Chapter Two

Concept of Punishment Through Ages
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2.0 Introduction:
In the first chapter we have looked into the Concept of crime and types of crimes through ages. Now we will discuss the concept of Punishment and its forms through the ages. The aim of this chapter is to draw a fair picture of the concept and modes of Punishment right from the ancient age to modern age.

Crime is defined as the breach or violation of any existing laws and established customs, which is followed by punishment. The word punish is derived from the Latin word 'Punire' means to punish, exact, inflict a penalty'.

The Sanskrit term *daṇḍa*, which is derived from the root *vdaṇṭ* means 'to restrain' or to 'deter'. The word is often mentioned in the ordinary sense; e.g. when used for driving cattle ¹ or as a weapon. ² A staff was given to a man on consecration for driving away demons, according to the *Satapatha Brähmana*. ³ In the *Smṛti* text *daṇḍa* is personified as the real ruler. But every lawgiver asked the king to implement it properly. *Smṛtikāras* state that proper implementation of Punishment is praiseworthy to everybody. Kautilya says, whoever imposes punishment as deserved becomes respectable. So from the ancient period *daṇḍa* is playing a vital role to build up a legal framework. It had various aspects, such as, expiative, retributive and deterrent. Mainly the concept behind the Punishment was to purify or to expiate the offender and to protect the public interest. For this reason Punishment is being used as a necessary element to rule over the country, right from the primitive age. Walter C. Reckless has rightly observed the necessity of punishment. He says, "Retribution, atonement, deterrence, protection, reformation, rehabilitation and treatment are the justifications of punishment to which the public subscribes, independent of the efficacy of Punishment itself". ⁴ But the Vedic and later *Smṛti's* concept of
expiation is unparalleled to the world's legal System. If we look into the Plato's theory of Punishment, we observe that it is somehow reformatory and to check further crime. He says that punishment should aim to prevent crime rather than exact Vengeance. In his last work, (the laws), Plato Prescribes Punishment of great severity but he also urged that the elders of the city shall counsel prisoners in the interest of reforming them. So, right from ancient period Punishment is using for various dimensions in the both eastern and the western society. Let us examine the concept and forms of punishment in various societies, tribes and in various religions from the primitive age to the present situation.

In the primitive Society, Punishment was considered as to take revenge whatever wrong has done to some one. The victim himself was able to take revenge against the wrong doer. In the previous chapter we have mentioned that crime was considered as the encroachment of ones right, and recapture of right was the holy duty to the primitive tribes. When the person was a member of a society or a guild, the members of the guild were supposed to help the individual to re-establish his right that was wrongly encroached by others. Primitive society was guided by their own customs, they were the strict follower of the 'Taboo and Totem'. For superseding the taboo one has to face the Punishment executed by the society. The methods of Punishment they follow is the form of the 'lex talionis' form i.e. the idea of life for life, eye for eye tooth for tooth. The very cruel and barbaric methods of Punishment are found in the Primitive Society. They include, decapitation, strangulation, hanging, stabbing or spearing, cudgeling or flagellation, emplacement, crucifixion, drowning, burning, flaying alive, burying alive, throwing from the height, stoning, sending the criminals to sea in a leaky canoe, cutting in two and lopping off the limbs. In certain regions where cannibalism prevailed criminals were killed and eaten, probably as an extreme form of gratifying revenge and showing contempt. The cruelest methods of the Punishments were found in the tribes in Africa.
2.1 Vedic Period:
In the Vedic period the concept of punishment was mostly supernatural. The rṣis thought that punishment comes through god. Any unnatural distress was considered as punishment for wrong activities or sins of human beings. They believed in the cosmic order i.e., rta which is supposed to guide the whole universe, even the deities were also guided by that order. A punishment also depends on the concept of moral and immoral acts. One may himself ordain punishment for his immoral works through expiation. Various types of ordeals are found in the Rgveda, such as, fire, poison, water etc. The traditional concept of retribution punishment comes through natural disaster. Where God Varuṇa was considered as the executor of punishment. Indra is also personified as destroyer of the fiends, his greatness and importance has been indicated in about 250 verses. The thunder bolt (vajra), is the weapon which Indra used to destroy the enemy.  

2.2 Buddhist and Jain Period:
As we have mentioned that at the lower limit of Vedas Indian literature was enriched by the thought of two great philosophers namely Gautama Buddha and Mahāvīra. They are the founders of two faiths. In the ancient Indian literature these texts occupy a unique position with due respects. These texts are written in Pāli and Ardha-Māgadhī Prākrit, viz., Tripiṭaka and Āgama. Let us see the penal system that prevailed at this period.

The Buddhist Jātakas mention various types of punishments. A Jātaka states four types of punishment, viz., Vadhabandhana-chejja-bhejja; i.e., death, imprisonment, mutilation and banishment. Let us explain these accordingly.

(a) Death (vadha):
Capital punishment was awarded for various offences. Modes of execution also varied according to offence. Such as,

(a) Some wine merchants once accused of poison making are ordered to execute by the king. \(^9\)

(b) Adultery in women was punishable to death mutilation, imprisonment or even cleaving asunder. \(^10\)

(c) A story tells that, four robbers were brought before a king, who were sentenced accordingly; first one received a thousand stripes by barbed whips, second one to be imprisoned in chains, the third to be smitten with a spear and the fourth be impaled. \(^11\)

(d) Another Jātaka tells that robbers and thieves were trampled under elephant's feet. \(^12\) Thieves were first beaten out by the people itself then they dragged before the king for Punishment. \(^13\)

(e) Execution by an axe and wooden stake were not uncommon at that time. Many Jātkas refer to this punishment. \(^14\)

Before the execution the offender was tortured by various ways. This is fairly describe by Ratilal N. Mehta in his article crime and punishment in Jātakas. He describes, "when a person was to be announced as to be executed special execution-drum (Vajjabheri) was beaten. The condemned man was tightly bound, his hands behind his back, and a garland of red flowers (kaññavera vajjamalā) was placed around his neck. He was sprinkled with brick dust on his head and then, scourged with whips on every square (catukkha) and was led away through the south gates to the place of execution (āghātāṃ), to the music of harsh-sounding drum.

The figure of the Coraghātaka (executor of death penalty) is as distinct as it is cruel. A hatchet (parasu) on his shoulder, and a thorny rope (kaṇṭakakasam) in his hand, dressed in a yellow robe (kāśāyanivāsano) and adorned with a red garland (rattamālādharo), he accompanies the horrible procession and prepares himself for his cruel task. There in the place of execution (āghātāṃ), the
condemned was placed within the fatal circle (*dharmagaṇḍikām*), and the axe did its deed.  

**(b) Imprisonment (bandhana):**

Imprisonment was of two kinds, viz., regular imprisonment and prisons in chains. The imprisoned life was very tough. The prisoners were normally died in prison, no story tells us the period of imprisonment also what kind of offenders are to be imprisoned. A story tells us some learned and trusted ministers are once thrown into Prison for plotting against the life of an innocent man. But for what term it is not known.  

Another story states that a king in order to save his owns life from a yakṣa promised to send to him one prisoner daily and after sometimes the Prisons became empty.  

Prisoners were declared free from Jail in case of emergency such as for fighting with enemy and for the special festive days.  

**(c) Mutilation (chejja):**

Adultery was normally punishable to death and mutilation of sexual organs.  

**(d) Banishment (bhejja):**

Sometimes offenders were banished from their country in a great humiliation, with all their properties confiscated to the State.  

Besides these we find some other Punishments in the *Jātakas*, such as, (1) fines, (2) confiscation of property, (3) settling in a *caṇḍāla* settlement and (4) various types of humiliating Punishments.  

(1) **Fines:** For drinking liquor one has to pay heavy fines. Slander was also punished with a fine of eight *kahāpās*.  

(2) **Confiscation of Property:** Confiscation of property (*gharavilopanam*) was not uncommon in *Jātakas*. Sometimes confiscation of Property and banishment was implemented at the same time.
(3) **Settling in a caṇḍāla settlement:** In some cases offenders were ordered to settle in a caṇḍāla village.  

(4) **Humiliating Punishment:** Various types of humiliating punishments, such as, shaving the heads of criminals were regarded as a severe punishment in the Jātakas.  

Turning to the Jaina Āgamas we find that these refer to various types of penalty at the time of ancient Jain kings. Punishments depend upon the nature of offence. Heinous offences were severely punished to death whereas the minor offences were less punished. Among the modes of the punishments the very common modes are as follows:

(a) Capital Punishment;
(b) Mutilation;
(c) Imprisonment;
(d) Banishment;
(e) Confiscation of Property;
(f) Swallowing human excreta (gū);  
(g) Fines; 
(h) Censure; and  
(i) Mild admonition.  

Death with torture is found for robbery, murder, adultery, and non-execution of king's order. We are told about a leader of the robbers 'Vijaya' how he was tortured to death. Vijaya was a ferocious robber who carried away the daughter of a merchant named Dhāna. The king ordered to arrest him and after some time police managed to arrest Vijaya and they killed him. Before his death he was severely tortured. First he was tightly bound with strikes through the elbows, knees and tied his hands behind the neck. Then he was marched on the roads beating with thong, cane and whip (kasalaya-chiva), throwing over him ashes, dust, and filth. Then proclaiming his crime of murdering child in front of
the citizens. Then he was sent to the prison, where his feet were tightly tied in a wooden frame (haḍibandhana); deprived him of food and drink and beat him with lashes thrice a day. At last the robber died in course of time.  

Another story states that Abhaggasena of Purimatāla who was a robber chief, was arrested by the king and was killed afterwards.  

Women were not exempted from capital punishment. Once a girl, who was banished by her father, she got job in the house of a wine-merchant. She was pregnant and in order to fulfill her pregnancy longing she used to steal money from her master's shop. Once she was caught and the merchant reported to the king. Then she was ordered to be executed after delivery. However, the girl managed to escape and the king brought up her son.  

Another story tells us that, Sagada who was charged for visiting a courtesan named Sudāmsanā, a keep of king's minister. Then they were brought before the king for the charge of adultery. The king ordered to execute both of them. Sagada has to embrace a red-hot iron image of a woman till he died.  

Then the commentary on the uttarādhyayana refers to two brothers' kamatha and Marubhūi of Poyaṇapura. Where Kamatha was charged for adultery with his brother's wife. The king ordered to banish him from the town by mounting on ass.  

In the Āgamas it seems that Brāhmaṇas were awarded a lighter Punishment. We are told that a certain Brāhmaṇa committed adultery with his daughter-in-law and as a punishment he was asked to touch the four Vedas to expiate his sin.  

Murder was punished to public execution and fines. We hear of the prince, Maṇḍīvaddhaṇa of Mahurā who wanted to kill his father through criminal conspiracy. Later on the prince was ordered to be executed publicly. He was forced to sit on a red-hot iron throne and was sprinkled over with hot water, etc.
The officers put a red-hot necklace around his neck, fastened a badge (paṭṭa) on his forehead, and placed a crown on his head and thus he was executed.  

Another story tells us, Devadattā, the queen of Pūsanandī, who killed her mother-in-law out of jealousy. But when Pūsanandi came to know of this, he ordered Devadattā to be put under arrest and impaled her by cutting of her nose and ears.  

For the non-execution of king's order offender was openly punished to death. We find four kinds of assemblies in Jain texts, viz., Khattya, Gāhāvai, Māhaṇa and Isi.  

For non-compliance the order of a Khattya assembly one has to punish with cutting off his hands or feet, impaled, killed by one stroke of the sword and was thrown away.  

The offender from the Gāhāvai assembly was burnt to death on a pile of bark, husk or chaff. The offender from the Māhaṇa assembly was taunted in disagreeable terms and was branded with a mark of a pot (kuṇḍiya), or a dog (suṇaga) or was banished. And the offender from the Isi assembly was admonished mildly.  

Generally, king was the absolute authority in the kingdom. Nobody should possess any doubt in his mind regarding king's order. It is said that persons who disobeyed the king's orders were thrown into salt (Kharantaka) where within a very short time its duration being calculated by the time that was taken in milking a cow their bodies were reduced to skeleton.  

There were also instances of the autocrat kings, who acted wantonly. We come to know the king Kumbhag of Mithilā banished the guild of the Goldsmiths simply because they could not repair his earrings. A physician was put to death by a king simply because he could not cure the Prince. And the prince Malladinna ordered a painter to be executed for no fault of his. A text provides an interesting punishment of swallowing human excreta (gū). A priest robbed a purse of a merchant containing one thousand bucks (sahasso naulo).
The merchant sued in the court. The priest lost the case and was punished with one hundred lashes or to swallow human excreta (gū). There were references of regular prisons in the Āgamas. But the life in prisons was miserable. Normally the offenders never came out from prisons. They were severely beaten in Prison. According to Jain tradition during the first era the punishment was of a mild character. The first two kulakaras established the 'hakkāra' (expression of regret), then came makkāra (prohibition), then was established the punishment of dhikkāra (reproach). Then it is said that Ṛṣabhadeva, the first Tirthankara introduced the punishment in confinement to a particular area (maṇḍalabandha). After that Bharata is said to have introduced Caraka or imprisonment and chaviccheya or mutilation of hand, foot and nose, etc.

Besides these, jain texts provide a number of punishments followed by the Jain king. Such as, putting in irons (aduyabandhana), in fetters, in stocks (haṭibandhana), screwing up hands and feet in a pair of shackles and breaking them; cutting of hands and feet, or ears or nose, or lips or head or throat-glands (muravā); piercing the organs (veyagachahiya), body (aṅgachahiya), the sides, tearing out eyes, teeth, testicles, or tongue; haging, brushing, whirling round, lacerating, pouring acids (in wounds), belabouring with a leather strap, twisting the organ like a lion's tail (sihapucchhiyu), like a bull's tail, burning in fire and exposing the offender to be devoured by crows and vultures. These are the modes of punishment prevailed in two ancient Indian religion sects. In fact, Buddhism and Jainism were the revolt of so called complicated Vedic methods. So there were no basic changes regarding the concept of punishment at this period. To come to the main topic after the Vedic period non-revealed texts vedāṅgas came forward which were attributed to various authors. Among the Sūtras, Dharmasūtras (DS) deal with legal matters. The contents of DS are divided into four parts viz., (a) Ācāra, (b) Prāyaścitta (c) Vyavahāra and (d)
Rāja-dharma. So, the Sūtras are mostly concerned with the legal system at that period. Let us examine the concept of punishment and methods to inflict punishment in these texts.

2.3 Sūtra Period:
In the Sūtras a full-fledged judicial system is found where king was the fountain of criminal law. The criminals were properly examined by king and then awarded punishment, as they deserved. The spirit of punishment was different and exemplary to repress the criminals. Punishment also depended on the offender’s social status, caste, education and other position. In Sūtras we find another form of punishment i.e. expiation or prāyaścittā. Penances are sometimes self ordained and sometimes prescribed through the law court.

The severity of the punishment depends on the status of a person, as also to which caste he belongs. An offender of the first three castes was less punished than the offender of a lowest caste or a Sūdra. Gautama says ‘na śarīra Brāhmaṇa daṇḍa’.43 Another important principle of Gautama may be noted here. He says that ‘puruṣaśāktyaparāḍhānubandhavijñānādaṇḍaniyogḥ’ i.e., the punishment must be regulated by a consideration of the status of the criminal of his bodily strength, of the nature of the crime and whether the offence has been repeated.44

A very notable provision is found in the Gautama DS that an offender may be pardoned in accordance with the opinion of an assemblage of persons learned in the Vedas.45 This much provision is also found in the present judicial system. When a person is finally ordered to execute by the Supreme Court then he may appeal to the president for mercy. President is the supreme command of the State who may consider the life of an offender. At present President is the supreme command of a State but he has no judicial liabilities so he may pardon a person considering the merits of the State. Whereas ancient times king was
the source of law and administration. He had the judicial liabilities. So, he could not be the proper authority to grant pardon for an offender. Considering these facts the ancient thinkers have given the absolute authority to grant pardon to an offender to the assemblage of persons learned in the *Vedas*.

Āpastamba declares that king must punish punishable offences, otherwise, the guilt falls upon him. But when a person was in danger of his life and he intentionally took away food to save his life, he shall not be punished. 46

In the *Sūtra* period judicial system was likely to be fair. Falsehood and false evidence before the court was strictly punished. Gautama states it is an important duty to speak the truth before the court as witness. (*sarva dharmebhyo gariyāḥ prāḍhvivāke satyavacanām satyavacanāṁ ||*). 47

Under this framework the *Sūtrakāras* have prescribed various types of punishments which are almost same to the previous periods. They are:

1) Death; 2) Mutilation; 3) Branding; 4) Fines; 5) Confiscation of property; 6) Banishment, and 7) Reprimand.

Let us see the matter in detail.

(1) **Death:**

Death punishment was inflicted for various types of crimes. Such as, homicide, adultery, drinking wine and theft. Baudhayana prescribes if a *Kśatriya* and a persons of other castes murder a *Brāhmaṇa*, their property shall be confiscated and they shall suffer capital punishment. 48 A *Sūdra* commits homicide or theft, appropriates land (or similar heinous crimes), shall get capital punishment by confiscating property. 49

# Adultery was frequently punished to death and mutilation of sexual organs, which also led to the offender's death. Violation of Guru's bed and
incest were treated as heinous offence. The offender has to expiate himself by embracing a red-hot iron image of a woman, till death.  

# A Sūdra who commits adultery with a woman of first three castes shall get capital punishment.  

# Drinking wine was also punished to death. If someone intentionally drinks wine, he has to expiate himself by drinking (pouring) hot wine till death.  

# Theft was considered as heinous offence. Various modes of punishments are imposed for theft. Sutras prescribe one has to expiate by throwing himself into the burning fire.  

# Gold was the most precious metal and theft of gold was taken seriously. A different method was followed to punish a gold thief. A gold thief shall advance to the king with a club or wooden stick in his hand, in a flagging hair. Then he will confess his guilt and asked the king to punish him. The king should hit him with that club, by this way whether he died or not he would be free from guilt.  

(2) Mutilation:  
Mutilation of limbs was very common punishment at Sūtra period. Cutting off sexual organs was a general practice for the illegal sexual offence.  

# The tongue of a Sūdra shall be split out for abusing other three castes.  

# In case of assault a Sūdra shall be deprived off that organ by which he made the offence.  

# A Sūdra who recites Veda shall be deprived off his tongue. If he remembers them (the verses) his body should be split in twain.  

# In case of intentional hearing of the Veda the ears of a Sūdra shall be poured with molten tin or lac.  

(3) Branding, banishment and confiscation of property:  
These are the three modes of punishments, which is used individually or altogether.
When a Brāhmaṇa slain a Brāhmaṇa, has violated Guru’s bed, has stolen the gold of Brāhmaṇa or has drunk surā, he shall be branded on his forehead with a heated iron, with the mark of headless trunk, a female part, a jackal, or the sign of a tavern accordingly. Then he shall be banished from the realm. 59

ĀP says that when a person who has had actual intercourse with a marriageable girl, all of his property shall be confiscated and should be banished from the realm. Afterwards the king should take care of the girl or woman. 60

A man of one of the first three castes who commits adultery with a Sūdra(woman) shall be banished. 61

(4) Fine:

Fine was a popular mode of punishment in the Sūtra period. It was inflicted for various types of offences. Such as, 62

A Kṣatriya who abuses a Brāhmaṇa shall pay a fine of 100 kāṛṣāpaṇa. A Vaiśya who abuses a Brāhmaṇa shall be fined 150 kāṛṣāpaṇa. A Brāhmaṇa who abuses Vaiśya shall be fined 50 kāṛṣāpaṇa. A Brāhmaṇa who abuses Vaiśya shall be fined 25 Kāṛṣāpaṇa. But abusing a Śūdra a Brāhmaṇa has not to pay any penalty.

For killing a man or woman of four castes, various kinds of punishments and penance were prescribed. In addition to these penance ĀDS prescribed fines for an offender. He says, 63 for killing a Kṣatriya one has to pay 1000 cows to a Brāhmaṇa. For killing a Vaiśya one has to pay 100 cows to a Brāhmaṇa. For killing a Śūdra one has to pay 10 cows to a Brāhmaṇa. But slaining of a Brāhmaṇa or Guru who has studied the Veda is not expiateable in the life. One cannot be purified from the sin in his life. But he has to perform a long time penance and after death he may be free from this sin. 64
Fines were also prescribed for damaging crop. A person is bound to compensate for not cultivating the land, which he has contracted to cultivate previously. He should pay a fine to its owner for non-yielding crops in the field. Herdsmen were sometimes punished for losing cattle in case of their negligence. 65

For damaging crops, by the cattle, the owner of the cattle was liable to pay fine as prescribed by Gautama. He says, 66 for destroying crops by a cow one has to pay five māṣa. For destroying crops by a camel or donkey fine shall be six māṣas. For destroying crops by a horse or buffalo fine shall be ten māṣas. And for destroying crops by a goat or sheep fine shall be two māṣas.

Gautama prescribed a general rule for the thieves. He says, a Śūdra thief shall be punished with a fine of eight times the value of the stolen articles. But for the other castes fine shall be double the value of stolen article. In the case of thefting vegetables one has to pay fine of five kṛṣṇalas. 67

Fine is also prescribed for adultery. ĀP says when a young man intentionally entered into the house of a woman with bad purpose, he must be fined. 68

(5) Reprimand (Vāca):
Āpastamba twice prescribes this punishment. When a young man decked with ornaments, enters unintentionally in a place where a married woman or a damsel living, he must be reprimanded. 69
And the next is for taking unintentionally the property of others such as, fuel and water (edhodake), roots (māle), flowers (puspe), fruits (phale), perfumes (gandhe), fodder (grāse) or vegetables (śāke). 70
Besides these, Sūtrakāras have prescribed punishments for unnecessary destroying of nature and animals. They were so conscious that in this early age they have imposed punishment for these cases. Āpastamba says, one shall
perform penance like a Śūdra for killing a crow, a chameleon, a peacock, a Brāhmaṇi duck, a Hamsai, a vulture, a frog, an ichneumon, a musk-rat or a dog, a milk cow or a full-grown ox without a reason. 71
Vasiṣṭha says, the king should punish them who cause injury to the trees that bear fruits or flowers. (*puṣpaphalopagāṇopādāpānma hīṃsyāt || VDS. XIX.11*).

2.4 Smṛti to modern period:
These are the modes of punishments as discussed in the Sūtra literature. Let us look into the nest phase of development of ancient Indian penal system i.e., Smṛti period by this time punishment became an unparalleled instrument to repress criminals. Smṛtikāras think that human beings are by nature bad, only ānāda can provide them the real path. Manu says, 72

अव्यदा दुःखजितो लोको दुःखो हि शुचिमिर:
दुःखस्य हि भवात् सवं जगात् भोगाया कल्यते ॥

i.e. the whole world is kept in order by punishment, for a guiltless man is herd to find; through fear of punishment the whole world yields the enjoyments (which it owes).
In another verse Manu expresses his view that ānāda itself is the real king. He says, 73

दुःखः: शास्त्रिन पुजा: सवं दुःख यशाभिरस्ति |
दुःखः: सुप्रजन जागरि दुःख धर्म विद्युज्जयः: ॥

i.e. punishment alone governs all created beings, punishment alone protects them, punishment watches over them while they sleep; the wise declare punishment (to be identical with) the law.
In this smṛti period Ānāda becomes very popular media to maintain law and order. All Smṛtikāras asked its proper implementation. We will discuss this
period in detail in the next three chapters. Hence, we now turn to the next phase of its development namely, the medieval period to the modern penal system.

In India medieval period observes a very crucial time regarding the concept of Hindu law. This time India had to face so many foreign rulers, who ruled over the country hundreds of years. They were not the followers of Áryan or Hindu religion. So they imposed their own system of law depending on their religious beliefs. Also this time India was divided into small kingship ruled by the independent Hindu kings. Among the foreigners Muslims possessed a unique position in the Indian political history. Since the Sultanate period to Mughal they had ruled over 600 years (1204-1757). They had imposed their own system of law and justice. In fact, in this period the rulers were primarily engaged to protect the boundary of their states. Because, stronger king always was interested in acquiring others land. So most of the time the emperor was engaged in war. For this purpose they needed more economical support from the people. Thus they developed the economic administration to collect more revenue from the subject. They did not bother about the welfare of the people. So the concept of Welfare State is hardly seen in this period. As a result a good or a bad king hardly made any difference to the people.

Islamic law recognized four kinds of punishments - *qisas*-retaliation, *diya* - compensation, *hadd* or punishment the limits of which have been defined in the *Quran* and the *Hadis*, and *tazir* or punishment inflicted by the judge at his discretion.  

This period also noticed the barbaric types of punishments like *lex talionis* system of punishment. There is not a much difference regarding the implementation of punishment from that in the preceding period.

In the other part of India such as Maratha administration ruled the strong king Shivaji and his successors followed the ancient texts of Manu and Yāj. These
also did not make any difference regarding the welfare of the people. In case of
heinous offences capital punishment and mutilation of limbs were inflicted. So
before the British's entry the penal system of India was somehow in a same
trend like it prevailed in the Smrti age. Through the ages it changed a little with
reference to quantity and quality.
After the British entry Indian law has turned into a major change. During the
British rule they have imposed the law of equity, i.e., in the eye of law
everybody is equal, there would be no caste and sex bar. British rulers ruled
over 200 years in India and passed many rules and regulations for the
administrative purpose. Which are at present the basic laws in India. Since the
British period to the modern age Indian penal system is led by two basic texts
namely, 'The Code of Criminal procedure', 1898, and 'The penal Code, 1860'
and some other minor acts. The legal authorities also amend the texts so many
times. As well as the assembly has passed a lot of minor acts in considering the
demands of present times. Under this framework the present forms of
punishment in India as well as this subcontinent prevail as under:

(a) Capital punishment;
(b) Corporal punishment or physical torture;
(c) Confiscation of property;
(d) Deportation;
(e) Fine; and
(f) Imprisonment of either description of a term.

Let us discuss accordingly in detail.

(a) Capital Punishment:
It has very limited application. Penal Code 302 mentions, ' whoever commits
murder shall be punished with death or imprisonment for life and shall be liable
to fine'. Due to its anti humanitarian nature in most of the cases verdict goes to
life imprisonment and fines. Except in the case of heinous murder or capable
homicide. Apart from this some special power act has prescribed the capital punishment to repress the frequent offences. Such as, the offence against women and children, drug abuses etc. Though, there are various modes to implement capital punishment but traditional method is hanging till death. A very recent verdict comes from the special tribunal court, Dhaka, which provides death penalty of its 15 accused out of 17 to be implemented in firing squad. In Pakistan there is a provision of stoning an adulterer to death.

(b) Corporal punishment or physical torture:
Corporal punishment or physical torture has almost been abandoned in black and white. The declaration of human rights in its Art. 6. has disapproved the physical torture. In some Islamic countries this type of punishment is still in vogue. But ratio of crime is not less in comparison to other countries where these punishments are not in rule. Most of the States have signed the Human rights declaration, which is in operation from March 1977.

(c) Confiscation of property:
Confiscation of property is widely usable method at present times. Especially in the cases of economical offences this mode is used. But due to globalization criminals could manage to hide their property in such a form, which is difficult to recover.

(d) Deportation:
Deportation was a form of punishment widely used in the British India. But by the Ordinance No. XLI of 1985, it has been substituted to imprisonment for life term. So, exactly this mode is not in operation.

(d) Fine:
Fines become more popular and common mode of punishment in criminal law. One may purchase punishment in the process of paying fine. Judges also have the discretion to make a fine according to the gravity of the offence.
(f) Imprisonment:

Imprisonment also becomes a popular mode of punishment at present times. Fines and imprisonment are simultaneously used. It is of two kinds. Simple imprisonment and rigorous imprisonment. According to the latest amendment imprisonment for life term limits upto twenty years.

This is a massive survey from the Vedic to modern period. Through this survey we come to know that the concept of punishments developed gradually through the ages. In the Vedic period we find the glimpse of idea regarding the punishment. There are some words, which rendered the idea of punishment. But at the next phase i.e., in Buddhism and Jainism the idea is clearer than the previous period. This period the kingship is found in stronger position. So the necessity to implement punishment becomes more useful. At the Śūtra period to Smṛti period punishment was a necessary element for a king to rule over the country. In this time we find that punishments that were imposed for various crimes were deterrent and somehow cruel in nature.

The Smṛtikāras were very particular to impose deterrent punishment. This time punishment was also imposed according to the caste of the offender. Śūdras were severely punished in comparison with the other caste people. But there is no reference for the causes why the Śūdras are more punished than others. Even for the silly matter Śūdras were punished to death. In the medieval period the nature of punishment is the same as that of Smṛti period. A drastic change is found after the arrival of British in India. They have imposed the law, which is equal to every one. But in the first phase of British rule, people were severely tortured by these foreign rulers. Gradually they developed their ruling system. At present the context is totally different from the ancient and the medieval age. The form of Government has been changed. People have the authority to make their king. States are also organized as well as people are more conscious regarding their demand and status. Above the national supervision there is
international supervision through United Nations, which looks after the human rights of every world citizen. It also pressurizes for the abolition of capital punishment. Because punishment is not the cure of social system. So, at present there are very limited methods of punishment in the world. Among these fines, imprisonment, confiscation of property are popular. And capital punishment in limited scope is also in vogue.
References

1. RV. Vii. 33.6
2. AV. V. 5.4 cf. Aitareya Brā. II. 35, S.B. I. 1, 5.4.6. etc.
5. Ibid, P. 1 (introduction)

8. J. VI. pp. 245-6, 444;
10. J.V. p. 444, J. II. p. 307
11. J.VI. p. 3.
12. J. I. p. 200
13. J. II. p. 122
17. J. III. p. 326. - (aparabhāge bhandańgañāni nimmarusāni jātāni.)
19. J. V., p. 444;
20. J., VI. P. 156.
23. J.V, p. 357.
24. J. VI. p.156.
29. Viva, 4. p. 31
32. Viva. 6, pp. 36 -39.
35. Rāya. 184.
40. Ācā. Cū. 2. p. 65. (47.)