**The Sorry Status of Criminal Law and its impact on**

**Prison Reforms**

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The present study would concentrate on some of the aspects of Administration of Justice and look at one of the specific problems in detail. For that purpose, the writer is enquiring as to when and how the Common Law of England was transplanted to India and what were the consequences of such introduction upon the prison reforms in India.

 The sorry status of Criminal Law in India has to be attributed to the introduction of an under-developed Criminal Law system from England. One of the curses India continue to reel under today is what Lord Macaulay warned the British Parliament, while introducing the Criminal Codes that the Indians will never be able to get rid of the legal system now being introduced there. What followed was an imposition of the substance of the British criminal law system, which was most under-developed in Briton itself, especially the area of awarding the punishment of incarceration, which hitherto was unknown to the people with whom these are introduced. This in turn created the necessity of establishing a network of prisons, all in the name of administration of justice, which for the British meant only the ‘King’s peace’.

Almost all the scholars in India agree that from *Vedic* times, through post-*Vedic,* medieval, Muslim, and Maratha periods, India never had a network of prisons in order to house the culprits who were to be punished with the punishment of varying terms of incarceration. The kind of prisons India had in the past, was not for completing the prison sentences, rather they were meant to house ‘a variety of persons including those whose trial was awaited or underway, those undergoing interrogation or torture; those unable to pay fines imposed on them, and those awaiting their sentence or punishment (including death).’ The inmates protected ‘from the cruel and violent actions jailors’; these were more a temporary lock-up, than a permanent jail.[[2]](#footnote-2) These prisoners were often let off as ‘king’s ceremonial display of benevolence’. They were released *en masse* ‘on king’s birth asterism and full moon days’; ‘there would be periodic release of children and old, sick, or helpless persons.’ ‘When a new territory is acquired, a crown prince installed, or a son born to the king, all prisoners are released.’[[3]](#footnote-3)

It was into these sorts of milieu that British criminal law was introduced. It was the company bahadur that wanted to protect their exploitative measures of augmenting revenue from India, by keeping the elements that might impede their pursuit of amassing wealth, by what-so-ever means available. It was imperative for them to remove or weed out all those who would interfere with their ‘free-for-all’ measures adopted for enriching themselves, in order to meet the expenses of lavish payment to the company officers, generous contributions to their motherland, especially after they were forced to surrender 13 American Colonies to George Washington, and also to meet the military expenditure of building up of an army consisting of sepoys and mercenaries. Whether the introduction of such a system was conducive to the Indian soil was not at all a consideration that persuaded them to do so, rather it was the prospect of achieving ‘King’s peace’, by developing a system of administration of justice that suited them to manipulate in a manner they wanted.

The introduction of British criminal law as a part of administration of justice into India, under these circumstances was most inappropriate, and in reality it was indeed a curse for the country that it was almost impossible now to remove it altogether, nor its evil consequences. The implications of these events need a closer look the understand the deep-rooted harm it was inflicting on the country:

**I**

Administration of justice was never the British *forte* in those days, rather it was rather the ‘King’s peace’[[4]](#footnote-4) what they wanted to achieve. This they seem to have been inherited from the **Anglo-Saxon criminal** jurisprudence, which is said to have developed in six stages and later developed into a process of trial comprising Compurgation and Ordeal.[[5]](#footnote-5)

 The *first stage* is more or less the same as the most archaic German procedure, where the underline principle was one of self-help, or self-redress. “The injured party took law in his own hands. He was his own judge and his own avenger. He seized upon the body or the goods of the offender without the intervention of a court. In helping himself to his own share of justice, his sole conception of the wrong done was that it involved himself alone, and hence in dealing with it he assumed and exercised judicial powers in his own case, and was his own executioner.”[[6]](#footnote-6)” “In what we would call the punishment of a crime, or a resort to the civil procedure of distress, he acted without restraint. He was both the judge and the warrior; for in doing that which we moderns would call levying execution, he exacted blood for blood by virtue of the inherent sovereign power vested in himself as an individual.”[[7]](#footnote-7) “Each individual was the protector of his own rights by whatever power he possessed, and was in the same manner the avenger of his own wrongs.”[[8]](#footnote-8)In short, predominance of individual might was the characteristics of this stage.

 In the *second stage*, vengeance still continued as a crude method of executing law, but it was not permitted unless the same was used as by the individual as an instrument of law. “….vengeance in time was used in the sense of an enmity, which caused the injured party to seize, bind and bring his foe before a court; or pursue his suit unrelentingly until outlawry was imposed.”[[9]](#footnote-9) “…vengeance, therefore, could not legally be an act of pure free will, since the avenger could be brought to answer for his deed, and show reason why he slue his foe.”[[10]](#footnote-10)

 In the *third stage,* “the original independence of the individual in the sphere of self-help became gradually controlled by the severe constraint of procedural norms.”[[11]](#footnote-11) The introduction of the matter laying the hands of the injured party; “..when an accuser brought an offender to court, each brough with him such numbers as to ensure a bloody conflict in the effort to enforce or to resist a judgement of outlawry.”[[12]](#footnote-12)

 The *fourth stage* consisted of efforts “to limit vengeance and its consequent feuds by the creation of a system of composition for injuries by pecuniary compensation, and its extension over cases of killing.”[[13]](#footnote-13)

 It was in the *fifth stage* that occurred the classification of offenses deserving of outlawry, and those which did not call such severity. The slighter crimes could always be compounded for money; and graver crimes could not be compounded.[[14]](#footnote-14)

 It was in the *sixth stage* that heinous crimes began to be developed where “the state appeared not as a belligerent against a member of society, but as castigator, and the unlimited right of the community to hunt down and slay the offender was converted into the duty to catch and deliver the offender to the state for punishment by the state. Not unless he resisted capture or escaped from custody could be slain with impunity.”[[15]](#footnote-15)

 Further developments took place by identifying more offences, offences against the Government, against the property etc., and the forms of trial. The only forms trial known to Anglo-Saxon were by Compurgation and the Ordeal. Compurgators are those the accused could bring along in large numbers and swear for the party, Ordeal is an appeal to God’s judgement of fire or water.

The ordeal of fire and hot iron was a religious rite applied to noblemen, thanes, and freemen. These are ‘conducted by priests in a church and the intervention of Providence was assumed to be secured to the innocent.’ “After three days of prayer and fasting, the accused plunged his naked hand, or his arm to the elbow if the offense was grave, into boiling water, and picked up a stone at the bottom of the vessel. The hand or arm was then bound in cloths, which were removed at the end of three days. If there were traces of scald, he was held to be guilty, if none, then Heaven had worked a miracle to declare his innocence.”[[16]](#footnote-16)

The ordeal of water is also a religious affair, administered by priests, and these are administered for ‘husbandmen or persons beneath the rank of freemen’; “the accused, after three days of prayer and fasting, was tied with his thumbs to his toes, and thrown into deep water. If he sank he was innocent; if he floated he was guilty.”[[17]](#footnote-17)

**II**

 From the above one can see that there was **no systematic criminal law code in existence** at the given time that could be recommended for implementation to another country like India which had a rich past with a well-developed system as far as administration of justice is concerned. What is then being transmitted to another Sovereign State was only a part of a primordial system of administration of justice, all in practice and nothing codified or written. This was only the rudiments of the so called ‘Common Law’ in practice for a narrow purpose of achieving ‘King’s peace’. “On the whole, it is clear that we cannot use the term criminal law in a technical sense in the Anglo-Saxon period.”[[18]](#footnote-18) Quoting Holdsworth, the author says: “A primitive system of law has no technical terms. It has rules more or less vague….”[[19]](#footnote-19)Therefore, there was no criminal law and for that matter, the system of administration of justice that could be validly transported to India.

 What is King’s peace, that is supposed to bind the work of the ‘courts’, the ‘hundreds’, the ‘manors’, the ‘counties’, and the work in the presence of the king.[[20]](#footnote-20)”There was no king’s peace in the sense of extending to all men and to every corner of the kingdom….There was king’s peace, the peace of the church, the peace of the sheriff, the peace of the lord, the peace of the household…..The peace of the house holder was personal and individual, and for every fight around his table atonement had to be to him.”[[21]](#footnote-21)These aspects were well illustrated in the following manner: “It suggests to me the action of drops quicksilver upon a table – little by little the smaller drops approach and become merged into the larger ones, until the largest one absorbs all the rest, but as yet the drops were separate and in many places far apart.”[[22]](#footnote-22)Therefore, the system of criminal law now being transposed to India, was not in any way near to the by far advanced system that was prevalent in India at the given time.

**III**

 The transporting of the criminal law practice to India, was **not intended to be administered by any judicial authority,** nor any authority of a Sovereign State, for that matter, rather it was left to a private company, which is bend upon commercially exploiting the country, now being authorized to enforce the said criminal law practice, without any guidelines or prescribing any definite procedure. These merchants would only use them to advance their fortunes further. No judicial element of any sort was visible while implementing them and the procedure could be left to be a ‘free-for-all’ kind, leaving the company bahadur to follow any procedure that could be adopted to suit to advance their commercial interests. As mentioned in the para just above, the ‘King’s peace’ that is sought to be implemented could be very near to the ‘peace of the household’, since it is a private company that is entrusted with the task of implementing the criminal law in India.

 The British Government, in fact, did encourage and solicit in furthering the agenda of the company bahadur. This requires showing some of the illustrating instances; two of the Charters issued by the Crown are worth noting. One of the most interesting charters issued on September 19, 1757 was called, ‘*A Charter or Letters Patents of Grant, to the United Company, of* ***Plunder and Booty’****.* Another one in similar lines was issued on January 14, 1758 and that was also called, ‘*A Charter or Letters Patents of Grant, to the United Company, of* ***Plunder and Booty’****.[[23]](#footnote-23)* Why did the Crown do so? Only because the company was the main feeding hands as far as the then British Government is concerned?

**IV**

 The company was to introduce into India **a most under-developed criminal law system** (as it is still at a developing stage in their own home country) into a country which has a robust system of administration of justice, which does not recognize a distinct role for civil and criminal transgressions, and prevalent for about 20 centuries, i.e., till the advent of Muslim Rule to India. And the intent was only to strengthen the hands of the company bahadur so that they may thrive in trade and commerce by whatever means.

One of the charters issued by the Crown was called, ‘*A Charter or Letters Patents of Commission to the United Company, for trying of Pirates at Fort St. George’.[[24]](#footnote-24)*This Charter was issued upon an application by the board of directors and by the general body of the company jointly to the then King George I, who readily issued this Charter in 1726, even though the practice of deciding disputes of this nature by the company was already in vogue in India This was the first instance that permitted the company to maintain forces on sea and on land for the protection of its commercial ventures in India. By this Charter, the company was authorized to establish a private dispute settlement forum, known as Mayor’s Court, to settle all internal disputes within the company. The legal history writers treat this as the first introduction of ‘Justice and Equity’ into India.

 These permissions were largely misused by the company, by applying the Charter to decide the disputes that arose between the company and the natives of India. A new Charter was therefore issued in 1753 clarifying that the dispute settlement forum established by the company cannot entertain any case from the natives, nor sue them without their consent. In 1783 the then Attorney-General at Madras gave an opinion to the company that it had no right at all to establish courts with jurisdiction over the natives of India at all.[[25]](#footnote-25)

In furtherance to these Charters, company had established what is known as the ‘Mayor’s Court’ first in Madras, and thereafter at Surat, Bombay, and Calcutta. In 1685 when an English prisoner was sent home, a dispatch from England had come to Surat, castigating the company courts and its presiding officers that they have no respect for law, nor for any evidence; the only testimony upon which the convictions were based upon, were *viva voce*![[26]](#footnote-26) In Bombay in 1697, some of the travelers had recommended that the pirates must be tried in India, because ‘the natives in India consider that these marauders to be in league with the company, and think sending them to England for trial a mere pretense’.[[27]](#footnote-27) As early in 1671 the directors had questioned the company why it was not appointing judges well versed in civil laws; they further stated that it was wrong to think that such a person might not obey the orders passed in the interest of the company.

The account from Madras is more vivid:

“…..The city of laws and ordinances

For its own preservation,

And a court kept in form,

The Mayor and Alderman in their gowns,

With maces on the table,

A clerk to keep a register of transactions and cases,

And attorneys and solicitors to plead in form

To the Mayor and Alderman;

***But after all it is but a farce,***

For by experience, I found,

***That a few Pagodas rightly placed,***

***Could turn the scales of justice,***

To which side the Governor pleased,

Without respect to equity or reputation.”

“…..And the Governors dispensing power of

***Nulling all that the courts transacts****,*

Puzzles the most celebrated lawyers there

To find rules in the statute laws.”

“…….That power of executing pirates

Is so strangely stretched that

***If any private trader is injured***

***By the tricks of a governor***

And can find no redress,

If the injured person is so bold

As to talk of Lex Talionis,

***He is infallibly declared a pirate.”****[[28]](#footnote-28)*

Till the grant of *diwani,* the company was merely a trading company. Immediately after the receipt of the grant, the architect, Clive left, and the servants and the officers of the company grew more and more greedy and started indulging in profiteering of the first grade, resorting to all kinds of activities by hook or crook. The company became an agent of the Mughal Emperor, to collect revenue from Bengal, Bihar, and Orissa. In the capacity of Diwan the company not only administered the land revenue, but also controlled and collected customs. The company did not submit to the jurisdiction of the native courts.[[29]](#footnote-29)Some of the residents complained that the country was verging toward its ruin while the English were the de facto administrators.[[30]](#footnote-30) An awful famine struck Bengal in 1770.

The Crown attempted to reign in the company by enacting the Regulating Act of 1773, by which the management and control of the territorial possessions of the company was kept under 24 members of the company constituting it as the board of directors, whose main function was to protect the interests of the company. Any crime and misdemeanor against the inhabitants of India at the instance of the officers and servants of the company were declared as punishable. They would be awarded appropriate punishments, if found guilty of such offences, after a trial in accordance with the English law, by the Court of King’s Bench Division in England. Similarly, punishments could also be awarded against the officers and servants of the company, but these punishments could be imposed only by the Crown, even if the officers and servants of the company defrauded the company, or committed any breach of trust or commit offences of embezzlement while collecting revenue. But the malpractices ended up destroying the wealth of a population, and a widespread and total destruction; the officers could not be restricted and punished, and they went on defrauding the company and or embezzling the revenue income for personal enrichment.

Another attempt was made by the British Parliament to control the company by passing the Pitts India Act of 1784. The company in India was not in any manner intervene in the affairs of the Indian Princely States, since,

*“…to pursue schemes and extension of dominion are measures repugnant to the wish, the honour and policy of this nation.”[[31]](#footnote-31)(*Emphasis added)

Yet the company introduced self-invented doctrines called the doctrine of ‘subsidy alliance’, and doctrine of ‘lapse’ …etc. and annexed vast territories of the Indian Rulers.

The malpractices and mismanagement, fleecing of Indian natives and Princes, violations of most of the provisions of the Regulation Act, all continued unabated. The company was paying 60,000 thousand pounds a year to England; as if in return the company was allowed to indulge in wanton violation of its own byelaws and regulations, most often contradicting, conflicting decisions coming out of its own courts, and anomalies in ‘rule of law’ from region to region.

Charter Act of 1833, was passed and it was directed that all the laws and byelaws and regulations passed by the governor general in council or by any other authorities shall be implemented in India, only with the assent of the British Government. That implied that the company to make rules and byelaws was subject to scrutiny. Contraventions were far exceeding than compliance.

Despite a clear ban on declaring war and entering treaties[[32]](#footnote-32) with any Indian power, several wars were fought. Delhousie had decorated himself with an insignia of winning a bloodier Second Sikh War (1848-49). The years that followed witnessed westernization on a war footing along with the annexation of many of the princely states, including two Maratha States and the Muslim State of Oudh. Just before he left India, he gave *notice to the Mughal Emperor at Delhi that his title to the throne would lapse by his death*[[33]](#footnote-33). The situation was near explosive by the time he left in 1846.

‘There was hardly a year without armed opposition or a decade without a major armed rebellion in one part of the country or the other. From 1763 to 1856, there were more than *forty major rebellions apart from hundreds of minor ones.’[[34]](#footnote-34)*

Thus, it can be seen that, in spite of some half-hearted efforts of the British Govt. to control the company, the introduction of a half cooked criminal law systeminto India, and permitting the company to have rules and regulations to suit their evil endeavours as afar as the hapless country is concerned, the company succeeded in replacing a robust system of administration of justice, prevalent for about 20 centuries, i.e., till the advent of Muslim Rule to India. And the intent of the British Govt. was only to strengthen the hands of the company bahadur so that they may thrive in trade and commerce by whatever means.

**V**

The ‘whatever means,’ included a total subjugation of the native Indians. The East India Company adopted a policy of exploitation, extortion, atrocities, harassment, and total suppression of people’s freedom.[[35]](#footnote-35)The Malers of Rajmahal (1772) were the first to object. This was followed by an organized protest by one Tilka Majhi in Santhal Parganas; another organized protest took place at Tamar in the year 1798 under the leadership of one Bholanath Singh. This protest popularly known as ‘*Chuari Larai’*, was supported by the Mundas and Mankies of the area. It was however, finally suppressed by an expedition led by Lt. Cooper. There were more organized protests in the years, 1789, 1798, 1807, 1817 and 1820 but all of them were suppressed through the company’s intervention. The 1820’s protest was a significant one under the leaderships of Rugdeo Munda and Konda Munda. This was followed by a widespread protest in Sibghbhum by the Hos, popularly known as ‘*Larka Kols.’*[[36]](#footnote-36)It was known as ‘the Kol Rebellion’ which spread among the Mundas and Oraons and other tribal people of Chotanagapur, and eventually among the Bhumijs of Patkum in the east as well as the Cheros and Kharwars of Palamau in the west.

Captain Wilkinson[[37]](#footnote-37) had given order on January 12th, 1832, to the Ramgarh Battalion to march towards Pitoria, and on 18th, he charged against the liberating crowd of tribals, 600 in strength, and killed seven of the leaders, took 30 of them, and routed off the rest. On the same day, the 50th Native Infantry (N.I. for Short) proceeded to Ramgarh via Gaya by way of reinforcement. After their arrival, Wilkinson was able to attack another band of 3000 tribals who were proceeding towards Pitoria. By the end of January, further reinforcements arrived. The first to reach through Tori was a 100 strong company of 2nd N.I. under Captain Malby. His army had killed about 50-60 tribals en-route to Churia; finally, on 4th February he joined Wilkinson at Pitoria.[[38]](#footnote-38) By that time the tribal forces had liberated the entire region, except Pitoria and a few neighboring villages. By this time sixcompanies of 50th N.I. from Banares under Captain Impey, followed by a troop of 3rd Light Cavalry arrived in the area. Next on 11th Feb., came two companies of the 54th N.I., and another, the 34th N.I., a brigade of guns under Col. Bowen.

It was Impey’s force that advanced attack on one Budhu Bhagat of Silligaon who was leading the tribals successfully in the area between Chas and Hazaribagh. It was said to be a battle royal! The eye-witness report was that in the face of bullets they stood firm like a rock! The noting of major Sutherland shows, “The *Bugguts* family and followers stood up like men round their aged chief; but what chance has the bow and arrow against a round of musketry or the Cole battle-axe against the pistol and sabres of our troopers.”[[39]](#footnote-39) Another report on the incident states that the old chief and his brother were beheaded along with a 100 followers. The heads of Budhu Bhagat, his brother and his nephew were brought to the office of the commissioners, ‘how horrid it is to see such sights’.[[40]](#footnote-40) Thereafter the tribals began to surrender through *pahans* and *mahatos.*

The officers of the company themselves were wondering, what exactly were going on. ‘The whole retribution exacted was certainly unjust and oppressive; the military was bent upon *making an example* by creating an unhappy picture of women and children in the midst of dead bodies holding out their infants and screaming’. One of the officers reported:

“…What has been going on against the Coles will bear a strict parallel with some of the persecutions against the Waldenses, or the sufferings of Hugenots in France, after the revocation of the Edict of Nantz, by Louis XIV.”[[41]](#footnote-41)

 Meanwhile, Col. Bowen led an expedition on 10th March against the *Dhangar Kols,* known also as *Larka Kols* of Singhbhum, who were still holding on to their liberated land, cattle, and grain. Along with Col. Malby, hundreds of tribals were brutally massacred, a few of them hanged in public, their lands were restored to the *mahajans* whatever grain and cattle they could carry they did, and the rest were destroyed. Some of the officers believed ‘without the total extermination of the *Kols,* there will be no security for lives and property in the region’. It was reported that continued campaigns were quite unnecessary, but Wilkinson was interested to prolong the attack for the sake of his special salary of Rs. 3,000/-. Bowen himself reported that the country had become a scene of desolation; there was no prospect of any harvest, and famine was impending.[[42]](#footnote-42) A report by *Miles[[43]](#footnote-43)* in India Gazette, should summarize the whole affair:

“What a ridiculous episode it will make

In the history of British India !

How the future historian will laugh

As he tells the tale of the worse than useless Cole hunt !

Oh for the genius of a Gibbon to describe

‘With solemn sneer’ the magnanimous exploit !

“Oh shade of Napolean !

If I knew of any *dak* that could convey a parcel

In safety to thy present habitation in Elysium,

Most assuredly would I send thee

An account of the late events in the perturbed territory,

Which might perchance amuse the idle hour

And make thee ‘wreath a smile’

At the operations of that mighty Indo-British power,

Which it was thy fondest ambition to overthrow.”[[44]](#footnote-44)

Blunt, a member of the governor-general-in-council, in his minutes of April 4, 1832, has referred to the tribal population of the area as ‘ignorant, poor, and uncivilized as they are, they have ever been regarded as a peaceful and inoffensive race of people who possess few wants, and who are patient and unresisting in an extra-ordinary degree’.[[45]](#footnote-45)

**VI**

 What is being introduced to India was an **individual-based** criminal law that was still developing in England, and focus is on the **rights of the individuals**, unmindful of the fact this country had a system of administration of justice based on the obligations of the individuals, and the transgressions of those duties which would make such individuals liable for punishments that would make good the loss to the entire society; and that is necessarily to be repaid by all means, whenever the prescribed stipulations in this regard are violated.

 What was practiced in England in those days were individual based criminal law. As the Charter Act of 1833, permitted the company that the governor general in council or any other authorities could pass any laws, byelaws, and regulations, for implementation in India, the duty cast upon the company was only to safeguard the ‘King’s peace’, which in fact had amounted in England, *inter alia’* to implement the ‘peace of the household’, as seen above; and as far as the company rule in India is concerned, it would only be the ‘peace of the company’. It will protect all the rights of the company and its officers and could validly ignore all the obligations imposed by the British Govt., however half-hearted that be, upon the company.

**VII**

 The worst aspect of all these processes was the introduction of criminal law with an allowance of imposing the **punishment of incarceration**, which was not a common practice at the given time even in England. This practice was extensively used in India, where imposition of such type of punishments were totally unknown; only because that was necessary to protect the interests of the company in India. Imprisonment as a form of punishment was not very much favoured by the ancient law givers. It was considered mild and meant for lesser offences. Prison was mainly a place for pre-trial detention.

The Fifth Rock Edict of Ashoka indicate release of prisoners--particularly the young, old, disabled and the destitute—on King's birthday and on full moon days. Prisoners were also released on the acquisition of a new territory, anointment of the crown prince and birth of a son to the king. All these indicate that there was no permanent prison in ancient India.[[46]](#footnote-46)

Imprisonment was not a rule under the Moghul laws either; it was mostly used as a means of detention of the persons under trial. There were fortresses situated in different parts of the country in which the criminals were detained pending trial and judgment. There used to be three ‘noble prisons or castles' in Moghul India at Gwalior, Rathambore, and Rohtas, Criminals condemned to death were usually sent to Ranthambore where they met their death two months after their arrival. The Gwalior fort was reserved for the "nobles that offend.” To Rohtas were sent those nobles who were condemned to punishment which were in the nature of extradition, from where "very few return home". Princes of Royal Blood were often sent to this place.[[47]](#footnote-47)

Thus, it is clear that there was no regular prison system in ancient or mediaeval India. Prisons mainly served the purpose of detention of accused persons under trial or awaiting the punishment of death; imprisonment was not a form of punishment at all.

**VIII**

 By introducing punishment of **incarceration for a definite period**, necessitated creation of large number of prisons of various descriptions. The Indian Penal Code and the Criminal Procedure Code were enacted in 1859 and 1860 respectively. The Indian Penal Code defined each and every offence and prescribed punishment of incarceration for a definite period, while the Criminal Procedure Code laid down the procedure for investigation of crime and prosecution of the criminals. The Penal Code prescribed imprisonment of various forms and duration as the punishment for most of the offences. Even in England there were no such statutes, while in India it was found that such enactments were very convenient and necessary in order to protect the interests of the company.

Under the East India Company Rule, there were 143 civil jails, 75 criminal jails and 68 mixed jails with a population of 75,100 prisoners. Out of them, 65,700 were engaged in the construction of roads. The prisoners were treated as slave labourers and there was no attempt at improving their living conditions and health and hygiene.[[48]](#footnote-48) The Directors of the Company were unwilling to spend money on the jails, which according to them was a waste of resources.

**IX**

 By and large these jails were **just like dungeons**, but later under pressure from London, some regularities were found to have been added, which required certain element of control over the unbridled exercise of power by the company bahadur. The conditions of these jails were so miserable that it reflected the mind-set of the company that it is a waste of spending money and materials for the welfare of these miserable, and a drain on the financial resources.

After spending considerable number of days in these prisons both Mahatma Gandhi and Pandit Nehru, made various suggestions to improve the conditions of jail. Quoting Lord Lytton on the subject of prisons Mahatma Gandhi wrote in the 'Young India' (of 18-2-26 at page 67):

"Lord Lytton in recently speaking about jails to the Rotarians of Calcutta said that just as we send our sick in body to hospitals and not to jails, so must we provide moral doctors and moral hospitals for the sick in mind, i.e., criminals….”[[49]](#footnote-49)

Commenting further on this speech of Lord Lytton Mahatma Gandhi wrote:

“If as Lord Lytton correctly put it, the punishment must be inflicted purely for protection of society, mere detention should be enough and that too only till the detinues can be fairly presumed to have been cured of their evil habits, or securities are found for their good behaviour. There can be no difficulty about a scientific classification of prisoners, apportionment of work from an humanitarian standpoint, selection of better-class warders, abolition of the system of appointing prisoners as warders, and a host of other changes that one might easily suggest."[[50]](#footnote-50)

Similarly. Pandit Nehru observed in Prison Lands:

“Any reform must be based on the idea that a prisoner is not punished but reformed and made into a good citizen. If this object is once accepted, it would result in a complete overhauling of the prison system. At present few prison officials have even heard of such a notion.[[51]](#footnote-51)

There is perhaps no stronger sentiment expressed anywhere on the question of prison reforms then. Pandit Nehru did not think that the reforms required great expenditure and the State cannot afford them. On the other hand, he wanted the **jails to be converted into centres of profit.**

**X**

 Every attempt to reform this still-born criminal law system introduced, **even after Independence**, it goes without saying that they all are gone as futile exercises. The struggle that is going on to get better living conditions to these wretched ones, without looking into the basic flaw in the venture, and without searching whether there are any alternative to these ill-grafted evils, are not going to be fructified.

Yet the Free India did make every effort to improve the system; it appointed a Review Committees to find remedies on the problems of ever rising number of undertrial prisoners who were crowding the prisons. There were concerted efforts both by the Government and the judiciary to get the deserving ones get out of the jails on bail; they also made all efforts to improve the procedure of investigations and enquiry by imposing appropriate limitations by law. But what they could not achieve is to render the prisons to form part of the criminal justice system and the functioning of other branches of the system, such as the police, the prosecution, the judiciary etc., function in coordination with each other. The result was **geometrical increase** in the number of prisons, all crowded with various types of prisoners.

By 2018 there were 1,339 prisons in the country, out of which were 628 Sub Jails, 404 District Jails, 144 Central Jails, 77 Open Jails, 41 Special Jails, 24 Woman Jails, 19 Borstal School and 2, other than the above Jails.[[52]](#footnote-52) (Tamil Nadu had 138 jails which included 96 Sub-jails, Rajasthan had130, and Madhya Pradesh 130. Delhi has the highest number of Central jails (14) in the country.

The actual Capacity of these 1,339 prisons was 3,96,223 persons, while they had 4,66,084 occupants, out of which 4,46,842 were male prisoners and 19,242 females. Out of these 1,732 women prisoners had with them 1,999 children. Some 1,376 were undertrial prisoners who were accompanied by 1,590 children, while the 355 convicted women prisoners were accompanied by 408 children.

During the year 2018, a total of 18,47,258 inmates were admitted in various jails out of which 1,39,488 were convicts, 3,23,537 undertrial prisoners, 2,384 detinues, and 5,168 foreign prisoners. Uttar Pradesh had the greatest number of convicts, i.e., 28,660, Madhya Pradesh had 18,626, and Maharashtra had 8,908 convicts. Among the 1,39,488 convicts, 270 were civil convicts.

There were 402 prisoners, who had been sentenced for Capital Punishment, 74,873 were sentenced to Life Imprisonment, 21,028 were sentenced for 10 -13 years of imprisonments and 10,817 were sentenced for 7- 9 years of imprisonments.

Among the 3,23,537 undertrial prisoners, the highest number of undertrial prisoners were lodged in District Jails (1,65,988 undertrials). Uttar Pradesh had the greatest number of undertrials, i.e., 75,206, Bihar had 31,488 and Maharashtra, 26,898 undertrials. Among the undertrial prisoners due to offences against woman, the highest number of inmates were undertrial for rape i.e., 32,761, and some 14,144 were undertrial for dowry death cases.

Among the foreign Undertrials the highest number of foreign undertrials were from Bangladesh, i.e., 1,044, from Nigeria 489 and from Nepal 459. West Bengal has reported the highest number of foreign-undertrial lodged in their jails, i.e., 576 followed by Maharashtra with 508 and Delhi with 306.

Tamil Nadu had the highest number of detinues (741) in the country followed by Gujarat (452) and Telangana (292).The number of deathsin prisons reported were 1,845 out of which 1,639 were natural deaths 1,639, and 149 were un-natural deaths (incl. suicide). A total of 673 prisoners escaped from prisons out of which 113 from the police custody and 560 from judicial custody. A total of 133 escapees were re-arrested during 2018. There were 30 incidences of jail break and 106 instances of clashes/group clashes occurred during 2018.

All these were in fact becoming a **burden on the exchequer**. The total expenditure for the financial year 2018-19 was Rs. 5,283.7 Crore, out of which Rs. 1,776.074 Crore was spent on inmates: the break-up would be, Rs. 891.232 Crore on Food, Rs. 76.487 Crore on Medical matters, Rs. 24.664 Crore on welfare activities, Rs. 24.692 Crore on clothing, and Rs. 8.139 Crore on vocational/ educational trainings. The total value of goods produced by inmates during 2018-19, Rs. 463.493 Crore.[[53]](#footnote-53)

**XI**

The writer was wondering whether there is any different way of looking at our system of Administration of Justice and find out if there is any remedy for the ills of the past. The scholar firmly believes that we may be able to find some solution if more and more studies on *Rajaniti* of ancient India is undertaken. For that purpose, a comprehensive study of *Rajasastra* and *Vyavahara* system of *Dharmasastra* traditions should be the first target. This should cover an over-all search among the major *Dharmasutra* literature, such as that of *Gautama, Baudhayana, Apasthambha, Vasishta, Vishnu,* etc. the *Shanti Parva* of *Mahabharata,* and *Yajnavalkya Smriti.[[54]](#footnote-54)* This should be followed by a thorough study of the *Danda-niti, Raja-niti* and *Rajya-niti* of the *Arthasastra* traditions as well.

By doing so we may be able, the writer is hopeful from the experience he has gained so far, to get some new lights on the system of administration of justice that was prevalent in ancient India, where the contours of civil and criminal divisions could be found to disappear, where respect for Nature (*Prakriti),* ideas how to live with Nature, and never attempt to challenge Nature, were prominent. We may hopefully find that the theory of punishment could be made to function with a predominant intent to enrich the country’s treasury, rather than a financial burden on it.

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1. ⃰ The writer was the former Vice Chancellor of Hidayatullah National Law University, Raipur (C.G.) and just completed a Major Research Project with UGC; he was selected to be Professor Emeritus (UGC), stationed at NLSIU, Bangalore. He has just now completed another Major Research Project with ICSSR on “Origins of Indian Constitutionalism: An Enquiry whether the *Arthasastra* of *Kautilya* was the First Written Constitution of India.” [↑](#footnote-ref-1)
2. Upinder Singh, *Political Violence in Ancient India,* Harvard University Press, Cambridge, Massachusetts, London, England, 2017, P.118-9. [↑](#footnote-ref-2)
3. Ibid. [↑](#footnote-ref-3)
4. What is this so called ‘Kings peace’ P. 661 [↑](#footnote-ref-4)
5. Hampton L. Carson, *Sketch of the Early Development of English Criminal Law as Displayed in Anglo-Saxon Law*, 6 J. Am. Inst. Crim. L. & Criminology 648 (May 1915 to March 1916). It is declared therein: “This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.” This Article explains, how the so-called Anglo-Saxon criminal law was developed in six stages, (vide, pages 648-653) from 600 AD, and seems to have continued to be in force even in 1833, and later as rudiments of Common Law in England. Thereafter it deals with the growth of criminal law with respect to developments of various offences in general (pages 654-656), offences against the Government (pages 655-656), offences against property (pages 656-657), special offences (pages 657-658), development of courts (pages 658-659), developments of trial procedure (pages 659-660), and development of the type of punishments (P. 660). The present writer has relied on these developments of Common Law in these aspects and is indebted to the author. [↑](#footnote-ref-5)
6. Hampton L. Carson, Op. Cit. at P. 649. [↑](#footnote-ref-6)
7. Ibid. [↑](#footnote-ref-7)
8. Ibid. [↑](#footnote-ref-8)
9. Hampton L. Carson, Op. Cit. at P. 650. [↑](#footnote-ref-9)
10. Ibid. [↑](#footnote-ref-10)
11. P. 651. [↑](#footnote-ref-11)
12. Ibid. [↑](#footnote-ref-12)
13. Ibid*. ‘Wergild’* was the price or value of the man killed, and must be paid to the ; ‘*bote’* was the compensation to the injured party for the wrong sustained; ‘*wite*’ was the penalty or the fine due to the king in his public capacity. Vide P. 657. [↑](#footnote-ref-13)
14. Hampton L. Carson, Op. Cit. at P. 652. [↑](#footnote-ref-14)
15. Hampton L. Carson, Op. Cit. at P. 652-3. [↑](#footnote-ref-15)
16. Hampton L. Carson, Op. Cit. at Pages 659-660. [↑](#footnote-ref-16)
17. Ibid. [↑](#footnote-ref-17)
18. Hampton L. Carson, Op. Cit. at P. 661. [↑](#footnote-ref-18)
19. Ibid [↑](#footnote-ref-19)
20. Ibid. [↑](#footnote-ref-20)
21. Ibid. [↑](#footnote-ref-21)
22. Ibid. [↑](#footnote-ref-22)
23. Both these charters issued prior to the Regulating Act, were given in the Appendices to Dunning, William Archbold, *The History of Political Theories, Ancient and Medieval,* Columbia University, 1901, Indian Reprint from Central Book Depot, Allahabad.1964, at pages 259 to 262. [↑](#footnote-ref-23)
24. This was issued prior to the Regulating Act, and it is given in the Appendices to Archbold, Op. Cit., at pages 259 to 262. [↑](#footnote-ref-24)
25. Taken from Archbold, Op. Cit. at pages 32-33. [↑](#footnote-ref-25)
26. Id., Op. Cit. at page 36. [↑](#footnote-ref-26)
27. Id., Op. Cit. at page 37. [↑](#footnote-ref-27)
28. The ‘Emphasis’are added. The above account, originally written in prose is Alexander Hamilton’s *New Account of the East Indies,* published in 1927, available at Archbold, Op. Cit. at page, 38. The present writer found when arranged in the form a poetry, without any changes, it reads better; and he would recommend it to be incorporated into the text books on English language for enlightening the young mind, both on the language and history with a bit of nationalism. [↑](#footnote-ref-28)
29. Arbhbold Op. Cit. at page 48. [↑](#footnote-ref-29)
30. Quoted in Op. Cit. page, 49. [↑](#footnote-ref-30)
31. Keith, ‘*Speeches and Documents of India Policy*’, page 111, quoted in S.K.Puri, Op. Cit., pages 199-200. [↑](#footnote-ref-31)
32. Treaty is universally considered a sovereign function and no private person, or a company meddle with such functions. [↑](#footnote-ref-32)
33. Id. At page 141. [↑](#footnote-ref-33)
34. Cfr. Chandra, Bipin, & four others, “India’s Struggle for Independence” Penguin Books, (1989), at page 43. [↑](#footnote-ref-34)
35. Some of these given in detail in a recently published work of William Dalrymple, ‘*The Anarchy: The East India Company, Corporate Violence, and the Pillage of an Empire’* Bloomsbury Publishing, London, (2019). [↑](#footnote-ref-35)
36. Means ‘Rebellious Hos’. [↑](#footnote-ref-36)
37. He was the political agent to governor-general and commandant of the Ramgarh battalion. See also note 34 supra. [↑](#footnote-ref-37)
38. Joint commissioner’s report of 16th Nov. 1832 referred in J.C.J ha, Op. Cit. page 95. [↑](#footnote-ref-38)
39. Quoted from J.C. Jha, Op. Cit. page 99-100. [↑](#footnote-ref-39)
40. Ibid., at page, 100. [↑](#footnote-ref-40)
41. Extract from a letter to John Bull, quoted in J.C. Jha, Op. Cit. page 106. [↑](#footnote-ref-41)
42. For detailed description of these events pl. see, J.C. Jha, Op. Cit. page 107-117. [↑](#footnote-ref-42)
43. It was not the real name, but a penname. [↑](#footnote-ref-43)
44. Quoted from J.C. Jha, Op. Cit. page 118. The text was in prose, since it sounds so poetic, liberty is taken to change the format as a poem. [↑](#footnote-ref-44)
45. This is taken from Fidelis De Sa, “Crisis in Chotanagapur”, Bangalore, 1975, at page, 47-48. The text of Mr. Blunt’s Report in full is found S.C. Roy, “Munda and their Country” (1912). [↑](#footnote-ref-45)
46. R.R. Dikshitar, The Mauryan Polity, extracted from 1ndra J. Singh, *Indian Prison-A sociological Enquiry*-Concept Publishing Company, Delhi, 1979, P.21. [↑](#footnote-ref-46)
47. A Mohanty & N,Hazary, IndianPrison System, Ashish Publishing House, 1990, P.22 [↑](#footnote-ref-47)
48. Vide, Report of the Indian Jails Committee, 1919-20 Government Central Press, Shimla, 1920, P.29 [↑](#footnote-ref-48)
49. Mulla Committee Report, Para 43. Justice A. N. Mulla Committee was instituted in 1980, and it submitted its report in 1983. [↑](#footnote-ref-49)
50. Para 44. [↑](#footnote-ref-50)
51. Para 45. [↑](#footnote-ref-51)
52. All the statistics given in this paragraph and the following, are taken from the Executive Summary attached to the National Crime Records Bureau (NCRB), 24th edition of the annual publication ‘Prison Statistics India 2018’ (PSI 2018); a Govt of India Publication. [↑](#footnote-ref-52)
53. Ibid. [↑](#footnote-ref-53)
54. Incidentally, the scholar’s wife had her Ph.D. (Sanskrit) thesis on *Yajnavalkya,* which she did after the marriage. [↑](#footnote-ref-54)