Conclusion

It will now be convenient to turn to two remaining questions: (a) whether these two institutions described in Dharma Sastras portray an ideal or imaginary system that was actually vogue or represented an actual system which was also practised and (b) whether these two institutions have undergone any change in later period and how far these are a force even now.

With regard to the first question it can be said that the system whose beginning and developments can be traceable from stage to stage was wholly imaginary or ideal. As we have discussed in the foregoing chapters the origin and development of both these institutions are so natural that one is led to believe that they must have been the result of actual experience of day to day life. The rules that are laid down are so detailed and practical that it is but natural to hold that they have grown out of actual experience of the people of the period. It was probably worked out by the Smṛtikāras after minute observation of the behaviour of the people in relation to one another. In order to put a check to these qualities these two institutions were evolved out so that an atmosphere of peaceful co-existence may prevail in the society. The discussion of the theories of both these institutions in the dharma sastras are very minute and detailed and all the different aspects of the institutions are discussed at length.
Further the dharma śāstras as well as the commentaries have been produced from different parts of the country and at different times. Some of these commentaries and nibandhas were even produced under royal patronage or by authors who were themselves associated with public administration as ministers or judges. To name a few we have Āpastambha from Andhra Pradesh, Baudhāyana from South India, Nārada from Nepal, Medhā-tithi from Kashmir. So why should they all have indulged in working out a system which never existed?

The theories and principles of the two institutions which were evolved out by the Smṛtikāras and nibandhakāras were so scientific and exhaustive that the same sort of principles and theories are accepted even in the day at least in the case of the institution of danda. The Indian Penal Code, supplemented by subsequent legislation, has laid down eight kinds of punishment, viz.:

1. Death
2. Transportation
3. Penal Servitude (For Europeans and Americans)
4. Imprisonment
5. Forfeiture of property
6. Fine
7. Whipping
8. Detention in reformatories.

The imprisonment, again, is of three kinds. viz., simple, rigorous and solitary. For clean illustration we put below a table to show the relative position of the institution of danda in the modern period with that of the period prior to codification:
The punishment of admonition which is discussed by the authors of the dharmasastras and nibandhas at length can also be found in the modern period when the judges set free a person after giving him a warning not to do such sort of a job in future. This to an extent is reminiscent of the vak and dhik danda. The main purpose of meting out punishment to the offender is to deter him from committing it in future as also to reform him. Modern Criminology emphasises both these aspects as the necessary purposes.

So we can deduce that the modern criminology which is substantive portion of the codified criminal law in British India has the skeleton of criminal law as propounded by the authors of dharmaśāstras and nibandhas but the principles were given a definite scientific approach and treatment so as to cope with the change of time and attitude towards crime.
On the other hand, the theory of prāyascittha which was also given a definite shape as far back as the period of Manu and yājnavalkya and which was given a detailed treatment in that period lost its impact in the society in the later period more so in the modern period. It is because of the fact that question of morality has lost much of its fervour to appeal the modern mind. The values have changed much since then. The purity of self which was given the utmost importance in that period is not given due importance today. The people around the globe have become materialistic and to live happily and comfortably has become the sole aim of the people. The individual freedom has assumed more importance. Consequently, the institution of prāyascittha has lost much of its force in the complicated modern society specially when profession of a formal religion has become a personal matter and when the society and priests are gradually losing their hold on individuals.

Since danda has become purely a concern of the state and the Indian Penal Code has replaced the rules of dharma śāstras in this respect it is now a subject only of historical interest while prāyascittha cannot be regarded as wholly so. Any individual sinner is free to undergo penance if he feels like doing it. In fact prāyascittha is not entirely lost or spent up force in the Hindu society of today. A Hindu even now cannot go without prāyascittha if he causes the death of a cow or commits similar sinful acts. The village priest and sometimes the whole village decide such matters and prescribe proper penance.
Excommunication is also not entirely a thing of the past. In Assam Vaisnava Satra institutions are the final seat of appeal in such matters. It must, however be admitted that prayascitta as an unavoidable prop of the social integrity and as a safeguard against spiritual impurity has lost much of its strength and its influence is on wane. The modern civilization however has not been able to provide a substitute. The ancients held out reward of heaven for good life and threat of hell for bad deeds. No such inducements or threat work today. Our education also lay little stress on ethical values.

On the other hand we do not have much evidence to show that crime was less prevalent and the people committed sin only very rarely in ancient days. The ancient cores and literature do not reveal a rosy picture although punishment was strict and almost unreasonably severe and expiations prescribed were sufficiently deterrent. Human propensities were equally forceful some thousand years ago as it is today. The ancients held out reward of heaven in curbing them and placed a picture of fearful who hell for those succumb to these evil propensities. Today a life in heaven does not attract the educated persons nor does he tremble at the thought of hell. There cannot be effective compulsion on performing prayascitta for sins committed knowingly or unknowingly. The modern civilization also has not been able to provide a substitute of prayascitta to keep people away from committing sin. What then is the remedy? In the spiritual plane the modern civilization has little to suggest and prayascittas
cannot be replaced. In the social plane the approach to the entire problem is bound to undergo change. The general charge levelled against the Hindus that they are more concerned with things of the other world rather than this no longer holds good. Even in ancient times we have reasons to doubt that our people did not care for mundane pleasures and happiness. Our seers regarded karma as one of the virtual pursuits of human life (purushārtha). In this regard every individual must feel that his happiness ultimately depends on the good and happiness all around him. Whatever he does must not be the cause of unhappiness of others. If the individual holds this view and directs and controls his activities accordingly the society will be comparatively free from crimes and acts commitments of which are regarded as sin will be less frequent if not disappear altogether.

Nevertheless some forms of praṇayāscittas as purifying and educative force will continue to remain due to the very nature of sin. Confession, repentance, fasting, study of scriptures and visiting of sacred places are some of them. Expiation apart, these have their own effect of bringing about mental satisfaction and purification of the soul and as such should be profitably encouraged even today.