Punishment is one of the oldest methods of controlling crime and criminality. However, variations in modalities of punishment, namely, severity, uniformity and certainty are noticeable because of variations in general societal reaction to law breaking. In some societies punishments may be comparatively severe, uniform, swift and definite while in others it may not be so.\(^1\) This accounts for the variations in use of specific methods of punishment from time to time. The primitive societies did not have well-developed agencies of criminal justice administration, therefore, settlement of private wrongs was entirely a personal matter and aggrieved party could settle the issue directly with the wrong-doer. Blood-feud was one of the common modes of punishment in early societies which was regulated by customary rule of procedure.\(^2\) Sometimes later on, restitution for injury through payment of money compensation was substituted for blood feud. The quantum of compensation, however, varied depending on the nature of the offence and the age, sex or status of the victim. With the advance

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\(^1\) Sutherland and Cressey: "Principles of Criminology" (6th. Ed) p.255
of time, primitive societies gradually transformed into Civil societies and the institution of kingship began to exercise its authority in settling disputes. Thus private vengeance fell into disuse giving rise to public disposition of wrong-doers. With the state assuming charge of administration of criminal justice, the process of public control of private wrongs started which eventually culminated into modern penal systems of the world.

FORMS OF PUNISHEMENT:

The history of early penal systems of most countries reveals that punishments were cruel and barbaric in nature. It was towards the end of 18th century that humanitarianism began to assert its influence on penology emphasizing that severity should be kept to a minimum in any penal programme. The common modes of punishment prevalent in different parts of the world included corporal punishments such as flogging, mutilation, branding, pillories, chaining prisoners together, imprisonment, forfeiture of property and fine.

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3 Ibid, p.288
FLOGGING:

Of all the corporal punishments, flogging was one of the most common methods of punishing criminals. In India, this mode of punishment was recognized under the Whipping Act, 1864, which was repealed and replaced by similar Act in 1909 and finally abolished in 1955. Flogging as a mode of punishment is being used in most of the middle-east countries even to this day.

MUTILATION:

Mutilation was yet another kind of corporal punishment commonly in use in early times. This mode of punishment was known to have been in practice in ancient India during Hindu period. One or both the hands of the person who committed theft were chopped off and if he indulged in sex crime his private part was cut off. The system was in practice in England, Denmark and many other European countries as well.
BRANDING:

As a mode of punishment, branding of prisoners was commonly used in oriental and classical societies. Roman penal law supported this mode of punishment and criminals were branded with appropriate mark on the forehead so that they could be identified and subjected to public ridicule. The system of branding was not uncommon to American penal systems also. In India, branding was practiced as a mode of punishment during the Moghul rule. This mode of corporal punishment now stands completely abolished with the advent of humanitarianism in the field of penology.

STONING:

Stoning the criminals to death is also known to have been in practice during the medieval period. This mode of sentencing the offender is still in vogue in some of the Islamic countries, particularly in Pakistan, Saudi Arabia etc. The offenders involved in sex-crimes are generally punished by stoning to death.
PILLORY:

Pillory was yet another form of cruel and barbaric punishment which was in practice till 19th century. The criminal was made to stand in a public place with his head and hands locked in an iron frame so that he could not move his body. The offender could also be whipped or branded while in pillory.

FINES:

The imposition of fine was a common mode of punishment for offenders which were not of a serious nature and especially those involving breach of traffic rules or revenue laws. This mode of punishment is being extensively used in almost all the sentencing systems of the world even today. In India, however, in the matter of recovery of fines the provisions of Sec. 421 of The Code of Criminal Procedure, 1973 would apply. While expressing its views about fine as a punishment the S.C. in Adamji Umar Dalal vs state\(^4\), observe as follows--

\(^4\) AIR 1952 SC 14
"In imposing fine, it is necessary to have as much regarded to the pecuniary circumstances of the accused person as to the character and magnitude of the offence."

**BANISHMENT:**

The practice of transporting undesirable criminals to far-off places with a view to eliminating them from society has been commonly used in most parts of the world for centuries. In England, war criminals were usually transported to distant Austro-African colonies. The practice of transportation is known to have existed in penal system of British India as well. It was popularly called 'KALAPANI.' Dangerous criminals were dispatched to remote island of Andaman and Nicobar.

**CAPITAL PUNISHMENT:**

Of all the forms of punishments, capital punishment is perhaps the most debated subject among the modern penologists. There are arguments for and against the utility of this mode of sentence. The
controversy is gradually being resolved with a series of judicial pronouncement containing elaborate discussion on this complex penological issue. However the S.C. held in Bachan Singh's case that death penalty should be justified in "rarest of rare cases."

IMPRISONMENT:

Imprisonment presents a most simple and common form of sentencing for incapacitating the criminals. It proved to be an efficient method of temporary elimination of criminals apart from being a general deterrent and an individual deterrent. The oldest penal institution is actually the 'jail' which is also commonly called a prison in many countries. In the early stage, jail functioned as a place for detaining prisoners awaiting trial and execution of sentence. Getting-off to a slow start in the 16th century imprisonment as a form of punishment became the major form of punishment of the 19th century. From 19th century onwards and following in 20th century, certain individualized measures of offenders are introduced into prison sentences. Thus began concept of

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5 Bachan Singh vs state of Punjab (AIR 1980 SC 898)
institutional correction. Prison has been defined as "a place properly arranged and equipped for the reception of persons who by legal process are committed to it for safe custody while awaiting trial or for punishment." This use of the prisons as places of detention has continued up to this date, but towards the middle of 16th century a period of "experiment with imprisonment as a form of punishment for certain types of offenders mostly for juveniles, sturdy beggars, vagabonds and prostitutes was initiated. The London 'Bride well', the Amsterdam Rasphiuss and Spinhuis founded respectively in 1557, 1595 and 1597, Franci's Florentine Hospice established in 1677, the Reformatories for boys and women in St. Michael's Hospice in Rome founded in 1704 and in 1735 were the most important institutions of the period.

The practical beginning of imprisonment as the normal method of punishing criminals come in the last quarter of 18th century, the way having been prepared by the moral revival led by Wesley and Whitefield, the humanitarian of the French 'philosophers and the

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7 The oxford English Dictionary, Vol. vii, p.1385
8 Encyclopedia of Social Sciences, Vol. xii, New York, p.57
English and American Quakers, and the progress of rational jurisprudence in the works of Montesquieu, Beccaria, Romilly and Bentham. The modern progressive view, however, regards crime as a social disease and favors treatment of offenders through non-penal methods such as probation, parole, open jail etc. Whatever be the reaction of society to crime, the lodging of criminals in prison gives rise to several problems of correction, rehabilitation and reformation which constitute vital aspects of prison administration.

DEVELOPMENT IN ENGLAND:

The history of prison reform in England dates back to the year 1957 when the old royal place of Bridewell in London at the behest of Bishop Ridley was turned into House of Correction "partly to provide employment opportunities to the needy poor and partly to punish, correct and reform by labour of a diversified nature minor offenders of the class of prostitutes and sturdy beggars and vagabonds."

During the 18th century mainly two prison reforms, namely John

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9 Harry E. Barnes: "Society in Transition" (New York prentice Hall, Inc, 1939, P.724)
10 Annals of the American Academy of Political and Social Science, Sep.1931 p.2
Howard (1726-1790) and Jeremy Bentham (1748-1832) should both a revulsion against the traditional view.

JOHN HOWARD:

The conditions of prisons in England in 18th Century, little changed from the past, become well advertised through the work of John Howard, whose both, "The State of Prisons " around the public with its description of the filth, corruption, sexual license and other evils disclosed. "There are prisons, into which whoever looks will, at first sight of the people confined there, be convinced, that there is some great error the management of them........"\textsuperscript{11} John Howard, on his appointment as High Sheriff of Bedfordshire began a series of inspection to his country prisons from 1973 onwards. He discovered that many acquitted prisoners were detained for failure to pay discharge fees. His originality lay not in his efforts to publicize prison abuses but in his systematic statistical reporting and comprehensive proposal for change. Howard advocated Solitary confinement because he conceived of a convict’s process of reformation in terms similar to his own spiritual awakening. Howard hoped to translate the ascetic
vigil of the priest into disciplinary regiment for the criminal. He postulated that cut-off from all permission and influences, the prisoner would have no choice but to confront his degradation and listen to the voice within his plans for better prison food, clothing and hygiene were but part of a programme intended to reset minds as well as to discipline bodies. Although Howards humanitarian reforms were sometimes criticized as too expensive and lenient he was regarded as one of the great reformers of prison because his proposals seemed both scientific and practical.

**BENTHAM ON REFORMATION OF PRISONS:**

The utilitarian philosopher Jeremy Bentham viewed crime as a result not of sin but of wrong calculation. In 1791, Bentham was given the contract for the building of a large prison on the plan outlined in his book called, "The panoptican". He abhorred the existing jails because in his view, the punishment they imposed was not appropriate to the justifiable end of teaching inmates that crime did not pay. According to him, prison conditions were sometimes too harsh and sometimes too

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lenient and they varied from institution to institution and become socially inefficient and thus immoral also. Although, he rejected solitary confinement considering cost involvement but Bentham joined Howard in tireless campaigns to promote penitentiary and he showed the faith that criminals could be rehabilitated through perfectly planned discipline. Bentham postulated for a perfect prison--"The Panoptican", where all activities of prisoners and their keeper's were to be made public and under constant inspection as the means of control. Neither Howard nor Bentham, however, lived to see their visions completely implemented in any particular institution, but many of their ideas took concrete form in the 19th century in England and later on in many other countries including India.

TRANSPORTATION AND PENAL COLONIES:

EARLY OUTLAWRY AND ABJURATION:

Outlawry was a medieval institution under which criminals and others banished from organized society took refuge in the forests of England. It has been said that more criminals were outlawed than hanged. In Elizabethan England, Catholics and dissenting Protestants were
permitted to abjure the realm, and a similar privilege was later accorded certain types of criminals. Such practices were precedents for more organized transportation to colonies which come in later countries.

**CONSIGNMENT TO GALLEYS:**

Captured enemies and maritime prisoners in many countries were set to work in galleys. France in the 17th century and England under Queen Elizabeth used many prisoners to row ships. The hardship of these prisoners makes up a chapter of horrors. When sailing ships replaced the galleys, convicts were worked in gangs ashore. Increased crime due to vast social changes in the 16th, 17th and 18th centuries put a strain on the already inadequate English penal institutions. Moreover, English Courts, in response to changes in popular attitudes, were loath to inflict the death penalty for more than a hundred crimes for which it was provided.
TRANSPORTATION TO AMERICAN COLONIES:

Early in the 17th century, the colonies in America needed labour and the policy of transporting criminals, authorized in 1597 became regular about 1618. Eventually contracts for their transportation were made with private individuals, who could sell the convicts into periods of servitude of from three to fourteen years. The number brought has been estimated at 50,000. It appears that this criminal element was eventually successfully absorbed into the citizen population of the American colonies. However these transporitees were hardly typical fellows, including as they did, many political criminals, debtors, and others not found in our prisons today. The revolutionary war, 1775-83, put a stop to this outlet for English criminals.

TRANSPORTATION TO AUSTRALIA:

After the loss of the American colonies the first resort was the old sailing vessels, where convicts of all ages and types were thrust under most demoralizing conditions. Meanwhile Captain Cook had

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12 HARRY E. BARNES: "Society in Transition" (New York, prentice Hall) Inc 1939, p.261
discovered Australia, and in 1786 some 756 prisoners, of whom 192 were women, were shipped there. Other ship loads followed. In 1791 Governor Philip began making grants of land to the convicts who had served their time, together with tools, seed and government rations for the first 18 month.\textsuperscript{13} With the arrival of free settlers, convicts were assigned to them and come completely under their power. For their exploitation and hardship and many failures, it is reported that "many convicts were really reclaimed through new life transportation afforded them, and...Occasionally they earned such good reputations as to be placed on Magisterial Bench.\textsuperscript{14} Transportation to Australia was abandoned chiefly because of the opposition of free settlers. Other contributing factors were the great expanse involved, the crime problem created in Australia, and the fact that criminals were not considered desirable elements in the building up of colonial empire. It was also held that this method of punishment did not deter, since some returned to crime in England and since the sufferings of the transported were not open to public view. The use of transportation by France, Russia and other countries in the past and its continued use today has not been encouraging.

\textsuperscript{13} Ibid p.262
\textsuperscript{14} Ibid
ORIGINE OF ENGLISH NATIONAL PRISONS:

The failure of the penal colonies called for substitute Local cellular prisons had begun to be built. The earliest example of cellular structure seems however to have been POOP CLEMENT XI’s prison and hospital of San Michele in Rome, built in 1704. The structure of this institution and that of villains prison of Ghent of Belgium, designed for the reformation of disorderly paupers who were taken overrunning the land, suggested that of the later dominant prison system in America. Following the failure of transportation, national prisons were built in England, of which Millbank and Pentonville were early examples. The year 1824 brings as to a great landmark in the history of British prisons. In that year Peel introduced a measure which "consolidated as many as 23 pre-existing status on the subject of goals and the Houses of Correction".15

The year 1835 marks the end of unrestricted local enterprise and the beginning of a period of partial Government control. In 1839 a new Prison Act was enacted and it was laid down that, "in order to prevent contamination arising from association of prisoners in any prison in

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15 Webbs, Sidney and Beatrice: 'English prisons under local government', London, 1922, p.74
which rules for the individual separation of prisoner shall be in force, any prisoner may be separately confined during the whole or part of the period of his or her imprisonment”. The Prison Act, 1865 revised and consolidated the Previous Act, amalgamated the goals and houses of correction. The Act of 1865 was a precursor to the entire abolition of local system of prisons. At last long struggle between the control authority and the local Justices was ended by the Prison Act, 1877, which placed all the local goals under the direct control of the central authority which assumed complete responsibility for their management, maintenance and cost. The Prison Act, 1898 formed the legal basis of the present regime in England. The Act effected many changes in prison management. The authority to frame all prison rules was given to the Home Secretary, prison management and the prison population were further affected by other Acts passed in the following century; the Probation Act, 1907 provided for the change of the young offenders to the probation officers, the prevention of crime Act, 1908 placed the Borstal system on its present foundation; the Children Act, 1908 rendered it impossible to send a boy or a girl under 14 years of age to prison; the Criminal Justice Amendment Act, 1914 gave time

16 Hinde, R. S.E.: "The British penal system". London, 1951, p.11
for the payment of fines imposed by Petty Sessional Courts; the Mental Deficiency Act removed mentally defective persons from prisons for treatment in suitable institutions. The penal institutions in England today vest in the Secretary of State and his statutory powers include the making of statutory rules for their governance, the appointment of Governors, Chaplains, and Medical Officers. The prison Commissioners are appointed by the Crown. The Commission administers and inspects all the penal institutions. The Commission is a body corporate with a common seal.

The five basic ideas on which the existing prison system in England is based are:

(a) That for all prisoners with sentences of suitable length, the prison regime should be one of constructive training, moral, mental and vocational;
(b) That such training can be fully carried out only in homogeneous establishments set aside for the purpose;
(c) That the special training prisons need not, for all prisoners, provide the security of normal prison buildings;
(d) That the service of the community outside the prison should be enlisted to help in the training at every practicable point; and

(e) That this continuing responsibility of society should be maintained after his discharge by effective aid towards social rehabilitation.¹⁷

English prisons were, however, greatly influenced by new prison system developing in the United States of America.

**DEVELOPMENT IN THE U.S.A.: Penal Institutions in America before 1820:**

There had been free employment of capital punishment in American colonies even for minor offence, though the number of crimes actually punished by death was never so great in England. Imprisonment was unusual except for political and religious offenders and debtors.¹⁸ In addition to death, colonial punishments included stocks and pillory where the culprit was subjected to the taunts, ridicule and missiles of


the populace, the whipping post, and the branding iron. Imprisonment was used by only rare cases. The life inside the prison was hard, unbearable, and painful, with the march of time, public opinion mobilized against these barbarous methods of treating the prisoners which eventually led to the passing of famous Penns' Charter of 1682. The object of this charter was to put an end to brutal methods of punishment on humanitarian grounds and bring reforms in prison administration.  

The charter inter alia contained that--

1. The practice of releasing prisoners on bail should be introduced.
2. Compensation should be allowed to prisoners who were wrongfully imprisoned and this amount should be double the amount actually suffered by the victim of the offenders act.
3. Prisoners should be allowed the choice of their food and lodging to a certain extent.
4. The system of 'pillory' i.e. punishing the offender in public places should be abolished.

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19 Vold G.B.: "Theoretical Criminology" (1958 ed) p.89
The period that followed brought a better future for the prisoners. With the advance of civilization, greater emphasis was laid on prisoner’s reformation. The Quaker's Movements in 1775 led to remodeling of Philadelphian prison on a new pattern. The prisoners were classified into two main categories, namely-

(i) Incorrigible or hardened criminals; and

(ii) Corrigible or ordinary criminals who were capable of reformation.

Incorrigible prisoners were subjected to solitary confinement cells without any labour whereas the corrigible were lodged together in rooms and were put to work in shops during day time. Women delinquents and vagrants were kept in separate well-fenced quarters. Thus, the prison was modeled on two major principles, namely works during day and humanitarian prison, however, and deteriorated towards the end of 18th century due to overcrowding laxity in discipline and abuse of power by Governors. This necessitated establishment of new Model prison elsewhere. Eventually, two model prisons were set up, one at Pennsylvania and the other at Auburn. The study of American prison comprises these two systems which were started simultaneously in Pennsylvania and Auburn.

20 Quaker's were a religious sect who condemned inhuman treatment of offenders on theological grounds
THE PENNSYLVANIA SYSTEM:

The Pennsylvania system was first introduced in the Walnut Prison in Philadelphia in 1790. The prisoners were kept in complete isolation in separate cells during day and night. Even the food was served to the prisoners in their cells. Solitary confinement of prisoners in isolated cells was designed to bring about quick reformation in them because of its extreme deterrent effect. But complete segregation of prisoners in isolated cells without any work brought them untold miseries and a large number of inmates died due to unbearable monotony of prison life. Those who survived their term of solitary confinement either returned mad or irresponsible. To avoid these horrible results, the system of labour and work was introduced for prisoners but it was to be done in isolated cells and not in congregate shops. The arrangement of cells in the prison resembled the spokes of a wheel with a guardroom in the centre. While carrying prisoners from one place to another their faces were covered by hoods so that they could not see each other. Only certain designated persons such as allowed to visit the prison and establish the contact with inmates but, the friends, relatives and other inmates could not have access to the prisoner during his
prison terms. The inmates were subjected to prayers and appropriate discourses so that they behaved themselves with greatest propriety and decorum.\textsuperscript{21} The major setback of this system was lack of productive labour for prisoners, over-crowding and cruelty. Consequently, this prison falls into disuse by the later half of the 19th century and was finally abandoned in favour of Auburn system.

**THE AUBURN SYSTEM:**

The distinguishing feature of this system was that prisoners were to work in shops under a strict rule of silence. In the initial stage, only hardened criminals were brought to this prison to undergo solitary confinement without work. But experience with this prison showed that severity of solitary confinement had fatal consequence on physical and mental disorder or committed suicide, consequently, a large number of prisoners were pardoned and released in 1823. The system which was adopted in this prison after 1823 come to be known as "Auburn system". The essence of Auburn system lay in forced silence and separation at night but congregate work in shops during day time.

\textsuperscript{21} Negley K. Teeters: "The cradles of the penitentiary (Pennsylvania) prison society," p.99
Commenting on the working of Auburn system, J. L. Gillin observed that most serious and hardened criminals were kept in solitary confinement in complete isolation so that they could spend their days in penance and repentance for their crime. The prisoners who were deemed corrigible were made to work in shops during day but were housed in isolated cells during night time. The striking features of the system were that the prisoners were not allowed to talk or communicate with each other while at work or during lunch or supper. Those who tried to break silence were flogged and punished. Thus hard labour in shops during day time was considered essential from the point of view of physical and mental fitness of inmates while enforcement of silence in association serve as a measure of punitive reaction to crime. Even visits by the members of the prisoner's family were forbidden. It is for this reason that Gillin characterized the Auburn system "a system of discipline by repression and labour under fear". Although the system yielded useful results and silence while at work or during leisure prevented contamination of prisoner's, but it was undoubtedly a brutal method of treating the offenders and it hardly had any reformatory impact on them. The system as a whole provided no exercise, play or sociability. The warden himself had no
conversation with the prisoners until just before their release when the inmate was given three dollars and advice. Both the systems lay greater emphasis on non-communication between the prisoners and extracting work from them during day time and keeping them in complete isolation during night. The only difference between the two was that in Pennsylvania system the prisoners were to live and work in isolated cells and therefore, they could not even know each other while the Auburn system provided congregate work in shops during day where the prisoner could see and know each other but could not, however, communicate. It is primarily, for the reason that Donald Taft Characterized the Pennsylvania system as the separate system and the Auburn system as the silent system.

**THE ELMIRA REFORMATORY:**

Isolation of prisoners in solitary cells, "work during day and reformation through religious sermons remained the basic feature of the Auburn as well as the Pennsylvania prison system till 1870. The succeeding years, however, witnessed an era of revolutionary changes

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in the history of American prisons. During the next thirty years these system were suppressed by the Elmira Reformatory in New York which provided for indeterminate sentence, parole and probation. The inmates were categorized as hardened criminals and incorrigibles for the purpose of treatment in prison. With new developments in penology during the early decades of 20th century, the prisons no longer remained the dump-houses for convicts but used as place of industry to train inmates for skilled work. The opening of Reception centre at Illions in 1933 marked the beginning of reformative era in the American prison system. The cells in these prisons were airy, well ventilated and equipped with adequate arrangement of lights. The condition of health and sanitation were considerably improved and inmates were provided facilities for reading and schooling. Adequate arrangements were also for physical exercise and recreation of inmates. The prisoners were to dine together in a common mess and they could meet their relatives and friends on certain fixed days. The sentence of solitary confinement was completely abolished and general tendency was to narrow down the gap between the outside free life and the life inside the prison to the maximum possible extent.23 Despite a series of

23 Supra no. 19 p.122
prison reforms, the condition of American prisons still remains deplorable. A recent study on American prisons reveals that they are overcrowded beyond belief. Mr. Ramsey Clark, a former Attorney General of United States under President Johnson was sunk in deep and dogmatic gloom claiming that more than half of those sent to prison returned there sooner or later after their release.\textsuperscript{24} Earlier, even the courts had little regard for the rights of the prisoners as they believed that as a result of his conviction the prisoners have "forfeited his liberty and personal rights except those which the law in its humanity accords to him." However, this attitude of indifference has now change due to human rights consciousness of the American Judges and the constitutional rights of prisoners in U.S.A. are now well safeguarded.

THE RUSSIAN PRISON:

In Russia, the prisons are called Miesta Lischenja Svobadi meaning the places of withdrawn the freedom. The Russian prison system also provides for colonies for prisoners. The famous penologists Lenkon

\textsuperscript{24} Leon Radzinowicz & Joanking: "The growth of crime". p.257
Von Koerber, in her book entitled "Soviet Russia Fight Crime" gives an interesting account of conditions in Russian prisons. The indicative reforms system adopted in these prisons offers better opportunities for inmates to reform and rehabilitate themselves in normal life. A prison sentence is never than a year so as to provide adequate training to the inmate. Liberal good time allowance is granted to prisoners and they can be released before the expiry of their term of sentence. The prisoners are allowed wages for the work done by them. Thus their family and children are served from hardship and starvation. The amount of wages depends on the quality and quantity of work done by the prisoners. Out of the total wages earned by an inmate two-third is paid to him in cash while the remaining one-third is given to him at the time of his release. The system also provides for education, adequate means of recreation and religious discourses. The prisoners form a council of culture to settle their mutual disputes in a spirit of co-operation. This also provides an opportunity for self government in these prisons. They can use their own clothing’s instead of the uniform prescribed for inmates.

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25 Koerber L: "Soviet Russia Fight Crime,"p.177
DEVELOPMENT IN INDIA: EARLY PERIOD:

The penology has its roots in ancient India also. It developed under the connotation of "danda-niti" which literally means principles of punishments. Nigam expounds the view that "while the criminal science or criminology is a modern growth in the west, it would be heartening to know that it was a fully developed subject of study in our country even before the dawn of Christian era." In Vedic period, which is nearly 1000 years earlier than the age of Manu, administration of Justice did not form a part of the state duties. Offences, like murder, theft and adultery are mentioned, but there is nothing to indicate that the king or an authorized officer as a Judge, either in civil or criminal cases, passed any judicial judgment. Some critics have suggested that Sabhapati of later Vedic period may have been a judge. But his being as a governor cannot be excluded. Usually the aggrieved party had itself to take such steps which could redress him. Distraint of the defendant or the accused by the plaintiff, his sitting before the latter's house and not allowing him to more out till his claim was satisfied or

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wrong righted was a established practice in Vedic India. During Rig Vedic period the idea of a divine cosmic order existed. Riti, the regularly of the universals process was the main basis of law and it was the Sabha or popular village assembly rather than king who tried to arbitrate when it was feasible to do so. This helps us to conjecture that there was no prison in the Vedic periods, but the house of the accused served the purpose for jail and he was practically imprisoned in his own house till he managed to compensate the plaintiff.

The Dharma Sutras and the Dharma Shastras reveal to us a more or less full-fledged and well-developed judiciary. Law or dharma was not a measure passed by legislature in ancient India; it was based upon Srutis and Smrities. King was at its head and it was his pious duty to punish the wrong doers; if he failed from discharging it, he would go to hell. In these two kinds of literatures, one rarely come across the word "prison", "jail" or "jailor". Megasthesenes, Fa-hsien and Arab travellers have described the Indians as remarkably law abiding, and have stated that crime was a rare phenomenon. Fine, imprisonment, banishment, mutilation and death sentence were the punishments in vogue. Fine was most common and condemned person who could not pay his bill

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27 A.S. Altekar: "State and government in Ancient India," Jainendra press, Delhi, 1958, p.245
28 A. L. Basham: "The wonder that was India" Macmillan Co., New York, 1959, p.113
to bondage until it was paid by his labour. Mutilation of hand and other limbs was often inflicted upon the thieves. The death penalty is prescribed in "Arthashastra" for murder even as a result of duel or quarrel. Generally death sentence was imposed upon murderers, traitor’s, dacoits and persons guilty of heinous sex offences.  

Banishments were sometimes imposed upon the members of the privileged casts. The Smriti writers rarely mention imprisonment, but all other sources show that it was common. There is no systematic description about the construction of prisons. Many critics have suggested that amendment and small fortresses served the purposes of the prisons. There are some reforms which indicate that Sannidhata was in charge of jail department who was to select sites for the location and construction of prisons. It seems from such references that prisons were designed like forts and castles with cells and small compartments. In a pamphlet entitled "Rajgir", published by the department of Archaeology, India there was description of Bimbisara's jail. In ancient literature gives no less encouraging account of prison reforms. In the early years of Ashoka, there was an unreformed prison in which

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29 Ibid p.115  
30 Ibid p.256  
31 Ibid p.118
most of the traditional fiendish torture were inflicted and from which no prisoners come out alive. But from his moral edicts which belong to his later period of rule when he was influenced by Buddhism it appears that many reformatory measures were taken. Another reformatory method introduced by Ashoka was the visit to the prisoners made by the authorities concerned once a day, sometimes, once in five days, to enquire about their conditions.\textsuperscript{33} This is evident from the verse:

"Divase panearatre va bandhanasthan visodhye,
karmana kayadandena hiranyanugrahena va II

(B.K.II.CH.36)\textsuperscript{33}

\textbf{MEDIEVAL PERIOD:}

An examination of Muslim law which was prevalent in the medieval period in India, it is revealed that imprisonment was not recognized as a form of punishment. In this period, sources of law and its character essential remained Quaranic. It was supposed to have been defined

\textsuperscript{32} Mohammad Hamid Khuraishi, Rajgir, revised by A. G. Ghose, Director General of Archaeology, New Delhi, 1958, p.p.27-28

\textsuperscript{33} V.R. Ramachandra Dikshita; "The Mauryan Polity," Madras University Historical Services, no. 21, 1953, p.p.175-176
once for all within the pages of the Quaran.\textsuperscript{34} Brahmamic Courts which followed Manu and Gentoo code, a loose mass of Sanskrit legal rules and sacred injunction survived under Emperor Akbar.\textsuperscript{35} It was Abul Fazal, one of the learned ministers of Akbar, who gave an interpretation that the Muslim rulers could aware imprisonment to offenders and one found that a number of forts used to confined offenders. Badayunm records that on the birth of prince Salim, the Emperor setout with all expedition on Agrah, and in the excess of his joy ordered all the prisoners to be released. In December, 1590, it was reported to Akbar that Shahbaz Khan had come from Swad without orders, for which act he was committed to prison for three years.\textsuperscript{36} Observation of Saran in this regard in worth mentioning, ”The regular jails for confining convicts were of two class which, for the sake of convenience, I shall call "A" class and "B" class. The "A" class jails are meant for imprisoning men of high rank, high government officials and princes, that is to say, they were meant for the custody of the royalty and aristocracy. The "B" class jails were meant for the criminals of ordinary status that is for the rank and file. For the royalty and novelty,

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\textsuperscript{34} Jadunath sarkar, K.C. I. E.: "Mughal Administration," M. C. Sarkar Sons Ltd, Calcutta, 1935, p.114
\textsuperscript{35} Ibid, p.177
\textsuperscript{36} Devakar: "Re-Socialization of prisons," Criterian publication, New Delhi, 1989, p.58
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several fortresses situated in different ports of the country were used as a prison for both classes of prisoners, although there were separate apartments for them inside the forts. In short Akbar’s introduction of imprisonment in his administration of criminal justice was a great departure from the Muslim law. It could be looked upon as the seeds of peno-correctional philosophy anywhere in the world at that time. This system of imprisonment found a very favorable climate and flourished under Jahangir under the name “justice” with high sensitivity to humanness, compassion, kindness and noble qualities of head and heart. Jahangir was followed by Shahjahan who himself spent his last eight years at a captive of his son in the Agra fort. At the time of Shahjahan the offenders could not get generosity from the administration and any reform in prison administration. Shahjahan rule was usurped by his son Aurangzeb when crowd gathered near his Red fort to protest against inequity and discrimination, the imperial elephants were ordered out to crush them. In the medieval period, the administration of criminal justice was deteriorated. Where the offender is deprived of his liberty and is physically forced on the point of pain and torture to show obedience to the dictates of the states. Trusts in the

37 Saran, p.; The provisional Government of the Mughals” Asia Publishing house, New Delhi, 1973, p.343
person of the offender disappear. Hardly any faith is left in the power of Dharma or religion, to reclaim the offender to social ways of life.

**LATE MEDIEVAL PERIOD:**

During the late medieval period, the Christian church had granted asylum or sanctuary to fugitives and criminals. These canon courts were traditionally forbidden to shed blood. Therefore they adopted the Christian theme of purification through sufferings. The wrongdoers were subjected to reclusion and even solitary cellular confinement, not as punishment alone, but a way of providing conditions under which puritans would most likely occur.\(^{38}\)

**BRITISH PERIOD:**

In 1600, the Portuguese constructed the church prison at Goa, which consisted of a complex of buildings, each 2 storied high, containing a total of nearly 200 separate cells. A corridor row the length of the buildings with 7 or 8 cells on each side. The cells were about 10 x 10 ft
with a small, barred, unglazed window in the vaulted ceiling, dark, somewhat lower and smaller. At the same time, a company was incorporated in England by the Charter of Queen Elizabeth on Dec. 31, 1600, which is known as East India Company. By 1623, the company had been authorized by the king of England for the purposes of establishing trading in India. According to Aspinal, "Until 1790 the prisons brings a part of the Foujdari Department were under the general management of Naib-Nazim and his subordinates, the judges of the Foujdari Courts. The judges were in the habit of confining accused persons for long period before bringing them to trial, their subordinates, the Thanadars, frequently imprisoned people without any show of legality." 39 The regulation of dec.3, 1790, transformed the management and control of the jails from Indian hands to European hands and the Magistrate was put in-charge of his jail in district. According to Cornwallis, humanity cried for a remedy and he told the Court of Directors in Dec. 1792 that he had resolved to rebuild all the jails in the province, in such a style that health and morals as well as safety of the prisoners would be secured. As a consequence, the

39 Aspinall, "Cornwallis in Bengal, Manchester University Press " 1931, p.115
Regulation IV of 1793 comes into being which provided prison as a system and emerged as the first comprehensive codification of rules for the management of jails, which also specified the objective thereof. Under this East-India Company rule, by this time, there were 143 civil jails, 75 criminal jails and 68 mixed jails with a total accommodation for 75,100 had been built in Bengal, North-West provinces, Madras and Bombay. On the recommendation of Lord Macaulay, the Governor General in council, on Jan. 2, 1836, appointed a committee of which Macaulay was a member. This committee submitted its report in 1837, in which it severely criticized the prison system. R. C. Majumdar and Kalikinkar Dutta, commenting upon the jail system of India during East-India Company (1818-1857) observed: "The early Indian jail system was, like English prototype, insanitary, demoralizing and non-deterrent."40

The earliest attempt for prison reform was made by the Regulation Act, 1834, at the initiative of Macaulay. No change for the better was introduced until the passing of an Act in 1855, which provided for the appointment of Inspector General of prisons in each presidency, and

40 Majumder, R. C. and Dutta, Kalinkar: "British paramountcy and Indian Renaissance; Bhartiya Vidya Bhawan, Bombay, 1970, p.p. 383-84
the passing of Act, vii of 1856, by which "the judges of the sadar Foujdari Adalat were relieved of the charge of jails ".

JAILS DURING BRITISH REGIME TAKE OVER (1858-1947):

The year 1857 witnessed the most floozy and tragic event of Indian History. The revolt of 1857-58 had an impact upon British administration in India. A highly efficient and awake system of government was developing at that time for providing an improved law, order and justice including a well-defined prison structure and policy. During this period Three Law Commissions were appointed towards developing uniform substantive law and legal system in India. In Aug 1860, govt. of India appointed a commission to investigate into the police administration for increasing its efficiency and reducing its high expenditure. The recommendation of the commission was embodied in the police Act, 1861. As regard administration of jails no improvement was effected till the position was reviewed by the second prison committee appointed by Sir Lawrence, on 3rd March, 1864. The Governor General in the Minutes adopted on 3rd March, 1864 recorded some observations regarding state of prison administration during that
period and the Second All India Jail Committee was appointed to minimize the high death rates in Indian prisons and for consideration of related other aspects of jail administration. The committee recorded that during 1854-1864 not less than 46,309 deaths had occurred inside prisons. Twelve years later a conference of experts held in Calcutta in Jan. 1877 where another inquiry into prison administration was initiated. By 1888 five separate enactments had been passed in different states of India governing the management of prison, namely:

(i) An Act for the better control of prisons within the presidency of Bombay (1856),
(ii) An Act for the regulation of jails in the city and presidency of Bombay and Enforcement of Discipline therein (1864),
(iii) An Act for the regulation of jails and enforcement of discipline (Bengal, 1874),
(iv) Madras jails Act,(1869), and 
(v)The Prisons Act, 1870 made by the Governor General in Council.

These Act differed inter se on various important points regarding prison administration. Therefore, the Calcutta conference proposed enactment of a prison law which could secure uniform prison system
throughout the country and as such a Draft Bill was prepared but the matter of passing on legislation was postponed. In 1988-89, the Govt. of India appointed another committee to examine jail administration with a view to examine into the actual carrying out of those principles and to endeavour to produce greatest uniformity on practices throughout India. This committee framed elaborate rules for prison administration and recommended separation of under trial prisoners, classification of prisoners into casual and habitual, building of hospital in each jail and also recommended for proper training of jail officials. On the basis of the recommendations of jail committee of 1888, a consolidated prison Bill was prepared. The committee’s recommendations were specially examined by another conference of experts on jail managements from all provinces which was held at Calcutta in 1892. The Draft prison Bill was circulated to all local governments on March 25, 1893, for their observations and thereafter, it was presented to the governor general of council. Thus come into being the prison Act, 1894, which is still the current law governing the administration of prisons in India.
The next all India committee on prison administration was the Indian jail committee, 1919 of which Sir Alexander G. Cardew was the chairman. The committee assembled in London for its first meeting and visited penal institutions in England, Scotland, U.S.A., Japan, Philippines and Hong Kong and then undertook a tour in India. They submitted a valuable report comprising more than 500 pages which contains information on matters both of principle and practice of prison policy administration and reform. Indian Jails Committee 1919-20 marks the end of an era of administrations of jails by the Government of India, because under the Government of India Act, 1919, the prison administration fell within the powers of provincial Government. After the Government of India Act, 1919, the provincial governments were changed with duties in respects of administration of justice and jails. Pandit Nehru who guided the freedom movement in many ways and himself suffered imprisonment for long wrote in 1934 from Allahabad: "Thus it is obvious that political prisoners must accept progressively bad treatment. In 1930-31 the treatment was worse-off in goal than non-political convicts. Every effort is often made to harass him up to apologizing or at least to made him thoroughly frightened of
prison..."41 After the transfer of the subject of jail to the provincial governments under the 1919 Acts, some committees at the provincial level had examined the jail system in the respective province, such as, Report of the United Province jail Inquiry Committee, 1929. In United provinces after the Government of India Act, 1935 which provided the provincial autonomy, two other Committees were constituted, namely, Experts Committee on jail Reforms, 1938 and United Provinces jail Reforms Committee, 1946.

**POST INDEPENDENCE PERIOD:**

After independence in 1951, the Government of India requested the United Nations, under the Technical Assistance Programme to lend an expert in criminology and correctional administration for training a batch of jail officers and to advice the Government of India for furthering development of correctional administration in India. Dr. Walter C. Reckless, an expert of the U.N.O., arrived in India on Oct, 21, 1951. In his report he recorded the scope of the mission: "Although the mission was designed primarily for the training of jail officers in

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41 Nehru, J.L.: "Prison Land" Appended to Report of All India Committee on jail Reforms, 1980-83
progressive methods of jail administration, a secondary aspect of the mission, namely, the simulation of local and national interest in the newer approaches to the treatment of adult and juvenile offenders has loomed very large.\(^{42}\) With this end in view Dr. Reckless’s report have some valuable recommendations, both national and state level, for improving correctional administration in India, particularly of jail administration, some of which could be summarized as under:

**NATIONAL LEVEL:**

(i) An advisory Bureau of correctional Administration should be established at the central Government immediately so that the states could be helped in the development of their correctional programmes;

(ii) The Government of India should consider the need for specialized technical assistance in this field;

(iii) Fellowships in the correctional field to prepare competent persons to fill higher positions, e.g. Inspector General of prisons and his Deputies;

(iv) The Central Government should encourage the development of

\(^{42}\) Reckless, W.C.: "The crime problem" (1956)
professional conferences of the superior stuff members; and

(v) An All India conference of persons working in the correctional field, both adults and juveniles.

STATE LEVEL:

(i) Establishment of whole time revising boards for selection of prisoners for mature release;

(ii) Revision of jail manuals, with greater responsibility on the superintendent and staff members for constructive programmes for prisoners;

(iii) Superior staff of a jail to have training for their work;

(iv) The larger status should developed integrated departments of correctional administration under one Minister, including jails, Revising Boards, Borstals, Probation and after care;

(v) Professional individualized services and handling of the prisoners by specialists like Supervisor of Education, Vocational Guide, Recreation officer, Clinical psychologists, Therapeutic psychologists, etc.;

(vi) Special institution for trainings.
After the Indian independence, the Constitution of India placed "jail" along with police and law and order in the state list of the 7th schedule. As a result of this, the Union government had literally no responsibility of modernizing of prisons and their administration. The seventh Finance commission in its report in 1978 acknowledged the facts that jails had been neglected for too long. The Government of India called a conference of the Inspector General of prisons at Bombay from 11th to 13th March, 1952 on the recommendations of the conference the Government of India asked the Government of Bombay to set up a committee and take up the revision of jail manual and the Central Act relating to prisons and till 1980 only four states namely Andhra Pradesh, Karnataka, Kerala and Maharashtra had revised their jail manuals in accordance with the Model Prison Manual. The Government of India constituted a working group in 1972 to examine measures for streamlining and improving the jail administration and conditions of living in the prisons. The group emphasized the need of a National Policy of prisons. It also suggested the inclusion of prison administration in the 5th year plan and amendment of the Indian Constitution to include the subject of prisons, and allied institutions in the concurrent lists. With this background and large scale criticism of
the prison administration due to inhuman treatment of the prison personnel and unsatisfactory living conditions and prolonged detention of under trial prisoners the Government of India appointed All India Committee on Jail Reforms in 1980 with Mr. Justice (retired) A.N. Mulla as Chairman. The committee in 1983 submitted a 511 pages report to the Government of India with a strong recommendation of a National Policy in prison.

**MULLA COMMITTEE’S REPORT ON PRISON SYSTEM:**

Mulla committee has recommended a draft national policy on jail reforms. It has recommended the creation of a permanent national body by the Ministry of Home Affairs to be known as "National Commission of Prison ". The objective is to bring about basic uniformity in various states and union Territories regarding the management of prisons, treatment of offenders and to provide a "National policy on prison", some of the more important general recommendations in the national policy draft are as follows--
(i) There shall be in each state and union territory a Department of prison and correctional services dealing with adult and young offenders-their institutional care, treatment, aftercare, probation and other non-institutional services.

(ii) The state shall endeavour to evolve proper mechanism to ensure that no under trial prisoner is unnecessarily detained. This shall be achieved by speeding up trials, simplification of bail procedures and periodic review of cases of under trial prisoners. Under trial prisoners shall, so far as possible, be confined in separate institutions.

(iii) Since it is recognized that imprisonment is not always the best way to meet the objectives of punishment, the Government shall endeavour to provide in law new alternatives to imprisonment such as community service, forfeiture of property, payment of compensation to victims, public censure etc. in addition to the ones already existing, and shall specially ensure that the probation of offenders Act, 1958 is effectively implemented throughout the country.

(iv) Living conditions in every prison and allied institutions shall be compatible with human dignity in all aspect such as accommodation hygiene, sanitation, food, clothing, medical facilities etc. All factors responsible for vitiating the atmosphere of these institutions shall be
identified and dealt with effectively.

(v) Prison service shall be developed as a professional career service. The state shall endeavour to develop a well-organized prison cadre based on appropriate job requirements, sound training and proper promotional avenues. An All India service namely the Indian prison and correctional service shall be constituted to induct better qualified and talented persons at higher echelons. Proper training facilities for prison personal shall be developed at the national, regional and state levels.

(vi) Prisons are hitherto a closed world. It is necessary to open them to some kind of positive and constructive public discernment. Selected eminent public men shall be authorized to visit prisoners and give independent reports on them to appropriate authorities.

(vii) Probation, aftercare, rehabilitation and follow-up of offenders shall form an integral part of the function of the department of prisons and correctional services.

(viii) The development of prisons shall be planned in a systematic manner keeping in view the objectives and goals to be achieved. The progress of implementation of such plans shall be continuously monitored and periodically evaluated.
(ix) The Governments at the centre and in the states shall endeavour to provide adequate resources for the development of prisons and other allied services.

(x) Government recognizes that the process of reformation and rehabilitation of offenders is an integral part of the total process of social reconstruction, and, therefore, the development of prisons shall find a place in the national development plans. After submission of the report there are no visible signs of any follow-up action by the Government. Thereafter, the National Human Rights Commission (NHRC) after acquainted with problem of prisoners in the prisons in India in general took initiation to formulate a national prison law by consolidating the existing prisons law framed during British period more than 200 years back. A draft Bill (Indian prisons Bill, 1995 -proposed) was circulated to all the state Governments in India during Feb.1999 regarding formulation of comprehensive law in prisons. The NHRC had submitted its recommended Bill for adoption by the Government of India which is still under consideration of the Law Ministry. In the light of the historical background of the prison reform movement in India, it may be remarked that while some fragmentary improvements have been made in piecemeal fashion, our penal policy
still remains unchanged to a large extent. Within the prison the atmosphere is not fully oriented to achieve rehabilitation. Education of prisoners remains largely neglected and the reformatory influences are much too weak. The penal system in our country lags far behind that of the advanced countries like England and the United States. If this lag is to be removed the recommendation of the committees appointed of the past must be implemented and the public opinion must be educated regarding penal matters.

INTERNATIONAL PENAL AND PENITENTIARY COMMISSION AND PRISON REFORMS:

The international penal and penitentiary commission made an endeavour in 1929 to work out standard minimum rules for the treatment of the prisoners which could be uniformly applicable throughout the world, but its attempt failed because of the variations in geographical, physical and political conditions of different countries. In 1949 the United Nations convened a meeting of the group of experts to consider the problem of crime prevention and to frame standard minimum rules for this purpose. Consequently, a draft of standard
minimum rules for the treatment of prisoners was submitted by the First Congress on Prevention of Crime and Treatment of Offenders, U.N.O., Geneva on 1955. Modern prison reforms of most of the countries are mainly based on these standard minimum rules. The rules sought to eliminate undue torture and suffering of prisoners and narrowing down the gap between the prison life and the free-life. There was greater emphasis on rehabilitation of the prisoner and training him for his return to normal life in society. The prisoners were to be humanly treated and not brutally punished. The General Assembly of United Nations passed a resolution in Geneva Congress in 1955 providing for convening every 5 years, a world congress on "prevention of crime and treatment of offenders.” Greatly impressed by the recommendations of U.N. congress on crime prevention, many member countries modified their prisons rules with a view to mitigating the rigors of prison life. These changes were directed towards reforming the delinquents and preventing their relapse into crime. The prisoners were to be kept engaged in work suitable to their health any physique and were to receive wages for their labour. They were not to be subjected to unnecessary humiliation but were to be helped in readapting themselves to social life after their release. An
overall assessment of the working of the standard minimum rules was made in the 5th United Nations congress on the "Prevention of crime and the treatment of offenders" held in Geneva in 1975. It was found that not a single country had honestly claimed to have fulfilled these basic requirements. Only 62 countries, which comprised less than half the total number nations, replied to an enquiry on this matter and most of them expressed practical difficulties in adopting the rules. Financial constraints, lack of qualified staff and shortage of accommodation were the main restraints in adopting these rules. There has been a suggestion from certain quarters that offender should be compelled to pay reparation to the victim of his crime and this should also include the court-costs incurred by the latter. But, the success of this proposal is seriously doubted because reparation may be an adequate relief in civil matters but not in criminal cases. The reason being that wealthy discharge by paying off the requisite amount of compensation. That apart, it would provide opportunities for fraud in raising fictitious claims of reparation. Other alternatives suggested as a substitute for imprisonment of offenders are suspending the civil rights such as the right of citizenship, employment, pension etc. or compulsory work in industrial establishments. The Columbian Legal System, however,
considers externment of the offender from his native place for a certain period of time as an adequate alternative for prison system. Norway and Sweden have introduced the system of open camps for prisoners. The Canadian prisoners are permitted to visit their ailing relatives and friends. The prisoners in England can even be at the bed side of their dying relatives. The Japanese prison system considers parole as the most important characteristic of the progressive treatment system which aims at allowing prisoners to receive mitigated treatment and at the same time requires them to discharge their responsibility as a healthy minded citizen.\textsuperscript{43}

\textsuperscript{43} Penal and Correctional Institution in Japan, Ministry of Justice, Japan (1957) p.2526