by yet another series of mechanisms that controlled the activity of the body. The time-table which the disciplinary method adopted from systems that existed before it was efficiently regulating the movement and action of the body that was in the process of being disciplined. Moreover, the control of body-object articulation, the peculiar way in which actions were carried out, along with the correlative placement of the body and gesture pushed the process further ahead. Such a meticulous distribution of bodies in space had a direct impact on how they acted in time. So the spatial distribution had a temporal outcome. Foucault says, "Discipline,. . . arranges a positive economy; it poses the principle of a theoretically ever-growing use of time; exhaustion rather than use; it is a question of extracting, from time, ever more useful forces" (Discipline 154). Time was compartmentalised in such a way so that each moments of it were integrated to one another so much that all of it had the orientation towards one single point, the point of being subjected and controlled by power. Though the arrangement of time was borrowed by the disciplinary system from older usages it was given a newer dimension in which time is said to have become "evolutive" (Foucault, Discipline 160). The motive shifted from salvation, as in ascetic discourses, to exhaustion in the mechanics of discipline.

The intention of the disciplining process did not stop at the extraction of time from the docile bodies, but went ahead towards making a more complex effect. Foucault uses two spheres in which the technology of
discipline was put to use in order to drive home this point; the military and the factory. In both these cases, the latter for which he quotes from *Capital* to illustrate, the desired output was maximising the efficiency of the mass or group by placing efficient bodies in relation to each other. When each constituent body of the army is capable of contributing the maximum that they have been trained to and each worker in the factory puts the maximum that he can to the production process, the time that is required for a desired result, be it winning a battle or producing a certain amount, considerably reduces. This coercive yet efficient rearrangement of bodies is what discipline set out to achieve. The exercise of placement and exhaustive usage was intended, finally, to set up a system of effective utilisation which leads to more effective utilisation of the available forces. "Politics," Foucault observes, "as technique of internal peace and order, sought to implement the mechanism of the perfect army, of the disciplined mass, of the docile, useful troop, of the regiment in camp and in the field, on manoeuvres and on exercise." (*Discipline* 168) Hence, the mechanism of disciplinary power was the source of political authority ensuring its own safety by generating normative bodies that worked for this authority by a continuous subjection of the force that the mechanism itself developed.

The success of this disciplinary model was identified to have vested in the "art of correct training." Training demanded a different set of specificities which developed the mechanics of discipline into a more structural and concrete level. The enactment of the disciplining process needed to be continually watched so that its accuracy is ensured. The idea of surveillance
makes its entry here. Foucault observes that the classical society had
developed, alongside great inventions like the telescope, the "shameful"
coercive observatories of mankind. The best example for this is to be found
in the military camps. Foucault says, "The camp was to the rather shameful
art of surveillance what the dark room was to the great science of optics."
(Discipline 172) Surveillance is observed to have played a similar role in the
case of the division of labour as well as elementary teaching. The dialectics
of surveillance extended its hold on to the system of punishment
transforming the very edifice of punishment from being an act of inflicting
pain on the body that is punished to a process of correcting the soul of the
individual who is punished and stopping him from being a danger to the
society of power relations. Discipline makes punishment from the central
element of the force of law into one of the two elements in the double system
of "gratification: punishment." The distribution through ranking and
examination further strengthens the exercise of power through normalizing
judgement and continuous punishment. The ideal of surveillance is what
supplied the missing element for the completion of the knowledge system of
disciplinary techniques.

The architectural manifestation for the generation of trained docile
bodies embedded in disciplinary interactions was seen in Jeremy Bentham's
model of the panopticon. The structural idea of compartmentalised
observation which derived from the medical observation mechanics during
the times of the great plague was developed into the physical space that was
required for the disciplinary model to be effectively practised. "Morals
reformed - health preserved - industry invigorated instruction diffused - public
burthens lightened - Economy seated, as it were, upon a rock - the gordian
knot of the Poor-Laws are not cut, but untied - all by a simple idea in
Architecture!," is how Bentham begins his 1787 treatise titled *Panopticon*
(31). The panoptic model that was the result of the great plague coupled with
the confinement model that was generated by the exclusion principle
introduced by the leper, provided a model for the continuous articulation of
disciplinary training and surveillance. Correct training and continuous
observation were the two ideals that governed Bentham's architectural
structure. It was a perfect manifestation of the economy which disciplinary
power was after. The panopticon saw not only to a continuous observation
but also in minimising the workforce that is required for its running. So the
structure ensured the surveillance of an ever larger number by an ever
smaller number which in turn effected a concentration of power to the
absolute centre. The major effect of the panopticon according to Foucault is
"to induce in the inmate a state of conscious and permanent visibility that
assures the automatic functioning of power" (*Discipline* 201). Visible and
unverifiable power was what Bentham conceived in this architectural model.
The structure was to include all the apparatus required to fulfil this goal of
power technology. The benefits that Bentham mentions in the beginning of
this treatise are reached through the careful implementation of the
mechanics of the disciplinary model into the architectural structure of the
panopticon. Morals, health, industry, instruction are all benefited from the
panoptic model. All these ideals are directly related to the coercive sphere
through which the state authority of power cements its own space within the subjects that were governed.

The generalised surveillance that prevailed throughout the seventeenth and eighteenth centuries was transformed into a disciplinary mechanism, that arguably intended to secure the balance of the societal constitution but was in effect a systematic operation power to exclude the individual who posited danger to this very same power. The "dangerous individual" was trained and disciplined under continuous surveillance in the panoptic mechanism. The spread of surveillance through the social body is seen by Foucault as "the formation of what might be called in general the disciplinary society" (Discipline 209).

The birth of the prison is not directly a result of these codes and mechanisms. Foucault states that the prison form had existed long before it was systematically used in the penal system. There was a continuous process that was being initiated throughout the social body during the centuries that preceded 18th century when prison became the central factor of penalty. The distribution of individuals in space and extracting the maximum time and forces from them were the main focal points of this social process. Hence it can be deduced that this was a process which was influenced by the systems of production that the interaction of power relations had given birth to. Foucault finds, "At the turn of the eighteenth and nineteenth centuries, there was, it is true, a penalty of detention; and this was a new thing" (Discipline 231). This is seen as the opening up of penalty
to the already established systems of coercive power. Prison developed into a "complete and austere institution," as Foucault calls it, modelled on this technology of discipline and serving the demands of a capital driven economy. The making of detention as the core of the penal process saw the characteristics of a different type of power being inculcated into it. Foucault states, "A justice that is supposed to be 'equal', a legal machinery that is supposed to be 'autonomous', but which contains all the asymmetries of disciplinary subjection, this conjunction marked the birth of the prison," (Discipline 232). This asymmetrical construct was argued to judge all the constituent individuals "equally", but what actually occurred was a colonization of the legal scenario by the disciplinary forces of the new class power. Foucault quotes a nineteenth century European reformer Van Meenen, who says that the "progress of ideas and the improvement in morals" were the reasons that made prison the central artefact of the penal process (Discipline 232). This was the attitude of those who heralded power, underneath this purification or purgation lie the deep rooted mechanics of power domination. This noble aim that was presented as the main objective of the detention process was based on the egalitarian ideal of depriving the individual of the liberty that was a natural privilege. The ideal is far from the actual situation of the prison system. This "juridico-economic" foundation along with the "technico-disciplinary" foundation of being able to transform individuals and reproducing all that is found in the social body is what made prison a self-evident existence in the socio-political scenario of the early
nineteenth century Europe and hence aided it to remain so up till the contemporary times.

The prison, modern day, becomes what Foucault calls, a penitentiary; where a complex series of processes are at work. The deprivation of liberty is its starting point. It facilitates the disciplinary needs of surveillance and training which leads to the economic realisation of a potential workforce and the moral correction of the individual for the benefit of the social order of power relations. Hence, prison is at once a panoptic observatory, a workshop and a hospital; a combination which Foucault terms as the penitentiary. The penitentiary replaces the offender with the delinquent. Crime is detached from the individual. The former dictates the need to be punished and the latter develops into a point of observation and correction. The body of the offender exits to make space for the soul of the delinquent, for it is only the soul that can be corrected. This substitution makes the disciplinary mechanisms operate through the economic and the psychiatric models. The parallel and interdependent functioning of these apparatus of the penitentiary contributes to the development of knowledge in the form of human sciences which in turn justifies the existence of the penitentiary as the central object of the penal process.

The series of legal, disciplinary, economic and political actions that were elaborated is what contributed to what Foucault finds in the complete carceral institution that was born in Mettary. Foucault justifies in choosing this point as the completion of the complex system by calling it, "disciplinary
form at its most extreme, the model in which are concentrated all the coercive technologies of behaviour" (*Discipline* 293). The carceral system is identified as producing several results that had their impact upon the social body. The emergence of norm that helped preserve the lawful state; the possibility of "recruiting" delinquents in order to assist the development of a vast body of knowledge alongside the fulfilment of the economic demand for an increased and efficient workforce; and legitimating and naturalising the power to punish were all the achieved outcomes from the complex system of the carceral. Foucault concludes by calling his work as a foundation for the future studies on "the power of normalization and the formation of knowledge in modern society" (*Discipline* 308).

**Deviance and vengeance: Durkheim on punishment**

Emile Durkheim elaborates on the relationship between punishment and social conscience in his seminal work *The Division of Labour in Society*. This theory is considered insufficient by Foucault on the grounds that "By studying only the general social forms . . . one runs the risk of positing as the principle of greater leniency in punishment process of individualization that are (?) rather one of the effects of the new tactic of power, among which are to be included the new penal mechanisms" (*Discipline* 23). Yet Durkheim’s ideas have attracted much attention from sociological studies on the penal system. The initial work did call for serious criticisms from theoreticians on penalty, which made Durkheim elaborate his views in a second write up titled "Two laws of penal evolution" which was published in 1900. This article
was a response mainly to the criticism that the contrast Durkheim drew between repressive sanctions in societies with mechanical solidarity and restitutive penal sanctions that corresponded to organic solidarity, a view put forward in *The Division of Labour*, was too overdrawn as the societies which he identified were pointed to be possessing central state organisation as opposed to the tribal or clan systems. The article modifies this opposition between repressive sanctions and restitutive principles. These two writings together form the basis of Durkheim's idea on penal systems.

Durkheim observes in *The Division of Labour* that an examination of systems of crime and punishment provides "an empirical indicator of the nature and condition of various levels of social organisation and culture in a society" (Thompson 59). It also helped combat all moral philosophers who claimed the existence of absolute moral principles from which emanated all laws and morals. The Utilitarian assumption of moral behaviour resulting from individuals making agreements to maximise happiness was also contested by such an examination. What Durkheim aimed to show was that there existed in society nothing that can be called an intrinsically criminal act. The definition of criminality was almost entirely based on the sentiments and beliefs that prevailed in each society. Durkheim says, "an act is criminal when it offends the strong, well-defined states of the collective consciousness" (*Division* 39). Hence it can be said that the conscience collective of a particular period of time decided the definitions of crime in that period. Law and penal system is said to have been empirical indicators "of more obscure and less easily observed social phenomena at other levels of
the social system, such as morals and currents of public opinion" (Thompson 59)

Durkheim provides the example of the primitive societies where religious sentiments dominated the collective consciousness which gave rise to the predominantly religious law. Repression of deviance was considered to be the function of the law. The moral beliefs or the justifications of the sanctions were not stated in primitive societies. This is because it was known to everyone and hence the need to formalise it did not arise. The explanation of punishment based on its deterrent value is also rejected by Durkheim on the ground that punishment is graded not according to the strength of the motivation to commit it but according to the seriousness of the crimes itself. Durkheim saw punishment as, according to Talcott Parsons, "a symbolic expression of the community attitude toward the crime – a severe punishment is a mode of reaffirming the sanctity of the norm the criminal has broken" (Parsons 403). Hence it was not the punished but the deviance that was the prime focus of the penal process. The vengeance with which repressive sanctions were carried out had a very crucial purpose; of reaffirming the social solidarity. Though Durkheim accepts that penal sanctions did have a reaffirming or deterring effect on the offender, he identifies, as the more fundamental cause of penal codes, deeper cultural structures like beliefs and sentiments.

While Durkheim identifies the shift of penal process in the altered scenario where mechanical solidarity decreases due to the division of labour,
and the subsequent appearance of an organic solidarity, he maintains that such an absolute shift is only possible if all the organs of the society functioned on spontaneously generated and positively accepted norms. He says that none of the capitalist societies that existed during his times were observed to have achieved such a state. Hence the division of labour is said to be forced which resulted in "anomie." Durkheim accepts the increase in individual based crimes and codes in the altered scenario. Criminal law that existed was represented by centralised organs like that of the state institutions. So the offence against the state was regarded the offence against the collective conscience. Though this is the case, Durkheim maintains that the fundamental element of vengeance has not been erased from the penal process:

Nowadays, since we are better aware of the purpose to be achieved, we also know better how to use the means at our disposal. We protect ourselves more systematically, and consequently more effectively. But from the very beginning this result was achieved, although less perfectly. Thus between the punishment of today and yesterday there is no great gulf, and consequently it had no need to change to accommodate itself to the role that it plays in our civilised societies. The whole difference lies in the fact that punishment now produces its effects with a greater awareness of what it is about.

(Division 45)
Durkheim's views did attract serious criticisms from the writers of his times which made him clarify his theoretical formulation in the second essay. He maintains his basic position that punishment becomes less severe when individualisation gains more importance, but modifies the claim by adding to it the role played by absolute power. The decrease in the severity of punishment is seen in relation to the extent to which power is absolute. "We say that governmental power is absolute when it encounters among other social functions nothing which serves to counterbalance it and to limit it effectively," says Durkheim ("Two" 22). This idea of absolutism is Durkheim's first law of penal evolution. He terms this as the "law of quantitative change." In the explanation that he offers to this first theory Durkheim makes a distinction between the collective crimes, having collectivistic subjects and collective things as their objects, and individual crimes that affect the private interests of people. The former is directed against collective conscience, like authority or moral values and the latter injures the individual. The first kind of crime, which was predominant in the primitive societies, called for severe punishments while the more recent individual crimes were punished less severely. Durkheim speaks of a reciprocal influence between the two types of crime, "as human criminality gains ground, it reacts in its turn on religious criminality and, so to speak, assimilates it" ("Two" 44). This can directly be linked to the practice of punishment being made less severe with the shift in the nature of the crime.

The second law, one which is termed "the law of qualitative changes," concerns the emergence of prison as the normal mode of punishment.
Durkheim words the law thus, "Deprivation of liberty alone, varying in time according to the seriousness of the crime, tend (?) to become more and more the normal means of social control" (*Division* 32). The non-existence or partial existence different from that of the modern societies is empirically presented to prove the relation between prison system and organic solidarity. After analysing ancient societies including that represented by *The Laws of Manu*, Mosaic law, Pentateuch, the book of Jeremiah and the ancient laws of Slavs and Germans, Durkheim moves on to mention the development of prison in the Christian societies. He writes, "At first, this was thought of as no more than a means of surveillance, but later on incarceration, or imprisonment properly so-called, came into existence, being regarded as a genuine punishment" (*Division* 33). The connection of prison and surveillance, which Foucault stresses, is hitherto found to have been identified much earlier by Durkheim. The idea of surveillance was not as developed here as it is in Foucault's writing. Durkheim says that it is from the Christian societies that prison system passed on to the secular legal system. He mentions the French Penal code of 1791, as the point when prison became the basis of the system of control. This emergence is seen as a result of responsibility becoming essentially individual and the idea of collective conscience getting shadowed. The necessity of preventing punishment from being evaded by the flight of those who have earned it is what Durkheim finds as the reason for the emergence of imprisonment. He locates the necessary preconditions that facilitated this emergence. The functional necessity was not just enough, there was a need for other
structural factors like "sufficiently spacious public establishments, run on military lines," for prisons to come into existence. These could only be seen in the more developed societies. Durkheim refers to a society reaching an advanced state of material development to allow the existence of "secure and fortified establishments" (Thompson 69) as the possible precondition for the establishment of prisons.

The "progressive weakening of punishment," due to the absolute nature of power and the subsequent qualitative shift to deprivation of liberty facilitated by material development together accounts for the new system of punishment called prison. Durkheim's theory of imprisonment has been criticised in several instances, but the basic idea that he puts forth, that of the importance of law in understanding of society has been regarded valid even by his severe critics. The equation that he creates between absolute power and the decrease in the severity of punishment can be regarded as a valid claim in the light of imprisonment replacing absolute corporal punishment in modern societies. The presence of vengeance in modern penality could be related to some of the contemporary prison situations that will be analysed in detail at a later stage. Hence Durkheim's theory of imprisonment could be taken as a valid sociological theorisation of the modern system even though it does not take into account the diverse forms of prison paraphernalia that are presented by Foucault's theory. The ideas of modernisation and development giving providing the necessary infrastructure for the emergence of the carceral system along with the connection established between severity of punishment and the body of the punished, as similar to Foucault's
idea of body and soul, are key contributions that Durkheim makes towards a broader theory of penal evolution. These ideas do assert the position that Durkheim occupies, even amid serious criticisms, in the sociological theorisation of prison emerging as the principle focus of the judicial process in modern societies.

**Socially structured punishment: Rusche and Kirchheimer on imprisonment**

One work that Foucault mentions to have analysed the birth of the prison before him is Georg Rusche and Otto Kirchheimer's *Punishment and Social Structure*. This seminal work published in the year 1939 amid the troubled times of the Second World War and Nazi Germany remained unnoticed until it was republished in 1968. After the reissue the book went on to become what sociologists call a classic in the analysis of imprisonment. As Adrian Howe mentions the book came to be "acclaimed as the 'seminal' text for critical analysis – especially Marxist analysis – within the newly emerging field of the sociological study of punishment" (4). Dario Melossi says, with reference to David Garland, that the book became "the bona fide Marxist view on punishment" (248). Foucault says that the work "provides a number of essential reference points" (*Discipline* 24).

The main idea of Rusche and Krichheimer, which came to be called the "Rusche and Kirchheimer hypothesis," is that "there should be a direct positive relationship between changing imprisonment rates and changing unemployment rates" (Melossi 250). By placing imprisonment side by side to
the questions of labour Rusche and Kirchheimer were elaborating on the role that capital played in the development of the carceral system. There have been two deductions from this hypothesis. First that prison conditions become worse with the market being flooded with labour and apparently as the demand for labour decreases prison becomes a better place to be. The latter case happens through the introduction of work in prison which is used to break the labour unrest in the society. The ideas of "less eligibility" and "dependant variable of the labour market" are at the threshold of this demand supply idea of labour and punishment. This concept is directly related to what Marx has stated in the 1844 Manuscripts (as illustrated by Melossi). The value of human being is hence concluded to be the value of his labour. Rusche says, "it is the labour market that structures the normal conditions of the working class as well as structuring the sanctions used against them if they resort to crime or political resistance to improve their lot in life" (Rusche 87). The specific modes of punishment found in societies are linked to the modes and methods through which the society is organised.

The analysis of Rusche and Kirchheimer has been criticised on diverse aspects. Melossi says that there is an "absence of reflection on ambits that differ from capitalist societies" (253), referring to the socialist societies where imprisonment was apparently high. David Garland says that punishment differs in countries with similar economic situations which lead to the conclusion that ideology and political power plays a role in deciding how punishment should be modelled. The critiques do have their point. Rusche and Kirchheimer approach punishment solely from the domain of capital and
labour. The recent development of imprisonment, especially in the US, calls for a more detailed and diverse theoretical analysis. Accepting this fact, one cannot deny the validity of the relationship that Rusche and Kirchheimer establish between imprisonment and labour economy. Their statement, "punishment is neither a simple consequence of crime, nor the reverse side of crime, nor a mere means which is determined by the end to be achieved," could be regarded as a classical theory on what punishment is meant to be (Rusche 5). Hence, in studying prison and imprisonment in modern society Rusche and Kirchheimer's ideas do play a crucial role. By bringing the idea of punishment close to that of the operation of capital which regulates labour, the theory becomes valid in its relation to a social organisation that has flourished ever more in the contemporary times.

**Sacred/Exception/Apparatus: Agamben and the study of imprisonment**

The Italian philosopher Giorgio Agamben has been the most instrumental philosopher who has made significant theoretical advancement of Foucault's ideas. His theories are not just the development of what he works upon but rather new and fuller theorisations on the underlying subtle yet powerful ideas that those formulations contained. The wide application of Agamben's theories among studies in social sciences testifies to his influence. Foucault, in the later period of his academic activity, was concerned with the concept of governmentality and its underlying forces such as the "apparatus." He repeatedly mentioned these in his theorisation of the various socio-political discourses found through his major works. Agamben
begins his elaborations from these ideas, and by meditating deep into the philosophical roots of these everyday issues he brings out the actual force that leads to their very occurrence and existence. Agamben himself notes that while developing theoretical ideas of others, he reaches "a point of undecidability where it becomes impossible to distinguish between the author and the interpreter," and he takes this point as the, "time to abandon the text that he is analysing and to proceed on his own writing" (Apparatus 13). The proceeding thus made results in theoretical conceptions that become relevant in studying objects (and apparently subjects) of contemporary societies.

In the recent essay titled "What is an apparatus?" Agamben takes to elaborating one of Foucault's repeated words, the 'dispositif' or "apparatus" as it is translated, and eventually comes up not only with a detailed interpretation of the term but also with a subsequent ontological discourse that substantiates the idea onto a higher level of philosophical reflection. Apparatus is a most frequently used and very rarely explained term in Foucault's works, especially those which concern the concept of "governmentality." Agamben quotes from one of Foucault's interviews to locate his definition of the term. Foucault explains, "This is what the apparatus consists in: strategies of relations of forces supporting, and supported by, types of knowledge" (Power 196). This definition in itself calls for a detailed analysis, which Agamben promptly delivers. He calls apparatus as, "anything that has in some way the capacity to capture, orient, determine, intercept, model, control, or secure the gestures, behaviours, opinions, or
discourses of living beings" (*Apparatus* 14). Here the connection that the idea of apparatus has to any measures that is directed towards controlling human activity can be seen pointing towards the subject of the present study: the prison. Agamben clarifies not only this connection but also its apparent social impact at a later stage in the same essay:

Apparatus, then, is first of all a machine that produces subjectifications, and only as such is it also a machine of governance. . . Analogous considerations can be made concerning the apparatus of the prison: here is an apparatus that produces, as more or less unforeseen consequence, the constitution of a subject and of a milieu of delinquents, who then become the subject of new – and, this time, perfectly calculated – techniques of governance. (*Apparatus* 20)

This is an obvious connection, but the real sphere of apparatus – the more obscure one – lies elsewhere. This obscurity is what more defines its connection to the coercive representation that Foucault identifies with the carceral system. The subjectification that Agamben associates with the apparatus is said to be implying a counter process of desubjectification where the living subject eludes itself in the governance mechanics. As Agamben puts it, "the penitential self is constituted only through its own negation" (*Apparatus* 20-21). This forced negation is a subtle process in "the state of exception" that forms the foundation for the existence of all modern governance. The subjectification or desubjectification inherent in the apparatus makes it "impossible for the subject of an apparatus to use it 'in
the right way" (Apparatus 21), which nullifies the entire refinement or correctional principle that the reformist ideologues sought to identify with the development of the carceral system.

In State of Exception, Agamben argues that the state of exception has now become the fundamental paradigm of governance today. This reversal in the role of the state of exception as a limited period measure to a continuous and normal condition relies on the way state power tends to become absolute. Agamben says that the state of exception becomes:

a legal civil war that allows for the physical elimination not only of political adversaries but of entire categories of citizens who for some reason cannot be integrated into the political system. Since then, the voluntary creation of a permanent state of emergency (though perhaps not declared in the technical sense) has become one of the essential practices of contemporary states, including so-called democratic ones. (Exception 2)

He elaborates with the help of the Auschwitz camp and the Guantanamo prisons to say that the captured, in these cases, are devoid of any legal status and hence the state of exception operates in a zone "of indelicacy or indifference" between law/lawlessness and private/public. There is a constant overtaking of governance by management that is happening in contemporary politics. The paradigm of management replaces law from the system of governance making it governance in the absence of law. Such is the form of governance that Agamben associates with the prisons that he
analyses, especially the ones mentioned above. He quotes from Carl Schmitt, "the King reigns but he does not govern" to locate the "termini" of the double structure of political systems, "to reign and to govern" (*Interview 611*). The carceral system of the modern era can be located within the zone of lawful governance and the managerial governance thereby turning at once to be within and outside the political construct of the state.

When the state of exception becomes the rule of governance the apparent result is the "transformation of a provisional and exceptional measure into a technique of government" that "threatens radically to alter – in fact, has already palpably altered – the structure and meaning of the traditional distinction between constitutional forms" (Agamben, *Exception 2*). This alteration of traditional distinctions gains absolute power in the realm of the coercive carceral system. Whereas the traditional reformist notion of imprisonment has been one of punishment becoming less corporal and hence more humane, the actual impact can be seen as a crucial change of focus in order to transform the fundamental idea of "correction" into a perpetual subjectification to the dialectics of the governance of management. At this precise point Agamben's ideas become relevant in the broader discourse on the emergence of the penitentiary.

Elaborating on the foundation of law and its close relationship to the state of exception, Agamben says that law, as all other social institutions, has "been formed through a process of desemanticization and suspension of concrete praxis in its immediate reference to the real" (*Exception 37*). That is
to say, the norms of law get nullified with the actual executive activity which thereby gets the force of law. This inclusion-exclusion "di-polarity" gets translated as the core of the state of exception at once being within and outside the realm of legality. Agamben refers to its effect, "Such a 'force-of-law,' in which potentiality and act are radically separated, is certainly something like a mystical element, or rather a fictio by means of which law seeks to annex anomie itself" (Agamben, Exception 39). The force that remains after law is stroked off is what ultimately remains in the realm of human experience. This force exists at once with anomie when at the same time being the carrier of law. Such a force that is at once legal and devoid of law can be observed as providing ground for the penintentiary evolve into an unquestionable apparatus of contemporary legality and governance.

The idea of "state of exception" and its role in incarceration could be furthered as the study advances. The theoretical insights that Agamben offers through a series of inter-related studies secure their place in any attempts to study the state of the contemporary carceral system in relation to the foundations of its origin. The ontological enhancement that Agamben makes to the observations of Foucault, delivers them equipped to enter into the complexity of the incarceration scene in contemporary social-order and to analyse the (un)relation between the legal norms or sociological dictums that gave them psychological and structural existence and the actual exercise of the "force" that conditions actual human experience in the penitentiary.
Civilising punishment: Norbert Elias and the evolution of prison

Law, be it in the primitive societies or the modern societies, has always been a justifying force behind civilisation. Emergence and sustenance of cultures have taken the active support of the legal apparatus throughout human history. It is this connection that law bears with civilisation that makes penal theorists look for clues pertaining to the foundation of the carceral institution in the works of sociologist Norbert Elias. Though his works don't explicitly speak of prison or imprisonment, they have, as John Pratt argues, "the potential to provide a very different but very significant contribution to this area" ("Elias" 214). In fact, John Pratt himself is the author of a crucial analysis of the punitive system from this vantage point.

Elias's idea of the civilising process inquiries into the process involved in the formation of the Western civilisation. "The process called civilisation," for Elias, "is especially marked by a reduction in the use of over physical violence and an increase in the intensity of psychological control" (Vaughan 74). The court society that was formed with the centralisation of authority, that is to say the historical phase when feudal social order ended, presented a set of manners and behavioural patterns that were slowly considered "civilised" by the unprivileged masses. This social process was unable to be hindered by the courtly aristocracy, for whom these etiquettes were symbols of their very existence, because of a "peculiar form of interdependence in which they lived" (Elias, Process 465). The refinement in the behavioural patterns of the bourgeoisie forced the nobility to further reform their manners.
When the newly emergent groups gain power and respect in the circles of authority "they begin to enunciate their own code of behaviour which increases the differences between them and the established classes" (Vaughan 75). Vaughan cites the example of the middle class reformers' reaction to the excess of penal law that took place in the 19th century Europe to drive his view that punishment can be a cultural construct. This phenomenon motivated by the cultural uplifting of an underprivileged class could be related directly to the civilising process that Elias speaks about.

When behaviour began to be conditioned by the expectations of the social conscience with relation to being civilised and uncivilised, violence was eliminated from the visible sphere of social activity as a reminiscent of the uncivilised past. This removal was conditioned by the concentration of violence into the hands of the singular authority, which at that time was the sovereign and thenceforth transformed into the state. Hence any violence that was considered necessary had to be exclusively performed by the state. Moreover, the visibility of violence in public spaces was also deemed to be uncivilised which provides the justification the state punishment mechanics requires. So, the concentration of violence as the exclusive right of the central authority on the one hand and the societal unwillingness to the visible action of this violence on the other were together initiating the penal process into a coercive sphere of operation.

Though it is argued that the civilising process that Elias examines comes to an end "by the mid nineteenth century and as such does not really
address the significance of features quite specific to social development in the civilised world thereafter," the origins of the systems, such as that of punishment, that this society lived with and developed further could be better understood with the theoretical observations that he makes (Pratt, *Elias* 214-215).

**From theory to praxis: Prison and the theories of imprisonment**

The sociological, genealogical, and Marxian analyses that were introduced above illustrate, among other things, the complexity that the carceral system is and has been since its origin. Penalty, today more than a system in itself, is a platform that allows the interaction and operation of diverse systems that are coated with the force of legality and supported by the requirements of the state, voiced as that of the people that it governs. Such an interplay which the prison renders possible activates the production of a system of knowledge that helps in strengthening the hold of these very same social, economic, and political ideals that leads to it. Hence the knowledge finds itself returning to its own foundations every time it develops into a newer structure. This apparent connection between the knowledge base and the underlying forces could be left unperceived by the legal framework that actually sets the system in operation. At this point the whole process of theorisation gets into a questionable and problematic conjuncture. The transformation of knowledge systems into actual practice remains questioned and the accuracy of theorisation leading to a historical understanding remains problematic. One possibility of solution remains that
any theorisation is an initiative that at once distances itself from the contours of power relations and also gets close enough to it in the attempt to understand what is being theorised. The ideas that were presented would all help in understanding what the penal system is in the contemporary times. That in no way reduces the contradictory interferences that each one of them could make with the other. None of the theories are complete with respect to studying the carceral system and all are complete in their own respects. The balancing of this quagmire is the most difficult task that the present study seeks to undertake. An endeavour which would lead to each perspective being put use in understanding each of the diverse aspects of the penal system.

The genealogy of prison that Foucault presents is undoubtedly the most comprehensive of all the theories that were analysed, which in no way means that it is complete. As a matter of fact, Foucault's accounts of his work in progress that is reflected in his lectures given at College de France, offer points for further analysis of the prison within the broader idea of governmentality. Moreover, there have been serious criticisms on the Foucault's methodology, especially on the accuracy of factual information and the limitations of perspective. Peter Spierenberg critiques Foucault's work on the methodological front, which opens up a whole new path to approach the origin of the carceral system in early modern Europe. He writes, "Foucault devotes the first part of his book to the spectacle of capital executions and discusses imprisonment as an entirely new mode of repression to replace capital punishment" (Spierenberg 2). Although he
leaves the basic chronology that Foucault records unquestioned, Spierenberg disapproves the idea of anything totally new being born with the emergence of the prison in the 19th century. It is apparent that there can be a counter criticism of Spierenberg's views, yet his ideas are worth noting in the analysis of the prison conditions in the early modern Europe. This would be taken care of at a later point of the present study. What matters here lies elsewhere. Given the criticisms, Foucault's work remains seminal as it encompasses several perspectives and fuses them together in order to offer the "raw material," as he has once referred to his work, for future analysts to play with. The raw material thus offered by him is the most comprehensive of all available theories that deal with the question of incarceration in the modern legal system and social conscience.

The basic incomplete nature of theoretical approaches, which stems out of the adherence of theories to a particular school of thought or scheme of academic discourse, is what the present study deems to be in the requirement of being completed first before getting into a detailed analysis of the carceral system and narratives in contemporary societies. But this is nowhere possible without referring to the developments in the prison mechanics in the post-Foucaultian era. Hence, a combination of the raw material from the theoretical approaches mentioned and the actual context of incarceration in contemporary times with inputs from literary narratives and critical accounts would lead to the final conclusion of the present study. The theories that were mentioned were incomplete in count as well, which is to acknowledge the existence of several other significant academic accounts on
the subject. There are also a plethora of studies on prison that have been carried out from an entirely different perspectives, especially that of criminology, that cannot be ignored in the attempt to make a clear understanding of the system. That would mean more concern and ideas that demand to be included in the infusion process. The next chapter of the study would attempt to place the carceral system in the broader context of the theoretical framework offered by various scholars along with the attempts to elaborate on the theories themselves.