Chapter 3

**Superstructures: Contemporary incarceration scenario**

In most parts of the world, it is taken for granted that whoever is convicted of a serious crime will be sent to prison.

--- Angela Y. Davis, *Are Prisons Obsolete?*

There is an inherent arrogance in the premise that one group of individuals can impose personal reform on another human being. If such reform is to happen, it will come from within and is much more likely to be realised if the individual remains within the community rather than if he is exiled from it, behind the high walls of a prison.

--- Andrew Coyle, "Prisons in a Modern Society"

Several features of contemporary crime policy are inevitable and natural for most of the population across the globe. People tend to live in the present, losing "all the sense of the historical process out of which our current arrangements emerged" (Garland, *Culture 1*). In just a matter of about thirty years, criminal policy expanded to such an extent that the penal system has transformed itself as an integral part of the social lives of people in contemporary world. This was not an overnight phenomenon, but it was a comparatively quick transition, given the historical background of how prison system developed. The pace at which the system was seen emerging in the early phases of its evolution and the rapid transformation that it underwent in the latter part of the twentieth century are drastically different from each other. As suggested by Rani Dhavan Shankardass there is a "historicity that
must be understood to arrive (in full circle) to a semblance of universal
guidelines" (14). The widespread acceptance and rootedness that
prison/punishment enjoys in contemporary social contexts is what brings
forth such a necessity. Manifold factors have contributed to this, yet one
crucial factor has been at its helm; the state's increasing urge to keep
subjects under control and surveillance. The forces that control the state,
like the corporate, bilateral politics, etc., have been fuelling this urge. As with
the development of the prison system in itself, this phenomenon of rapid
change that the system underwent cannot be understood unless a
comprehensive approach, taking into consideration the several factors that
contributed into it, is undertaken. This makes any enquiry into the system at
once "sociological, empirical and historical, and marginally philosophical"
(Shankardass14).

With the immense "popularity" of the prison system, it becomes
imperative to decipher it in a method that has not been employed so far. As
Garland says, "The point is not to think historically about the past but rather
to use that history to rethink the present" (Culture 2). Adopting Foucault's
methods, Garland takes a combination of genealogical and sociological
approach to analyse the issue to the core. Attempting to trace the genealogy
of the contemporary institutions of incarceration, Garland analyses the social
and historical processes that gave rise to the present ways of controlling
crime and doing justice. He delves into the historical conditions upon which
these institutions depend as well. It is almost impossible to study the present
day prison system, due to the wide variety of issues that it presents, from a
single vantage point. Moreover, the operational method of prison system
differs from one legal system to another, although their building foundations
remain the same. Yet as Andrew Coyle points out, "the problems which" the
prisons "face are the same in virtually every country" (Coyle, Modern 72).
The systemic differences related to the constitutional, social, political and
economic make-up of specific nations which lie close to its penal system
haven't brought forth any major discrepancy among the carceral systems of
different nations. This is at once a boon and a bane. It is a boon, in that it
aids in a relatively easy journey towards understanding the reason behind
the mass support that the system enjoys. Given the fact that these systems
have developed under such diverse circumstances, it is a hard road in sight
that has to be treaded through to locate the same problems that appear
among these prisons. One way to come out of this dilemma is to attempt a
comparative and inclusive study of the different points of view that have been
expressed on the matter by academic experts. But this alone is not sufficient
to understand the state of the system in the contemporary world. Hence the
attempt to analyse a few representative prison systems from different parts
of the globe is made, which would at once contribute to the better
understanding of the theories and observations and help in bringing these to
a common ground for understanding/evaluating the system as a whole. This
would eventually contribute to the decoding not just the present condition of
the system but also the roots under the common problems that different
prison systems face.
Imprisoned society: Approaching the US prison system

The United States of America is a country that best exemplifies the extent to which incarceration can grow. Scores of studies on the US prison system and situation are testimonies to this fact. Yet another significant reason for these studies would be the rate of imprisonment that the US state "boasts" about; a glance into the International Centre for Prison Studies graph of the top ten countries of the world in terms of prison population would clarify this point beyond any doubt (Table 1). A country that sets out to ensure global "well-being" has more than 2 million people behind the bars. This means that 737 US citizens per every 100,000 are in prison with jail occupancy of over 107 per cent.

Table 1: Top ten countries in terms of prison population. (Source: International Centre for Prison Studies)

<table>
<thead>
<tr>
<th>Ranking</th>
<th>Title</th>
<th>Prison Population Total</th>
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<tbody>
<tr>
<td>1</td>
<td>United States of America</td>
<td>2,228,424</td>
</tr>
<tr>
<td>2</td>
<td>China</td>
<td>1,701,344</td>
</tr>
<tr>
<td>3</td>
<td>Russian Federation</td>
<td>672,100</td>
</tr>
<tr>
<td>4</td>
<td>Brazil</td>
<td>581,507</td>
</tr>
<tr>
<td>5</td>
<td>India</td>
<td>411,992</td>
</tr>
<tr>
<td>6</td>
<td>Thailand</td>
<td>318,841</td>
</tr>
<tr>
<td>7</td>
<td>Mexico</td>
<td>254,641</td>
</tr>
<tr>
<td>8</td>
<td>Iran</td>
<td>217,851</td>
</tr>
<tr>
<td>9</td>
<td>Indonesia</td>
<td>167,163</td>
</tr>
<tr>
<td>10</td>
<td>South Africa</td>
<td>157,394</td>
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According to the Sentencing Project website, the present prison US prison population shows, "a 500% increase over the past thirty years" (Incarceration). The number of people in prison doesn't always correspond
to the amount of crimes that are committed. On the other hand, it represents
the way the state views crime and devices punishment for "avoiding" further
crime. Being coated with the welfare slogan, the mass incarceration system
of the US comes wrapped in its own acceptability packaging. Mass
acceptance is guaranteed for the mass incarceration project, among other
factors, by this altruistic intention that it is said to be advocating in the first
place. Several analyses have so far been made of this strangely populist
phenomenon. Penal populism has become a major area of concern in
criminology and mass incarceration a much-researched topic. It is obvious
that such a mammoth imprisonment system gives rise to a plethora of
issues, which are dealt in detail by these studies. The crisis of prison over-
crowding, human rights violations, and poorly managed prison conditions are
to name but a few. Due to the number of issues with the system, studies on
US incarceration have grown as wide as that of prison system in itself. The
rise in incarceration rate, as mentioned earlier, doesn't account for any
corresponding rise in the rate of crime. It does, on the other hand, show an
increase in the number of minority offenders. As Marie Gottschalk puts it,
"Blacks, who make up less than 13 per cent of the U.S. population, now
comprise more than half of all people in prison, up from a third twenty years
ago and from a quarter in the late 1930s" (Gottschalk, Gallows 2). Based on
different statistical data Gottschalk present a graph in which the number of
prisoners per 100,000 people is split up. It shows the numbers of black
males, black males, white males and white females as separate graphs. This
reveals that while the number of white male prisoners per every 100,000
white males 708 that of black males per every 100,000 black males is a jaw dropping 4749 (excluding people of Hispanic or Latino origin). The statistics related to females too show a similar picture; 333 black females as compared to 91 whites (Gottschalk, *Caught* 5). The number of white males is marginally below the total number of prisoners per 100,000 people. Another interesting fact is that the Hispanics, who form 17.5 per cent of the US population according to the American Community Survey of 2013, constitute 35 per cent of its prisoners (Gottschalk, *Caught* 4). This makes the Hispanics the largest ethnic group behind the bars. Hence the racial conditioning of mass incarceration becomes obvious. As Michael J. Lynch put it, the growth in minority imprisonment doesn't indicate a growth in minority crime, on the contrary the most serious crimes in the "society - corporate and governmental crimes - are devoid of minority offenders" (Lynch 2). As with other issues related to the US incarceration scenario, this is also a crucial factor that contributes to the better understanding of the rampant spread of imprisonment in that country. Nullifying the work such people as Abraham Lincoln, the increase in minority imprisonment exposes the deep rooted of racial prejudice that persists in the American society.

Lynch gives an interesting point to understand the acceptance that the massive prison system has gained in the US. He relates the mass incarceration in the US to the popular American cultural belief "bigger is better" (Lynch 3). This is only a trivial reason that made such a scale of imprisonment possible in the first place. Although it is a well-known fact, from the historical figures, that making prison bigger doesn't counter-effect any
reduction in crime rate, the mammoth system still hides all its dark secrets behind this dictum. It not only acts as an iron wall for hiding the pitfalls of the system, but also contributes significantly to the acceptability that the system has gained among the American population. A host of non-academic writings support the mass incarceration movement in the United States, as well. Lynch cites writers such as John Dilulio, Morgan Reynolds, and Charles Murray who have vehemently supported the idea of prison expansion and repeatedly emphasized, "the connection between punishment and deterrence of crime" (Lynch 6). It has also been observed that legislators have generally adopted "a conservative approach toward crime control" (Lynch 6). The fact that Charles Murray happens to be the author of the controversial book *The Bell Curve*, in which he argued that African-Americans are biologically inferior to the whites, strengthen the tie between mass incarceration and racial prejudice. Studies have also decoded the legislators' tendency to mislead the public by giving false date and building their arguments on it. For instance, the National Centre for Policy Analysis in its 1995 report titles *Crime and Punishment in America* states, "a liberalization in the response to crime caused the rise in crime that occurred during the 1960s and 1970s. The report claims that punishment remained low until the 1980s, when it rose significantly, which in turn led to a significant decline in crime" (Lynch 5). Lynch argues that doesn't that the escalation of crime didn't result from the liberalisation of punishment and the current statistics of prison expansion, which hasn't resulted in any reduction in crime rates, confirms the contention against the NCPA report. This in turn fuels the
conservative policy making process which has resulted in the rapid expansion of the prison system in the US. Although the idea of prison expansion is more to be found in what the sponsored writings of the "partisan groups", Lynch comments that the argument that prisons reduce crime are historically "promoted by the research of economists" (Lynch 7) like Gary Becker. Economics argue that the rational behaviour of human beings is conditioned by the contexts and conditions in which they are placed. This means that acts of punishment would make them avoid criminal behaviour.

When in 1967 president Johnson received a report that the prison population in the country was diminishing, it was never thought of a harbinger of the great imprisonment binge. As Loïc Wacquant points out, "the federal government professed to accelerate this downward carceral drift through the expanded use of probation and parole and the generalisation of community sanctions aimed at diverting offenders from confinement" (Wacquant 3). The result was seen not more than six years, in a report issued by the National Advisory Commission on Criminal Justice Standards and Goals it was noted that the carceral population of the country was longer on a downward drift. A notable recommendation of this report was the ten-year moratorium on building large prisons on the argument that it was not effective in reducing crime and on the contrary caused an increase in it. Wacquant quotes from the report, "There is overwhelming evidence that these create crime rather than prevent it" (3). There were even historians at that time, says Wacquant, who foresaw a time when incarceration will be used more rarely as a form of punishment. It could be seen from the popular
scholarly opinions of the age, like those upheld by David Rothman and Andrew Scull, that throughout the mid 1970s a broad consensus had been reached which predicted the gradual decline of the prison system. This was further strengthened by a strong prisoners' rights movement, which originated in the US and spread to other western societies. Wacquant notes that what happened was just the reverse of what was expected. "Starting in 1973, American penal evolution abruptly reversed course and the population behind the bars underwent exponential growth, on a scale without precedent in the history of democratic societies" (Wacquant 4). It is noteworthy that this happened not soon after the National Advisory Commission on Criminal Justice Standards and Goals had recommended that no new prisons should be built and those that existed should be closed. The report noted that prison has achieved "only a shocking record of failure"(Mauer 5). It should also be noted, as Mauer says, "What is striking about these calls for a reduction in the use of incarceration is that they were voiced at a time when the inmate population in prisons and jails totalled just over 300,000" (Mauer 5). From 176 incarcerated individuals per every 100,000 in the early 1970s, the US incarceration rate is now a whopping 932 per every 100,000 individuals. Wacquant notes, "During the period 1985-1995, the United States amassed nearly one million more inmates at a pace of an additional 1631 bodies per week, equivalent to incorporating the confined population of France every six months" (5). The three main types of incarceration facilities in the United States, viz., country and city jails, state prisons and federal prisons amounts to roughly 4800. A major problem that the mass
incarceration scenario created for the state is the acute shortage of facilities. Federal penitentiaries, 125 in total, were operating at 146 per cent capacity and state prisons at 131 per cent capacity by the early 1990s itself.

In Foucault's terms, the tendency to punish stems from the state's urge to keep citizens under control and secure power to the centres that have historically retained it. This tendency has given rise to the policy makers tending to adopt a conservative attitude and making arguments to gain popularity for the prison expansion program. The US prison expansion program, unlike the other policy matters, was seldom discussed in the public sphere before imparting. As Marie Gottschalk argues, "The carceral state was built up rapidly…largely outside of the public eye and not necessarily planned out" (Gottschalk, Gallows 2). Although developed out of public view, the system is influencing the working of key institutions such as schools and public housing. While the budgets for social welfare saw marginal increases, that of correction saw a soaring rise of 946 per cent in the period between 1977 and 1999 (Wacquant 7). To top the crisis of imprisonment:

on the heels of the most costly criminal justice package ever voted in world history, the Omnibus Crime Control Act of 1994, Congress passed the 1995 No Frills Prison Act, which compels states to apply 'truth in sentencing' provisions (on pain of losing federal funds earmarked for prison construction) requiring that all convicts serve at least 85 per cent of their sentence before being eligible for parole release, thereby guaranteeing massive across-the-board increases in correctional expenditures for years to come. (Wacquant, 8)
This is a well-suited instance to prove the state's position in the prison-building programme. When the level of incarceration infrastructure was raised it saw a parallel rise in the number of people involved in the law enforcement process. As Wacquant points out, the rise in incarceration rates has also seen a parallel rise in the personnel employed in the carceral establishment. In 1999, the number of people employed in the crime-fighting machine was 2.2 million. As Donna Selman and Paul Leighton sums up the emergence of the mass incarceration scenario "entails building, stocking, and staffing an increasing number of prisons and jails, which in turn requires dramatic increases in corrections budgets" (Selman 17).

The increase in imprisonment rates and the corresponding state expenditure had resulted in the emergence of the Corrections Corporation of America in the year 1983. With budgetary requirements increasing the state could no longer afford to house the ever-rising prison population. Hence, "they turned to specialized firms that promised to deliver facilities in short order while trimming the costs of confinement by 10 to 20 per cent per head, (Wacquant 9)" From zero in the early 1980s the private prison capacity grew to over a hundred thousand inmates by 1998. This increased the profitability of investing in bonds that sought to finance the private carceral building. The CCA is not the only corporate house that offers correctional services but just happens to be the largest of them all. As stated by Rita J. Simon and Christiaan A. de Waalin:

(It) is the sixth largest corrections system in the nation, behind only the federal government and four states. CCA is the founder of the
private corrections industry and is the nation's largest provider of jail, detention, and corrections services to governmental agencies. (20)

The CCA's importance is further outlined by the fact that in a matter of two decades the profit that CCA accumulated saw a mammoth increase of 500 per cent (Erickson). As Joel Dyer points out in *The Perpetual Prisoner Machine*, the argument for increasing prison funding had been the increase in crime rate in the 1980s, an increase that is proven to be only marginal and not substantial. By the 1990s the argument took a reverse turn in that justification was found in the decreasing crime rate; that meant spending money works. Private prisons gain their grounding and public support, which did not exist at the time of their arrival, by projecting themselves as a "potent tool for economic development...through stable jobs, regular businesses and perennial tax receipts" (Wacquant 10). This turn of faith transformed the private prisons into what Wall Street analysts labelled as "hot stock picks in the 1990s," (Selman 18).

Crucial statistical miscalculations have also resulted from the emergence of the carceral state due to the distortion that it has created in "demographic, political, and socioeconomic databases," (Gottschalk, *Caught 2*). The creation of "a large and permanent group of political, economic and social outcasts" (Gottschalk, *Caught 2*) has lead to a radical remaking of the conceptions of citizenship, which would result in the disruption of the very foundations of the notion of a nation state. Gottschalk points out that this creates a dent in the American Dream, the country's central ideology, of everyone standing equal before the law. The dilemma of the carceral state
has called for two key positions to be taken against it; one based on race and
the other based on economics. While the racial pole argues that racial
disparities, discrimination and institutional racism as the underlying factors of
the carceral state, the economic pole demands for a more "rational, cost-
effective, evidence-based alternative for some offenders, primarily drug
offenders and other nonviolent offenders, without jeopardising public safety"
(Gottschalk, *Caught 3*). The racial argument stems from scholars, ex-
prisoners and social activists, whereas the power centres stand with the
economic argument. This is more of an apparent position. What interests the
state apparatus, at least in a capitalist country like the US, is to minimise the
cost of punishment and divert the same funds into other commercial
activities. Although these two arguments do contribute to addressing the
issue of the carceral state seriously, they both exhibit some serious
shortcomings that impact the reform efforts negatively. Since the question of
reform is a matter of another section of the present study, it is no further
dealt with at this juncture. A serious misperception that both these poles
have made happen is the question of "who is sent to prison and why"
(Gottschalk, *Caught 3*). As noted earlier, the single largest ethnic group
imprisoned in the US is the Hispanic. This makes it impossible to view mass
incarceration as an African-American against white American issue. Hence
the racial question, although important, needs to be carefully dealt with. As
Gottschalk points out:

Racial and other disquieting disparities do not automatically flow from
that troubled past. They are the product of politics – of how key
politicians, other public figures, interest groups, the media, and social movements choose to draw from that past, reinvent that past, and discard pieces of the past as they adjust their political strategies to the political, social, and economic realities of the present. In the process, they create new institutional and political arrangements that inscribe the past in new ways onto the present. (Caught 3)

Thus, the racial question in the carceral state is not a mere natural re-occurrence of historically prevalent attitudes, but the result of a carefully drawn out plan of the power centres. Hence the power structure becomes the central contributory factor in the emergence of the carceral state in the United States. To illustrate the point, it would be ideal to look at the rise in the imprisonment rate of the Hispanics. This is a direct result of the criminalisation of immigration laws that has been going on since the late 1980s (Stumpf 382). Juliet Stumpf states that the process of criminalising immigration, which has lead to imprisonment and deportation, began in the early decades of the twentieth century but gained pace since the 1980s. This has apparently resulted in the two immigration agencies being vested with the powers of criminal law enforcement organisation (Stumpf 387). These agencies, that were not part of what Foucault terms "apparatus of punitive justice," were made its part by the new law (Foucault, Discipline 17).

Marc Mauer identifies a major shift in the sentencing policy that led to the changing landscape of the criminal justice scenario. Mauer notes that prior to the 1970s "the American sentencing policy had been characterized by indeterminate sentencing, accompanied by an emphasis on rehabilitation
as a major objective" (Mauer 5). This drew objections in the 1960s from both the liberals and the conservatives, although on different grounds, which lead to the shift in policy which saw the emergence of determinate sentencing policy, where the punishment was the emphasis (be it imprisonment or others). This again can be related to the socio-political climate that prevailed during the times. Sentencing policy, beginning early 1970s, started becoming harsher and more rigid focussing more on the punishment aspect and less or even in negligible proportions on the rehabilitation aspect which once used to guide it. As Reagan era progressed with the war on drugs this harsher sentencing policy too continued getting more and more rigid in the 1980s. With drug laws becoming harsher, so much that possession and/or sale of small quantities of drugs received the same sentence as that of a first degree murder (Mauer 6), it naturally lead to an increase in prison population. So the war against drugs becomes another major contributor, like the immigration laws, to the prisonization programme of the US state. Although drug war is one major contributor to the high rate of imprisonment in the US even today, Mauer maintains that there are other more important reasons for that. He says that the trend of rising carceral population:

is most likely a result of a combination of factors: high caseloads that result in limited services to offenders; untreated substance abuse leading to new crimes or violations; and the failure to develop a broader range of non-incarcerative options for responding to violations. (6)
Among other reasons that lead to the increase in incarceration is the shift in the economic landscape that affected the black neighbourhoods more than elsewhere. As Wacquant point out, "the withdrawal of the wage-labour economy combined with the retrenchment of the welfare state to produce inordinately high rates of interpersonal violence" (Wacquant 13). Such a shift in the economic scenario caused an increase in unemployed African-American youth, who in turn became the primary victims of the shift in the criminal justice scenario. The victimization, although not direct, was indeed a consequence of the changes that the state policies underwent in the late 1980s and early 1990s. Yet it is important to note that such tendencies were restricted to the dark alleys of the big cities and was never a general phenomenon that spread across the country (Wacquant 13). It must be noted that these youngsters were becoming part of the large proportion of non-violent inmates that flooded into the US incarceration binge. The statistical data released by the US Department of Justice show a giant leap in the imprisonment of drug offences starting the early 1980s. So much so that it surpasses the number of those incarcerated for violent crimes. In short the rise in the carceral population in the final decades of the 20th century was not due to the increase in the crime rates but "the attitude of the society and the responses of the authorities toward street delinquency and its principal source, urban poverty concentrated in the big cities" (Wacquant 14). In the post 1970s period the US carceral system has elevated itself from being a mere crime repression mechanism into a machinery from ensuring socio-economic order by regulating the deviant behaviour of those who belong to
the bottom of a "polarizing class and caste structure" (Wacquant 14). Prison is a place to contain the voices of protests that echoes from the dispossessed classes that are the victims of the transition of a semi-welfare state into a corporate governed ultra-capitalistic state. This incarceration surge is not a mere criminological or legal issue, but a deeply political issue that lies at the heart of the power structures that govern the state (Gottschalk, "Carceral" 233). The very categorization of mass imprisonment that David Garland mentions is based on two conditions, one the number of incarceration people and second the tendency to imprison social groups as a whole (Garland, Culture 5). The US carceral system ranks well above the qualifying mark in both the criteria thereby exemplifying the extreme to which imprisonment can grow. Such massive growth of the systems brings with it several issues that need to be seriously addressed. These can broadly be classified into psychological issues that the prisoners face, prison overcrowding and related problems, and life after imprisonment for the prisoners, which will be discussed in detail in a future section. The present section calls for the understanding of the sheer size of the carceral in the United States and that it provides the basis for the analysis of the system of punishing crimes as a whole. The Prison Industrial Complex, as it popularly called in scholarly discourses, is continually expanding the scope and implications of the imprisonment scenario in the United States and is hence a central factor in the understanding of contemporary incarceration scene.
Incarceration and development: The Indian prison scenario

The history of prisons in India can be traced back to the ancient ages. Prisons are mentioned in the ancient texts and pictorial representation of imprisonment could be seen in the paintings from the ancient period. Most noticeable among the ancient texts is Kautilya's *Arthashastra*, which has sections devoted to prisons and penal system. There are elaborate and solid references to the necessity of "just" punishment and danger of there being no punishment. In the commentary to *Arthashastra* L.N.Rangarajan says that the Kutilyan state, which was highly centralised, "was regulated by an elaborate system of penalties," (Kautilya 492) which makes the work to be called as *dandaniti* meaning the science of punishment. Maintaining social order and helping the king keep his position were the instrumental reasons behind the penalties. Regarding the acceptability of the king Kautilya says, "A severe king [meting out unjust punishment] is hated by the people he terrorises, while one who is too lenient is held in contempt by his own people. Whoever imposes just and deserved punishment is respected and honoured" (Kautilya 493). He further explains the specificities of just and unjust punishments. It is crucial to note that the attitude to punishment that Kautilya reveals could be traced in contemporary penal practices as well. Hence, the history of Indian punishment could be said to have been evolved form the ancient culture/texts. Yet there are some crucial differences between the punishments mentioned by Kautilya and what is practiced in contemporary India, which will be dealt with elsewhere in the section.
Although Kautlya gives great importance to punishment, he doesn't mention imprisonment as a form of punishment, unless in special cases, anywhere in the *Arthashastra*. People were locked pending investigation or being not able to pay fine. Two types of jails are mentioned by Kautilya, "prisons for those convicted by judges and lock-ups for those punished by high officials for non-payment of fines" (Kautilya 489). Detailed descriptions of prison requirements are given by Kautilya, "Both these (the prisons and the lockups) shall have well guarded rooms and with separate accommodation for men and women. They shall have halls, a water well, latrines and bathrooms. Adequate precautions shall be taken against fire and poisonous insects" (Kautilya 489). He speaks in detail about the responsibilities of the officers, like guarding the inmates and preventing their escape, and also on the welfare of the prisoners. Kautilya maintains that no officer has any right to harass a person in custody by hindering their "sleeping, sitting down, eating, exercise or going to the lavatory; or tying any of them down in one place" (Kautilya 490). These lines could be read as the precursors of the present texts of law that govern prison governance and prisoners' rights.

Although Kautilya mentions the importance of punishment being just, caste conditioning is evident in some of his rules. So is the sovereign power. For instance, he maintains that a rebellious crown prince should be executed, if the king has other righteous sons, in the absence of which the prince should only be imprisoned. This evidently shows the centrality of the sovereign power and how its influence is felt even in an objective code of
law. Another instance of influence is seen the section that talks about the punishment which has to be meted out to the purohita (the priest or the religious teacher). "A purohita," Kautilya says, "however great his offence, shall be punished by exile or imprisonment" (Kautilya 161). Here the exile or imprisonment that is recommended for the purohita is in place of execution. This is a testimony to both how Kautilya was influenced by the power structures that governed the socio-political life of his times and also the influence that the priests had in matters of governance during the time.

Kautilya's work remains one important reference point for punishment in ancient India. The systemic imperatives of Arthashastra could be located as being followed in several of the ancient Indian dynasties, including that of emperor Asoka. The system that Kautilya recommended in his treatise underwent only minor changes until the emergence of the modern prison, well after the settlement of the British. Yet, during the Middle Ages several minor changes did occur in the punishment systems. As mentioned by Amarendra Mohanty and Narayan Hazary, "The legal system in the Mediaeval India resembled that of Ancient India and the contemporary Muslim rulers seldom, if at all, attempted to tamper with the day to day administration of Justice" (Mohanty 22). Although the reference points of legal matters shifted to the Quranic dictums, the legal system remained almost entirely untouched. This continued even during the Maratha period. Prison, whatever had existed, was a place for detention of under-trials (in case of commoners) and was used as a form of punishment only for the privileged. Several references of people (usually former emperors or their
sons) being thrown into prison could be seen in the history of the Mughal dynasty. For instance, the blinding and imprisonment of the revolting son Khusrau by Jahangir and the locking up of emperor Shah Jahan by his son Aurangzeb are examples of explicit use of imprisonment as a form of punishment. Yet this was not a common practice. There is not mention of prisons, as in a modern sense of the term, in any medieval history. There were no rules for governing prisons or even description of the internal organization of prisons. What this means is that although imprisonment prevailed in a minor degree during the period, it was not as organized as it is in the modern era.

Prison as it is seen today started evolving in modern India only after the advent of the British. The authority granted to the East India Company to govern India was to give rise to a regime that "promoted an overtly punitive philosophy" (Maguire 30). Even up to four years after the British gained control of India, prisoners were "confined to Bencoolen, in southwest Sumatra" (Roth 133). These prisoners were said to have been employed in jungle clearing and road building works. As Radhika Singha suggests it was the criticism that public punishment form received during the late 18th century that made the Company authorities start thinking of prison regime as a viable alternative. During the early yeas, "the company's criminal justice regime of confinement was one sketched out in very broad terms" (Singha 253). It took several decades before the laws governing imprisonment took a proper shape. Several committees were formed to revive and reform the criminal justice system. It is notable that by 1836 India had a large number of prisons
that could hold more than seventy thousand prisoners. These were all but places to confine undertrials or those awaiting execution. It was in the year 1846 that the first central prison was constructed in India (Roth 133). Roth says that, although several recommendations of John Howard were implemented in Indian prisons by as early as 1850s, by virtue of being a colony, the Indian prison system continued to have corporal punishments such as flogging as part of its normal proceedings. Recommendations of the Fourth Jail Commission constituted by the colonial regime gave its report of recommendations in the year 1888, which lead to the drafting of the Prisons Act in 1894. It may sound ironical, but is very much a fact, that it is this act that governs the Indian prison system even though it is more than a century old.

Several other committees constituted during the colonial period laid the foundations for the contemporary prison system in India. "In 1919-1920 the Indian Jails Committee names reformation and rehabilitation as major objectives" (Roth 133). By the 1940s labour became less penal and prisoners were made to focus in learning various crafts. In the post-independence era added emphasis was laid on giving proper training to the correctional staff. In 1959, after two years of high level meetings and discussions, a Model Prison Manual was prepared. This was to become the guideline for correctional facilities in India. The state governments, which govern the prisons in their respective states, were asked to incorporate the recommendations of the manual into their correction policies. Yet, as Kumkum Chadha points out, not many state governments followed suit even
as late as 1983 (when Chadha made this remark). Chadha remarks, "The due, and cumbersome, process of law delivers the prisoner into the jaws of the monster that is the Indian prison system" (Chadha 40). This is, even after reaching half-way through the second decade of the twenty-first century, still the case with Indian prisons. Even after the number of prisoners being low, the way the system is (mis)managed makes the system apparently one that goes against its (so called) founding principles. This, along with the antiquated *Prison Act* of 1894, makes the Indian prison a modern day reality expected to be working on the principles laid out by the colonial regime well over a century ago to manage what they called colonial subjects. Acts such as the *Prisons Act*, which govern incarceration in India, are not even a new version of what the colonial regime had drafted, but are exactly the same, with apparently no new act replacing them. It does not come with any surprise that this law doesn't cater to the requirements of the criminal justice system that the country demands in the contemporary socio-political milieu.

As Mike Maguire says, "Indian gaols (are) so varied that to describe any one is to create a false picture," into the system (Maguire 30). It is due to the fact that the administration of prison is matter that lies with the state governments and the central government has very less role in the matters related to the day-to-day operation of the prisons. As the penal systems of different states show variation, so do the prison systems. This makes it difficult to draw a conclusive picture of the Indian prison condition that applies to all the prisons in the country. Yet statistical data published by the Government of India, along with several news reports that appear on a day-
to-day basis, makes it clear that issues resulting from poor management conditioned by rampant corruption are similar in almost every part of India. A look into the statistical data would help in understanding the prison population and its classification in India.

*The Prisons Act, 1894* defines prison as, "any jail or place used permanently or temporarily under the general or special orders of a State Government for the detention of prisoners, and includes all lands and buildings appurtenant thereto," and avoids certain places like the lock-up where a suspect is under the complete custody of the police, and places that are designated as subsidiary jails by state government. Going by the statistics of the Ministry of Home Affairs, there are 1391 jails in the country at the end of the year 2013 (*India Prison Statistics 2013*). The inmate population amounts to 411,992 with an occupancy rate of 118 per cent. The prison occupancy rate has been showing an upward trend after being almost constant for two previous years (112.1 and 112.2 per cent during 2011 and 2012 respectively). On comparing the data with that of 2003 and 1995, when the occupancy rate was 139 and 116 per cent respectively, it is clear that the prison occupancy rate has seen upward and downward drifts in the last two decades. It is important to note that in 1995 the total number of prisons in the country was 729 with a capacity of 138,347 occupied by 161,552 inmates; and in 2003 the total number prisons rose to 1140 with a capacity of 233,543 occupied by 326,519 inmates. What can be deduced from this is that even though the state tried to address the issue of prison occupancy over and above the capacity by increasing the prison capacity, the increase in
incarcerated individuals has been more then this increase. Hence, it becomes clear that in the last couple of decades, for which the data is available, there has been an upward trend in the number of people incarcerated in the country. However, it should be noted that the per capita imprisonment rate in India is much lesser as compared to countries like the United States. This is indeed a welcome sign given the fact that India's population is almost four times that of the US. Yet there a number of issues that surround the Indian carceral system, which have been the focus of several criminological and sociological discussions in the academia.

Prison population in India is a matter of no great concern if the actual number of inmates and the per capita imprisonment rate is taken into account. What makes it worth studying is the condition of the prisons and the occupancy rate. As of 2013, the occupancy rate is 118 per cent (*India Prison Statistics 2013*), which means there is a serious issue of overcrowding in Indian jails. The picture that emerges, when the occupancy is split into the different category of inmates, is even more problematic. There are four types of inmates listed in the *Indian Prison Statistics*; viz., convicts, under-trials, detenues, and others. The last two categories are somewhat shady. Detenues are those held in prison without trial under the provisions provided for by various acts like the National Security Act, and the Conservation of Foreign Exchange and the Prevention of Smuggling Activities Act. There are times when political prisoners are also taken in as detenues in the name of preventive detention. This has "sometimes attracted international concern, particularly during periods of internal tension," (Maguire 31) when allegations
of custodial torture have come up, like what had happened during the Emergency period of 1975-77. The several violent and non-violent "lunatics" (a term which appears in various codes of Indian law) who are incarcerated in prisons in India are victims of gross human rights violation. They are not provided proper health care, due to the lack of facilities and are housed mostly along with the other convicts. V.R.Krishna Iyer comments that it is "an unfortunate notions that criminal 'lunatics' are more criminal and less 'lunatic,' and therefore, in the mind of the lawmaker, deserve to be jailed rather than treated" (Iyer 65). Iyer goes on to remark that the provisions in the CrPC that allows IGs to inspect mentally challenged inmates should be changed in favour of psychiatrists visiting them. Kumkum Chadha has noted that the condition of the mentally challenged inmates is conditioned by negligence and ill treatment. He says, "In several prisons lunatics have stayed in prison for more that 20 years without their trial having even begun" (Chadha 61).

Caught in a dilemma of a uninformed prison management system, these prisoners find their situation to be worse than that of the normal inmates. As Maguire states, "Convicted prisoners, undertrials, detenus and 'lunatics', together with civil prisoners and various other small groups, make up an unknown total population in Indian gaols" (Maguire 33). This is indeed a crucial issue. Although the prison statistics published by the Government of India gives the details of prisoners in Indian jails, there is still a shady class of prisoners whose number is unknown.

A study conducted by NIMHANS on the mental health of prisoners (in Bangalore Central Prison) helps understand the condition of mentally ill
patients in imprisonment. The report states that at the time of the study the prison had 5200 inmates, whereas the total capacity was just 2100. This means that there was an occupancy rate of 248 per cent, which is well above the national average of 118 per cent (Prison Statistics 2013). Of these, 65.4 per cent were undertrials, a majority by far. The study mentions that the health issues of the inmates were addressed at the prison hospital that was located within in the prison premises. This hospital had four doctors (one each psychiatrist, physician, dermatologist, ophthalmologist), a staff nurse, a laboratory technician, an x-ray technician, and two pharmacists. The doctor patient ratio here is 1:1300. There is an in-patient section, with 100 beds, which, the study says, is overflowing at any given time with at least 250 patients. The study located mental problems in 79.6 per cent of the prisoners. This was either mental illness or substance use disorder. Even after deducting the substance use disorder, 27.6 per cent prisoners had serious mental illness (Math et.al.). This best exemplifies the condition in Indian prisons. Although the national average of occupancy is close to the one hundred level, closer scrutiny would reveal that this is not evenly spread. Prisons in some areas tend to be more crowded, while those in some other areas tend to house very less inmates. Also, the amount of people with mental issues and there being only one psychiatrist to look after this is indeed a representation of a serious problem that the Indian prison system faces today.

The cause of the issues that continue to bother the Indian punishment system could be traced back to the legal framework that is used to sentence
punishment and to oversee the process of punishing. Both these acts derive its support from the antiquated *Penal Code* and *Prisons Act*, both passed during the colonial period. The Penal Code is said to be a "handiwork of Lord Macaulay" (Dhavan 268), whose (in)famous "Minutes on Indian Education" has been subject severe criticism from postcolonial scholars. The legacy of the British attitudes towards social and personal life could be traced down in the legal codes as well. Dhavan speaks of five legacies of the British law that forms the "fundamental basis on which crime is detected and punishment meted out in contemporary India" (Dhavan 279). The legacies are summarized thus, the first legacy is to "accept the broad categories of common law and the basic suppositions of legal responsibility that it was founded on," the second legacy is to "portray criminal justice as necessarily severe but intrinsically fair," as exemplified by the blindfolded Goddess of Justice seen in Indian courtrooms. The third legacy is to "treat the fundamental principle of responsibility, on which criminal liability under common law was founded, as defeasible in the public interest and for reasons of state." The fourth legacy is the "overt commitment…to achieve social reform and change through the aegis of a high profile system of criminal law." And finally, "to create investigative agencies which were given maximum leeway to investigate, threaten and intimidate, arrest without charging a person and keep them in judicial custody for inappropriately long periods of time" (Dhavan 277-79). These legacies are very well evident in the criminal justice system of contemporary India. They form the root cause of all the evils that the system is ever charged with. The statistics of prison
population in India reveals a key factor, which stems from the fifth legacy that Dhavan speaks of, that of prison being populated with undertrial prisoners who have been detained for long duration. These undertrials for almost sixty per cent of the prison population in India and if their trials are finished and disposed of, that alone would prevent the Indian prisons from being overcrowded. The crisis of Indian incarceration stems from its origins, the British colonial law. Times have changed, crimes have changed, criminality has changed, but the Indian Penal Code and Prisons Act have not. Governing a punishment mechanism in the twenty first century with legislations that are over a century old is nothing but injustice.

The Indian government has, from time to time, appointed several commissions to look into the matters related to reform measures that are required in the punishment mechanism. From the 1980s there have been several steps "taken toward improving the quality of corrections in India" (Roth 134). But these measures are never given enough priority due to the state's concern with other matters of "higher" priority. The effect is that India still maintaining "a leftover from colonial past," where foreigners, upper castes and those close to quarters of power are given special consideration even in the prison. This makes the "ordinary" prisoners face even more problems due to the unjust distribution of the already scant resources. Specific issues that prisoners face include lack of enough space, proper sanitation facilities and even deprivation of proper food, whereas the privileged prisoners get access to almost all the luxuries they enjoyed in the life outside a prison. It is evident from this that the Indian prison, although
housing a lot fewer people than mammoth systems like that in the US, is full of issues that sometimes even surpass those of the systems with higher inmate counts. Amidst the high-sounding slogans of emerging as a world superpower the Indian incarceration system can be found as still an underdeveloped one with little progress form the times of the colonial regime.

**Re-forming imprisonment: Prisons in England and Wales**

Tracing the history of British prison system would become the basis of understanding the prison systems almost all the erstwhile British colonies. It is very much evident, as in the case of Indian prisons mentioned above, that the colonisers founded the punitive mechanisms of the colonies for the purpose of smooth governance. Several historical accounts of the British prison system could be seen on the web. The Howard League, the BBC, and even the British Parliament portal offer very short histories and historical timelines related to prisons in England and Wales. Almost all the accounts draw a similar picture. The first instance in the development of the punishment system could be located in the building of jails by King Henry II in the year 1166. These include the Newgate Prison in London. King Henry was also instrumental in starting courts of law in England (BBC Timeline). These two moves prove to be significant in the historical evolution of punishment. Although jails were opened, imprisonment was not used a form of punishment during this period. The Howard League history states, "Prison tended to be a place where people were held before their trial or while awaiting punishment. It was very rarely used as a punishment in its own
right. Men and women, boys and girls, debtors and murderers were all held together in local prisons." This situation prevailed without any change until the 18th century. Before national prisons were built, it was Thomas More who, in his work titled *Utopia* published in the year 1615, suggested that death by execution be replaced by imprisonment as a form of punishment. "The suggestion was that thieves be locked away and reduced in status as slaves for a number of years, but as state prisons at the time did not exist there was no place to send them" ("A Brief"). The most crucial development of the 17th century was the building of a prototype house of correction, the London Bridewell. "Houses of correction were originally part of the machinery of the Poor Law, intended to instil habits of industry through prison labour" (Howard League). The inmates of such institution were those who belonged to the lower class of the society, whom it was thought necessary to be trained in the manners of the capitalist regime. By the end of the 17th century, they were all absorbed into the prison system. Transportation became a widely used measure of punishment (in place of death penalty, as many judges refused to sign death sentence for several offences) during the 17th century. Even this form of punishment started to be criticized by the mid-18th century. Around this time, imprisonment with hard labour came to be considered as a suitable punishment for petty offenders. Another important phase in the development of imprisonment was the use of prison hulks. The Howard League "History of Prison System" has the following account of prison hulks:
Transportation was curtailed at the end of the 18th century. Other sanctions therefore had to be found. The two prominent alternatives were hard labour, and for those unable to do this, the house of correction. This practice lead to the use of prison hulks from 1776 until their phasing out in 1857. Prison hulks were ships, which were anchored in the Thames, and at Portsmouth and Plymouth. Those sent to them were employed in hard labour during the day and then loaded, in chains, onto the ship at night. The appalling conditions on the hulks, especially the lack of control and poor physical conditions, eventually led to the end of this practice. But the use of prison hulks did much to persuade public opinion that incarceration, with hard labour, was a viable penalty for crime.

Although the poor conditions within the hulks forced the system to be ended, it made a significant contribution to the development of modern day prison system. The fact that the hulks could generate public opinion in favour of imprisonment with harsh labour as a viable alternative in punishing crime could be regarded as a milestone in the development of the modern penitentiary. In the latter half of the 18th century John Howard studied the prison system in England and came up with a report recommending crucial reforms in the prison conditions. The BBC Timeline states:

As High Sheriff of Bedfordshire, Howard studies prison conditions for 17 years. He proposes they should be healthy and disease-free, and that jailers should not be allowed to charge prisoners. The book,
called *State of the Prisons in England and Wales*, is highly influential but not widely put into practice until the 19th Century.

It is an irony that Howard died of typhus in the year 1790, contracted on a prison visit at Kherson in what is now Ukraine. John Howard did not just lay the foundations not just for the contemporary prison system, but was instrumental in developing the idea of prison reform which is being upheld even by contemporary criminology scholars.

Other scholars of Howard's time were also critical of the conditions of the prisons. The Howard League "History of Prisons" notes thus:

Jeremy Bentham, and other penal reformers of the time, believed that the prisoner should suffer a severe regime, but that it should not be detrimental to the prisoner's health. Penal reformers also ensured the separation of men and women and that sanitation was improved.

In 1791 Bentham designed the 'panopticon'. This prison design allowed a centrally placed observer to survey all the inmates, as prison wings radiated out from this central position. Bentham's panopticon became the model for prison building for the next half century.

In 1799 the Penitentiary Act specified that gaols should be built for one inmate per cell and operate on a silent system with continuous labour.

Bentham's model was to become the basis on which the structure of prison would be built in the modern day punitive system. It was in 19th century, which is regarded to be a watershed in the history of punishment, that
punishment underwent a radical change. It was in 1816 that the first state prison was built at Millbank, London. The prison held over 800 prisoners and can be regarded as the first full-fledged prison in the modern sense of the term. The next prison was built in the year 1847 using the panopticon design. The Pentonville prison, which was initially designed to house 520 prisoners, is still in use. In 1877, the prisons were brought under the control of the Prison Commission and in 1898 the Prison Act was passed. These two moves were very crucial in shifting the focus of to "reformation as the main role of prison regimes" (Howard League). Further, the "History of Prisons" has the following to say about the Act:

This Act can be seen to set the penal-welfare context, which underlies today's prison policy. It led to a dilution of the separate system, the abolition of hard labour, and established the idea that prison labour should be productive, not least for the prisoners, who should be able to earn their livelihood on release. (Howard League)

It can be seen that the idea of reform, which John Howard argued for, had been successfully imbibed into the punitive system of England by the end of the 19th century. This idea is deep rooted even in the legislations of contemporary legal systems. What is interesting in Howard's work is that it came at a time when imprisonment as a sanction, let alone the central sanction, was not in practice. It is also important to note that his recommendations took more than a century to come into force.

The development of the prison system in England and Wales continued in the 20th century as well. By the end of the 19th century, it was
identified that young people needed a separate prison and hence the borstal system was introduced in the Prevention of Crime Act in 1908. In 1933, the first open prison was built at New Hall camp near Wakefield. The reason behind this new move is found in the words of a reformer Sir Alex Paterson, "You cannot train a man for freedom under conditions of captivity" (Howard League). The changes that the system saw in the latter part of the century could be summarised thus:

The Criminal Justice Act 1948 abolished penal servitude, hard labour and flogging. It also presented a comprehensive system for the punishment and treatment of offenders. Prison was still at the centre of the system, but the institutions took many different forms including remand centres, detention centres and borstal institutions.

In April 1993 the Prison Service became an Agency of government. This new status allows for greater autonomy in operational matters, while the government retains overall policy direction. The 1990s have also seen the introduction of prisons, which are designed, financed, built and run by private companies. Supporters of privatisation argue that it will lead to cheaper, more innovative prisons, while organisations like the Howard League argue that private prisons are flawed both in principle and in practice. (Howard League)

The development of prison system has been continuing for more than two centuries in England. The idea of imprisonment and prison has undergone a see through change during this course of time.
Prisons in England, although several legislative measures from the state have made the situation better than in many other countries, are not free from problems. The Howard League and other such non-governmental organisations are always on the watch out to identify and address issues that come up with the prison establishment in the country. The English prison system is argued to have been following a comparatively liberal with a more rehabilitative approach being adopted since the early 20th century. Nevertheless, the system began to face a crisis with reports that came in the 1960s. The first one The Mountbatten Report of 1966 proposed the classification of prisoners into four categories based on the security requirement for prisoners. This report was the result of the government response to a few high profile prison escapes that happened in the 1960s. The recommendations of the first report were further clarified, with some recommendations rejected, by the Radzniowicz Report of 1968. Both these reports set in motion, what could be called a retreat from rehabilitative practices by placing highest priority to security at the cost of "humanitarian goals such as education, training, association, and living conditions" (Scott 53). The real crisis was to follow in the next decade. Ryan and Sim argue that the penal system in England "has been described as being in 'crisis'" since the 1970s (Ryan 93). Different sociological perspectives have been offered on this crisis; orthodox arguments, radical analysis, mainstream interpretation, liberal ideological approach, radical pluralism and even abolitionism have all contributed to this description of the prison system in England and Wales (Ryan 93). David Garland addresses this crisis that there
was a see through change in the attitude towards crime and criminal justice beginning the 1970s. The support that policy of penal-welfarism had been receiving faced a set back and criminal justice policies had to be redesigned. This remarkable shift that set the "most turbulent period of change" (Garland, *Culture* 54) is continuing even until the present day. The change is summed up by Garland in the following words:

> Over the following decades this would result in important changes in sentencing law, in the practice of prisons, probation and parole, and in the character of academic and political discourse about crime. This period of change was heralded by the critique of correctionalism and the concerted attack upon indeterminate sentencing and individualized treatment. But these developments soon led to a more fundamental disenchantment—not just with penal-welfare but with the whole criminal justice state in its modern form. The resulting transformation has reconfigured the field of crime control and criminal justice, and reoriented its policies and practices, often in ways that were quite at odds with the original critics' intentions. A movement that initially aimed to enhance prisoners' rights, minimize imprisonment, restrict state power, and end predictive restraint, ultimately ushered in policies that did quite the opposite. The major crisis in the English prison system could be seen in the ideals that govern the system. (*Culture* 53)

The crisis in the system arose from the fact that the changes that began in the 1970s were "a radical departure from the trajectory of penal
development" (Garland, *Culture* 53). When a system is developed in a consistent pace, taking long time to evolve policies and turn them into actual practices, it has a grounding and sufficient time to evaluate and reflect on itself. It is this kind of a development of the penal system, the development of which scholars like Foucault have described, that was being challenged or even overthrown by a less thought of, more-populist policy of criminal justice. Ever since the analysts began describing the crisis in the system there began an alternative movement that went on to insist the necessity of prison and imprisonment in the mechanism of social order. Ryan and Sim argue that this was manifested as a penal policy that was driven by the idea of justice. This is said to have continued influencing the power centres increasingly as the 1980s progressed (Ryan 94). Although this drift into the rhetoric of justice was new at that time, it is argued that underlying idea was never new. It is said, "With very few exceptions, neo-classical approaches to crime, and to punishment in particular, were very much the order of the day," (Ryan 94). If neo-classical ideal of penality was what governed the reform rhetoric, then there was no movement happening in favour of a reform within the system. Instead, what was happening was to strengthen the foundations on which the system had been erected. This indeed could be termed as a "crisis." Although these so called "reform" was a major concern in one of the White Papers titled *Crime, Justice and Protecting the Public* which was issued in 1990, and the suggestions were embodied in the Criminal Justice Act 1991, it never proved anything beyond a reductionist nomenclature (Ryan 95). The so-called "justice" ideal argued that community sanctions are
better equipped to address the issue of crime. Imprisonment was seen as a costly affair to worsen the condition of criminals. Although sounding progressive in the first instance, this was never put into proper practice which leads to a major crisis that the English prison system is facing today. The argument generated a hope that arrest and custody would reduce significantly. It reduced a little in the first years of the new law, and has ever since seen a constant upward drift. By the mid 1990s the prison population in England had reached over 50,000. That is to say, that between 1993 and 1995 there was increase in the English prison population by over 10,000 (Ryan 95). That was a 25 per cent increase in a span of less than two years. This trend of rising prison population continues even today.

A major issue that is confronted by the British punitive machinery today is that of overcrowding coupled with understaffing. The Howard League research briefing states that between 2010 and 2013 over 30 per cent frontline prison officers were dropped from English and Welsh prisons. In addition, the government closed down 18 prisons after 2010, which resulted in the loss of 6500 prison places. At the same time, the prison population has been on the rise. As of April 2014, there was a prison population of 85,264, which was 255 higher than what it had been in May 2010. Prison population reached an all time high of 88,179 in December 2011, when the reduction of staff and space was already underway. Although these figures may not present a similar picture as in the case of prisons in the US and India, it nevertheless is an instance of overcrowding. The issue in English prisons is not that of overcrowding alone, but overcrowding,
understaffing and reduction in the number of prison cells all put together. When these three critical issues arise at the same time, it becomes difficult to manage the condition in prisons. The Howard League argues that because of these issues there has been less time being allotted to the productive activities that the prisoners used to be engaged in earlier. Hence, the prisoners tend to become less productive with less number of hours being spent on purposeful activity (*Breaking Point*).

The increase in prison population is seen as a consequence of the populist regimes that England has been witnessing ever since the times of Margaret Thatcher. As Mick Ryan says, "the rhetoric of neoclassicism took over that of welfare" (Ryan 142). This lead to longer sentences being given for repeat offenders and even made parole a more difficult thing to secure. The conditions of parole were also tightened, and the parliament voted for the reintroduction of capital punishment as well. Thus, the punitive scenario in England shifted back in time into something similar to what had existed at the time of the birth of the prison. The New Labour continues this neoliberal populist move even long after the fall of the conservative regime. Yet, Ryan points out that it is not proper to brush it aside as a mere political gimmick. On the contrary, with the rampant use of media and the availability of information, it became necessary for governments to hear the public voice. Thus the age-old system that had existed in England, wherein the powerful elites codified the norms and passed it down to the masses, came to be replaced with a regime that is more than answerable to the public. This in no way has brought forth any significant improvement in the condition of penalty
in the country. What happened instead was that the measures taken by the governments were given a coating of being advocating social well-being and hence was able to secure mass support to a great degree. This could roughly be seen as an example (not per se) of what Chomsky calls "manufacturing consent." Ryan further points out that the conservative idea that prison regimes had to be austere meant, "the pain of imprisonment was also intentionally ratcheted up, while the government endorsed incapacitation theory, adopting,... the slogan 'Prison Works’" (Ryan 142). What sums up the contemporary prison establishment in England and Wales, is the argument put forward by David Garland, that the foundational principles of prisons, laid in the early 19th century, coupled with the new correctional motives of the late 20th century resulted in, "a hybrid, 'penal-welfare' structure combining the liberal legalism of due process and proportionate punishment with a correctionalist commitment to rehabilitation, welfare and criminological expertise" (Garland, Culture 27).

Re-educating individuals: Incarceration in China

The Chinese prison system evolved out of interpretation of philosophical doctrines right from the late Qing period (early 20th century). The philosophical positions of two schools have played a crucial role in the evolution of law, attitudes about the purpose of sanctions and the development of the penal system - the Confucians and the Legalists. While the Confucians argued that human kind was essentially good or capable of becoming good and hence humans have "a capacity to reform their own
behaviour," (Terril 577) the Legalists advocated stringent penal systems on
the grounds that, "harsh laws were necessary in order to deter people from
committing wrong" (Terril 577). Legalists saw wrong doing as a possibility
since humans always acted out of self-interest. The combination of these two
ideals and their functional interpretation is seen in the resultant reformatory
punitive system that is in force in contemporary China. Jan Kiely sketches
the emergence of the reforming ideal among the scholars of the late Qing
dynasty and how it continued to influence the penal thought well into the
Communist regime. Kiely notes:

in the late Qing and the early Republican modern penal reforms of the
early twentieth century, Japanese forms of high modernist penological
theories interpreted by late imperial Chinese scholar-officials and their
nationalistic Republican heirs had produced modern prisons devoted
to the ideal of reforming the minds of convicts. (3)

Kiely further adds that the administrators from the late imperial scholar-
officials up to the Communists have "all shared dreams of reforming minds
through institutionalised incarceration and other means" (3). The
fundamental principles on which the Chinese prison system is built is
underlined by Article 3 of the Prison Law, which "states that prisons should
follow the principle of combining penalty with reform, education with labor, in
a bid to reform prisoners into law-abiding citizens" (Jail System). There are
two central guiding principles that guide the system, 1. transformation
through punishment and 2. combining education with labour. These link that
these guiding principles has to the philosophical foundations of Confucians
and Legalists could be clarified with the following explanation:

Prisons punish criminals because, without punishment, it is difficult for
criminals to come to grips with their crimes and begin their life anew.
While punishment focuses on enforcement, reform focuses on
transformation. Punishment is the means, while transformation is the
end. The purpose of punishment is to transform criminals into law-
abiding citizens. This is precisely what criminal penalties are for.
Prisons do not punish criminals for punishment's sake... To effectively
reform prisoners, it is also necessary to combine education with
labour. Education can be multifaceted: ideological, cultural, vocational
and technical. (Jail System)

So the principles of transformation and education are what make the Chinese
prison.

Prison has been an evolving phenomena in the Chinese culture. As
James Seymour points out:

The word 'prison' (jianyu) has actually had various and evolving
meanings in the Chinese context. It can refer to any unit where
sentenced prisoners are kept, most of which were until recently known
as labour reform institutions. In the more rural provinces, most
prisoners are in prison farms (141).

The Criminal Law of The People's Republic of China lists several forms of
principal punishments, viz., public surveillance, criminal detention, fixed-term
imprisonment, life imprisonment and death penalty (Cook). The two major
prison systems in China are designated to carry out the punishments thus dictated by the law, the *laogai*, which aims at reform through labour and the *laojiao*, which stands for re-education through labour. While the former houses inmates sentenced for serious offences, the latter serves to house people committing minor offences. The total prison population of China amounts to 1.7 million as of mid 2013. The population rate, the number of prisoners per every 100,000 people, amount to 124. These inmates are housed in 700 prisons spread across China. Apart from these there are 320 re-education-through-labour camps. Although the Chinese government has said, in 2013, that these camps would soon be closed no specific information regarding the closure is available yet. It can be seen from statistical data that prison population has been on the rise in China. The following table would clarify this point.

<table>
<thead>
<tr>
<th>Year</th>
<th>Prison population</th>
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<tr>
<td>1995</td>
<td>1.32 million</td>
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<tr>
<td>2004</td>
<td>1.58 million</td>
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<tr>
<td>2010</td>
<td>1.65 million</td>
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<tr>
<td>2013</td>
<td>1.7 million</td>
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*Prison population in China from 1995 to 2013.* *(Source: International Centre for Prison Studies)*

The reformation ideology that governs the Chinese criminal justice system is definitely following its true course of action by sentencing more and more people every year.
The administrative detention powers, detention for education (shourong jiaoyu), coercive drug rehabilitation (qiangzhi jiedu), and re-education through labour (laodong jiaoyang), together contribute to the population under detention. These three types of detention that began after the 1978 modernisation policy are meant to "educate" and reform those people who have committed a misdemeanour that is not serious enough for criminal sanctions, which would lead them to the main prison system called laogai. These administrative detention powers are imposed mainly by the Chinese police; the Chinese public security organs known as gong'an jiguan (Biddulph 3). These measures are "framed seen as posing a threat to social order, undermining the ethical life of society and harming the overall modernisation programme" (Biddulph 6). These measures, although contributes to state surveillance and educating process, is the major prison system in China. What is central to the incarceration scenario in China is the laogai system, which here is linked closely to the economic context that the country poses itself in. Statistics do support this relationship that the prison system has with the economic scenario. The crime rates in China shows a significant rise after the initiation of economic reforms (Bakken). Annual rate of crime shows this increase very clearly; in 1950 crime rate per 1 million people was 100, which stabilised to around 50 per 1 million by 1975 and remained so until around 1980 from when it began rising again and by 2006 it reached 350 per 1 million people (Qi 138). This is a clear indicator of what the economic reforms did to the crime scenario in China.
The Chinese laogai system is compared to the Soviet Gulag and even to the Nazi concentration camps by several analysts. The only difference that is attributed is that while the Russian and Nazi counterparts relied solely on brutality, in China the prison establishment was conditioned by economic reasoning (Wu 36). For those who hail the system, it is economic imperative that has helped the system survive and fulfil its intention. Michael Dutton and Xu Zhangrun cites Li Kangtai, referred to as "the intellectual doyen of the reform-through-labour system, who argues that thought transformation, the condition that laogai intended to bring forth, could be possible only through labour (Dutton 103). Both these arguments regarding the laogai are not completely true. For instance, one of Wu's major allegation is that the products of the prisoners' labour that are sold in the domestic and international markets from the most indispensible part of the national economy. This is proven ill-informed by what Seymour and Anderson says that, "penal labour in China far from profitable...it is a drain upon rather than a benefit to the national economy" (Dutton 103). What all analysts seem to agree upon is that the reform-through-labour system has almost entirely been unable to reform the criminal and since this constituted the fundamental argument for the establishment of this system, it is beyond any doubt proven to be a complete failure. Whether reform has ever been a guiding principle for the establishment remains a curious case. As James Seymour points out, "In Mao's time, the purposes of imprisonment were as much as anything else political – to safeguard the political power of the leadership. There was much effort to affect inmates' ideology and turn them into loyal citizens" (Seymour
This trend continued until the 1980s when efforts were taken to "professionalise" and "legalise" the system. Dutton and Zhangrun establishes a theoretical link between the contemporary Chinese penal labour and the early western reformist agenda which offers a clearer picture of the claims of reform and also the regime's ontological claims of it. What they say is that the Chinese system is not new but, "an amalgam of traditional methods (Confucian, Legalist) and values wed into a Marxist theoretical framework" (Dutton 104). To put it short, it was a placement of the 19th century Benthamite method of targeting the soul into a Soviet inspired Marxist paradigm of reform-through-labour. Hence, the claims of ingenuity regarding the prison system found in the views of those who support its existence and by those who oppose it are both taken to task to a certain level by the finding or rather analytical presentation that the system is only a revamped version of what had existed since the emergence of incarceration. On a philosophical level, the system is understood to represent the socio-cultural make-up of the Chinese civilisation. Penal servitude is very much related to the traditions of Confucian philosophy. There has always been a clear distinction between manual and mental labour in China. Physical labour has always been regarded as a "form of enslavement and disgrace, and this perspective is graphically represented in the penal vocabulary that operated in traditional times and which, is still in use today" (Dutton 109). The notion of penal labour as punishment was deeply rooted into the Chinese cultural psyche ever since the times of the ancient dynasties. This, "has become such an ingrained association that it was scarred onto the national mind-set and no
subsequent reformist agenda was able to fully erase it" (Dutton 110). Hence it becomes clear that the carceral system that began during the times of Mao Zedong was not a unique feature of the Communist regime, but the result of blending the classical Chinese philosophical ideals with western/Soviet Marxist practices. Although this is so, it is important to note that the Chinese reform-through-labour programme had been crucial in the success of the penal system in the early years of the republic. It lost its effect after the economic condition initiated by the post-1978 reforms. The economic reforms brought forth a radically re-formulated social landscape that differed a great deal from what had existed during the early days of the republic. Social dislocation symptoms like high labour mobility, rising unemployment, inflation, rising crime rates, rising recidivism rates etc., were the results of modernisation and economic liberalisation infiltrating into the Chinese society (Dutton 105). A new law was passed in 1994 to cope with the changes in the social structure initiated by the economic reforms and to combat the western human rights groups' argument/allegation that the Chinese reform-through-labour was nothing less than, "slave labour" (Dutton 105). It was from this time that the mechanics of the Chinese prison system came to resemble what the western sense of the term implies. The transformation has made the system, "no longer part of an overall social enterprise" and "sit uneasily, among a panoply of strategies designed to combat crime" (Dutton 105). The reform climate changed the working atmosphere within the laogai as well. For example, the handicraft based production, which prevailed in prisons,
was replaced by large-scale manufacturing which was though to transform "ontologically the prisoner-worker into a proletarian" (Dutton 107). This is seen by Dutton and Zhangrun as a compromise of ideology, forced by economic necessities (demands of higher production), exemplified by the Chinese prison (Dutton 107).

Another crisis that the economic reforms caused is related to the reintegration of the prisoners. Prior to the economic reforms, prisoners were effectively reintegrated to the social life they has before being imprisoned. This was done through a "highly coercive programme of monitoring and surveillance" (Dutton 114) which took place after the completion of their term in the prison. This has ended with the opening up of the economy through reform policies. The change that was brought forth is that of companies being non-committed to state requirements. Prior to the reforms the companies (which were mainly state-run) had commitments to the state which they fulfilled at all levels. One such commitment was to re-employ a person returning from imprisonment at the same level in which he used to work prior to being sent to prison. As the privatisation was put on the rise by the new economic regime, private employment became a common thing. The non-state sector was exempted from commitments to the state. There were changes happening even in the state sector, which now re-orientated itself into the typical profit motive of private enterprises. Since state enterprises turned into the profit motive, the enterprise managers were given the right to hire and fire, similar to those in the private sector. This gave the state sector industry, "the power to refuse prison requests for re-employment of ex-
inmates" (Dutton 115). This naturally lead to increased unemployment rates among the ex-prisoners. Such a situation, together with the general anomie that the society was pushed into by rapid modernisation (Qi 139), has lead to another issue which marks the failure of the carceral system in general and the Chinese laogai in particular, a significant increase in recidivism. This was very low during the pre-reform era due to the possibilities of re-integration that were alive and also due to tight policing (Dutton 117). Crime rates have also shown a subsequent increase in the post economic reforms era. In 1950 the crime rate in China was 100 per million people, which came down to 50 per million in 1978 before climbing steadily rising to reach 350 per million in 2006. So if the measurement is made based on the 1950 level it could be seen that there has been 3.5 times increase in crime rate, whereas taking the 1978 number would mean that there has been 7 times more crimes taking place compared to what it had been during the pre-reform era (Qi 138). Shengui Qi says that the low crime rate during the pre-reform era was due to "effective use of informal control," which is seen as "a genuine expression of Durkheimian 'collective conscience'" (Qi 138).

When the crime rates increased the state reacted not by attempting to generate conditions that existed during the times when it was low, but by acting hard against instances of crime. For this the state apparatus was conditioned back with the ideological backing of the Legalists which formed the half of Chinese penal philosophy. As Qi says, "The strike hard policy" that began in 1983, "is a realisation of this traditional repression of thought, although in an excessive way" (Qi 141). The strike hard policy stipulated that
the state apparatus should crack down on crime with severity and swiftness. This meant that the state attitude to crime got even more rigid and polarised. This doesn't mean that the official prisoner population has increased. On the contrary the prisoner population had peaked during the 1950s, the heydays of the revolution, and has since declined (Seymour 142). The 1.5 million prison population has been on that level since the late 1990s. The issues in Chinese prison are different. Most of these issues, related to human rights violations, are allegations of the human rights organisations or testimonies of the ex-inmates of the prison system. The Chinese government has continually been rejecting such claims. Yet all of these cannot be brushed aside as anti-communist propaganda. As Neier says, "The foremost symbols of political imprisonment worldwide in the 1990s were the democracy activists in China imprisoned after the Tiananmen Square demonstrations". Human rights violation are rampant in Chinese prisons. This is exemplified by the several inmate confessions that could be read in the cyberspace as well as in print (Harry Wu, Jacobs, Frank etc.). Most of these are not responded to by the western human rights watchdogs or other nations whose hues and cries are heard aloud when there is an issue in some parts of West Asia or Cuba. This has been the case since the times of the Cold War. As Aryeh Neier puts it:

China occupied a peculiar slot in the Cold War; it was a Communist state that was more or less aligned with the United States against the Soviet Union. Neither side in the cold war debate was particularly
eager to try to discredit China by denouncing its abuses of human rights.

Even if the international community intervened or rather voiced their concerns over the human rights issues in Chinese prisons, which has happened occasionally, the Chinese government denied these charges most often. The only change has been the recent announcement of the Chinese government to shut down its re-education through labour camps; a move which is yet to be confirmed as successful. Forced labour continues to be an issue that haunts the Chinese prison system. Human rights activist Maya Wang explains the situation thus, "In China, labour is actually written in the detention centre regulation…So we could safely say that millions of people are engaging in forced labour at any one time in just the detention centres alone" (Langfitt). China also happens to be the worst jailer of journalists; statistics show that 44 journalists are imprisoned in Chinese jails as of December 2014, which amounts to 20 per cent of the total journalists incarcerated around the world (Omari). Stories of forced labour have surfaced from other quarters as well, which will be studied in the section dedicated for prisoners' rights. These glimpses show that the incarceration scenario in China, stemming out of a different philosophical and political context, at once exhibits similarities and differences from the trend of incarceration in other parts of the world. One of the major hindrances to get clear picture of what is happening inside the Chinese prison is the state's intervention in the dissemination of information. Yet, with what is available it
can easily be concluded that incarceration in China is "developing" too along with the statistical indicators of economic growth.

**Erasing prison: Punishment in the Nordic countries**

Incarceration scenario in the Nordic countries is different from the general trend elsewhere. It could best be summarised in the words of John Pratt who calls for these countries (and Holland) to be "seen as leaders of the civilised world, the role model for others to follow," (Pratt, *Civilization* 145). Pratt based this call on two conditions, the rate and the conditions of imprisonment in these countries. As opposed to the so called "protectors of the world" nations those in the Nordic region have a very low rate of imprisonment. The prison conditions there could well be used as reference points in the production of prison manuals. A comparative analysis of the imprisonment rate would serve to clarify the level of imprisonment in the Nordic countries.

![Graph showing Imprisonment Rate](image)
The above table clearly shows the incarceration scenario in the Nordic countries in comparison with the countries with trendsetting mass imprisonment practices. The actual number of people in prison in the Nordic countries draws an even more exemplary picture; Finland – 3011, Norway – 3842, Iceland – 147, Denmark – 3774, and Sweden – 5525. The question that naturally comes up after going through these numbers relates to the reason behind these states being an exception in the global incarceration scenario. John Pratt’s thesis in *Punishment and Civilisation* was that modern societies departed from the civilising process, which Norbert Elias theorised on, by the 1980s when the levels of punitiveness started to define the governmental responsibility and state security in societies around the world. It is amid this increased populist punishment schemata that the Nordic prison systems draw a different picture. The idea is not unchallenged. Although scholars, such as John Pratt, from outside Scandinavia look upon the prison system in the region as being exceptional, there are scholars from within the region, like Thomas Mathiesen, are not all praise for the prison systems in their country. But the focus of these scholars are different, and the shortcomings of the system that they talk about are different too. Their thrust is, "the pains of imprisonment and the complex process of social marginalisation the penal system is part of" (Dullum). These are in no way comparable to the problems of the penal systems elsewhere and they result from what Pratt calls the "specifically Nordic culture of control" (Dullum).
While analysing the Nordic prison conditions it is crucial to take a look at the level of crime in these countries. Scholars like Bondeson hold the opinion that the crime rates in these countries have shown an upward trend at least since the 1960s (Bondeson 189). On the other hand, John Pratt, in his much acclaimed essay maintains that the crime rates have not been on the rise but have either been stable or have reduced in the Nordic countries (Pratt, "Exceptionalism 2," 275). But scholars are generally in agreement about the reduction in the imprisonment rate in the Scandinavian countries. Denmark, Sweden and Norway have all shown a more or less stable prison population in the last 50 years whereas Finland which had an imprisonment rate of 200 forty years ago has since reduced considerably (see table above). The average imprisonment rate in Scandinavia is 60 which is "almost 50 per cent less than the average of other European countries" (Bondeson 190). The penal trends in these countries haven't shown any changes since the 1980s. Prisons in the region are generally small, with capacities ranging from five to five hundred. The interaction between the prisoners and the staff are less antagonistic compared to that in American prisons. The high level of staffing is attributed to have contributed this fact. Another factor that has helped in keeping the incarceration rates stable is the public attitude to crime. John Pratt has argued that the public mood, in general and not specifically in Scandinavia, became more and more punitive from 1980 onwards (Punishment 182). Issues related to individual security and protection has lead to the public favouring harsher punishments. This public opinion has resulted in populist regimes resorting big prison building
programs as in the United States, England and elsewhere. Even in the
Scandinavian countries the public do share this fear of crime, yet they don't
share the view that this should be combated through delivering harsh
punishments. "The general question whether sentencing is too harsh or too
mild always seems to produce the result that the public thinks sentencing is
too mild" (Bondeson 192). But specific questions about acts of deviance and
the sentences related to it receive much moderate responses. Bondeson
continues, "there is little correspondence between public opinion and criminal
justice policy...people rated more acts less severely than more severely
compared with judicial opinion" (192) People could be seen as more tolerant
and less punitive compared to the judges. What this shows is that public
opinion has been less repressive than the judicial sentences. This could be
seen as a factor that made the punitive climate in the Nordic countries
possible, but this is not just the reason why it is so. There is another
contributing factors too, media moguls have kept away (no sensational
tabloid media reporting) and so less presence for the anti-crime and more
punishment campaigns that are common in Britain and Australia. Welfare
has influenced the system positively. It can ideally be said that, "the ideology
of the welfare model with its emphasis on rational and humanitarian belief
systems would also impact on the criminal justice system"(Bondeson 194).

The condition of life inside a Nordic prison is yet another aspect that
Pratt sees as a factor that makes these prisons exceptional. What
contributes to such an exceptional condition is roughly the same factors that
keeps the prisoner number in check. In this part of the world, going to prison
in itself is considered to be punishment enough which deprives people of their personal belongings and liberty. Hence making conditions inside the prison as close as possible to the outside world is considered a necessity. This is resultant from the egalitarian traditions which existed in these countries. Pratt makes an interesting comparison of how different the interpretations of egalitarianism can be with the help of the US prison scenario. The egalitarian tradition in the United States contributed to a dynamic of tolerance to more "degrading and inhumane punishments in that country" whereas in Scandinavia it has been the opposite, "the highly egalitarian cultural values and social structure of these societies" were "institutionalised and embedded their social fabrics through the development of the Scandinavian welfare state" (Pratt, "Exceptionalism 1" 120) This is reflected in the humane punishment scenario in these countries. There is a large number of small prisons, each with population less than 100, in these countries. this means that most of the prisoners would be, unless they are in a maximum security prison, close to their home and family. Yet another crucial factor that has to be noted about prison management in these countries is that here prisoners too become part of the policy making process. That is to say, here the prisoners (and the activists) can literally influence and condition the incarceration scenario. Pratt gives the example of Norway, where prisoners are part of the annual meeting to discuss prison policy and where a group of prisoners, prison officers, civil servants etc., opposed to a proposed 1000 bed facility in 2006 and blocked it from materialising. Here, egalitarianism and democracy are defined in different
terms. Prisons in the Nordic region has a very high staff to inmate ration as well. Prisoners receive education well beyond the remedial level and they have a personal space and material comfort in the prison. John Pratt locates the emergence of such prison conditions in these countries as mainly due to the social conditions that prevailed in Scandinavia even before the 19th century when these countries were sparsely populated before 19th century due to the land being unproductive. Hence no agricultural labour mobilisation was able to be made by the rich farmers which resulted in there being no influential upper class elite people and neither serfdom. There was equal social conditions and a good deal of autonomy and no land-owning aristocracy. Pratt says, "social conditions provided for little class distinction and high levels of egalitarianism" ("Exceptionalism 1" 124). The solidarity was further enhanced by the population homogeneity that existed in the region due to there being no migration resulting from the climatic conditions and poverty. The conclusion that Pratt makes in the first part of this two-part essay on the Scandinavian penal exceptionalism draws a clear picture of how diverse factors that existed in these countries lead to the emergence of a prison system that stands out from the prison systems and conditions that exists elsewhere in the world. These factors, although showing tendencies of minor changes towards the attitudes outside the Nordic region mainly due to the changes in the economic climate of some of the countries, nevertheless continue to be the defining clauses in the criminal justice scenario of the region. Pratt says that the elements that resulted in the Scandinavian exceptionalism are present in other low-imprisonment
European societies. He cites strong state bureaucracies independent from political interference, a strong central state, public media that is not controlled by the market forces but by neo-corporate organisations among these commonly deducible factors. Pratt says:

Clearly, when these, or some combination of them, are present in a given society, the less likelihood there will be of that society marching down the route towards penal excess. The social solidarity rather than division that is produced, the forms of knowledge and power relations characteristic of them are likely to act as preventive barriers…We can discern the general themes and social attributes that were conducive to this, but how these arrangements came to be present in such an intense concentration is specific to these countries. It needed their egalitarian and homogenous origins, the geo-political forces that made 'security' so paramount, and Scandinavian-style welfarism. Subsequent penal developments became identifying and distinguishing characteristics of this region, allowing it to become the shining light of Western liberalism in the post-war era of optimism; and now giving it the opportunity to act as a focal point of difference and opposition in the contemporary era of penal excess ("Exceptionalism 1" 135).

Pratt's reasoning gives a clear idea of the forces that lie as the foundations for the incarceration scenario in the Scandinavian countries. Whereas, these arguments are still valid in a comparative scenario (with the conditions outside Scandinavia) the punitive trend in the region has undergone some
changes from the final decades of the twentieth century onwards. There has been an increase in the imprisonment rate in these countries which is in no way the result of a parallel increase in the rate of crimes. The average span of stay in prison has increased in all these countries in the recent times. This is true of all convictions including life imprisonments. This has drastically increased the number of prison inmates at any given time. The emergence of conditions, that resulted in penal excesses elsewhere, in the Scandinavian countries (especially Sweden) has been instrumental in producing "new forms of knowledge and understandings about crime and punishment, new power relations that determine policy" (Pratt, "Exceptionalism 2" 277). There has been a general shift in the socio-economic conditions in the Scandinavian countries - especially Sweden - beginning the 1980s. This has lead to a reduction in the policies of welfarism and a gradual shift towards a more capitalistic order inspired by the capitalist countries elsewhere. Yet this has not given rise to a totally transformed socio-economic landscape, although there has been significant differences given the conditions that had existed in the region before the change. These changes are reflected in a changed penal policy as well. The Swedish system especially, moved into a just deserts sentencing framework in 1989. This is seen as a limiting force on the "scope of humanitarianism and leniency"(Pratt, "Exceptionalism 2" 279). Sweden now has the biggest prison building program in Europe and the fact that this is proclaimed with no embarrassment in the Ministry of Justice website offers testimony to the changing attitude that the government and the people of the country has
towards penal policy. The condition is different in Finland. Although the country too was badly hit by the recession of 1990s, the policy makers here have seen to it that it doesn't influence the specificities of the welfare state. Hence, the state provides for the security of the people and crime rates have not gone up. Norway decided not to join the EU thereby restricting the invasion of European values and standards. The welfare state is in total operation and the people are demanding more from it. But, the changing attitudes of the Norwegian youth have escalated the possibility of crime in the country to a certain extend. And so there is an increased punitiveness that is in action in Norway. The challenge that penal exceptionalism faces in Norway is from the "divisive and particular effects of wealth and immigration in this country, rather than from welfare restructuring and limitations" (Pratt, "Exceptionalism 2" 288). Although there is an increase in the imprisonment rate in Norway and Sweden, the prison condition, which too forms part of penal exceptionalism, still continues to be what it had been before in Norway as in Finland. But the situation is Sweden is different. The shifting emphasis which moved from welfare/rights to security "clearly poses challenges to the standards that prisons in this country were famous for" (Pratt, "Exceptionalism 2" 289). The Scandinavian exceptionalism, although facing challenges now, stands relevant to countries well beyond the relatively small countries where it operates, to signify how certain social arrangements can effectively ensure low rates and humane conditions of imprisonment. The Nordic prisons present an alternative to the world, that of how else to deal with crime and manage prisons. As Pratt says, these countries have shown
that penal excesses can be kept in check and that things can be different. These countries have successfully, "demonstrated this in the past and, even if more precariously than was once was the case, they continue to do so at present" (Pratt, "Exceptionalism 2" 289).

**Theorising the present: What prison systems of the day mean?**

The present, in any instant, is not just the state of this as they are now, but is also a reminder of what it had once been. Incarceration in contemporary world cuts no different picture. From what it once used to be, and what it intended to be, it has hitherto come a long way to what it is right now. Prison has outgrown all the factors and aspects that resulted in its birth. So much so that it has imbibed some of the factors that it was initially intended to replace and made them its own. By analyzing selected prison systems of the contemporary world what it could be understood that although the socio-political realities that these prisons address are different in each case, their extra-legal make-up is essentially the same. From overcrowding to prisoner abuse to mass imprisonment, incarceration has grown into a central pillar in the socio-legal framework of the present. No legal system in the world can exist without a strong prison system. Some exceptions, like the Nordic case, do thrive, but are slowly being washed in the high wave of penal populism. Although the picture that was presented above is far from complete, it represents a crucial cross-section of the contemporary incarceration scenario. A little additional information on other prison systems around the world would offer a slightly better understanding of the state of
the carceral in today's world. But then, the core idea of how prison now act as a central structure or rather super-structure in the socio-legal framework of the world is clear from what was analysed here.

The emergence of the prison as the central structure in the legal and social framework of the world is conditioned by crucial contributing factors, most important being the attitude of the public towards punishment. As Neil Hutton points out, over the last few decades or so, "most western jurisdictions have experienced a punitive turn" (243). This is evidently reflected in the rising prison population and the political colouring that crime and punishment has received (political parties trying to present themselves as the upholders of law and order). This is what is generally called the populist attitude in criminal justice. And this is what governs prison systems, not just in the western societies, but the entire world. Public demand for a harsher sentencing that results from an increased concern for individual security (a norm of the nuclear family system of the present day), is given legislative support by the politicians and legal support by the judges at once. Thus prison becomes more and more of the delivery arena of what Foucault calls "the gentle punishment." A great irony that one finds among the public, the political parties and the judges is the relative distance that they keep from the actual delivery of punishment. That is to say, the physical reality of punishment is still a distant act which takes place at a location that is far away from the eyes of those who want it happen. This is what Foucault cites as the defining quality of prison in itself; the ability to be discreet yet being able to give the feeling of its existence and carrying out of its responsibilities
without fail. What makes the public demand for harsher punishments in the event of a security flaw is this confidence of the system fulfilling its intended purpose with clinical precision. The only exception to this is found in the Nordic countries analysed above. Other than those, the culture of control strikes a similar note in the United States, England, India, and China. Other European countries like Germany and France are not far behind in adopting the populist punitive culture; so is the case with Asian countries like Japan, and Indonesia. Although specific penal arrangements would vary, the basic underlying principle that governs them are the same in almost every country. Prison in today’s world is not a correction measure but more of a security mechanism. It is the existence of this massive structure that makes the people feel safe and secure from criminal tendencies, and governments feel the fulfilment of their responsibilities towards their citizens. This is what at once defines and defends the prison system of the present day. Although several voices advocating reforms are heard through critical penology or human rights dialogues, prison continue to thrive. Some of the concerns that are raised by those advocate prison reforms could be traced in literary representation of the prison which is detailed in the next chapter.