

## PRISONS IN COLONIAL INDIA: A HISTORIOGRAPHICAL ANALYSIS

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This article is an attempt to understand various historical studies about penology, particularly in the colonial Indian context. The study will trace the policies of British colonialism in the implementation of the modern penal system in India. By analyzing various historical studies on colonial law and prison, we would like to bring here the colonial notions of criminality regarding the indigenous communities and the way British colonialism operated the repressive state apparatuses in the name of the Rule of law.

The idea of prison or Jail in the modern period marked a great change in the notion of punishment. The origin of the modern disciplinary system can be traced back to the period of 'Enlightened Europe'. According to Michael Foucault, the principles of modern penology in the West were formed at a moment of transformation which turned the codes determining the pre-modern socio-economic hierarchies ineffective. At this transformational historical moment, the newly emerged power elites, economically highly successful within the capitalistic mode of production and consumption that they had helped nail into place, wanted more effective control over the subordinate laboring populations within their own societies. The new system aimed to create 'docile bodies' that could be subjugated, used, transformed, and improved for the sake of the power-wielding sections. The expansion of Western ideas of governance and control with the spread of colonialism influenced and transformed the socio-political systemic structures of colonized countries like India.

Pre-modern punishment was mainly centered on the physical body of a human being. Foucault in his brilliant work '*Discipline and Punish*' explains the way pre-modern punishment was operated. The public spectacles functioned in pre-modern Europe that visualized the punishment to the public and created fear upon them about the authority. This visibility of punishment was a very important mechanism for the power elite to demonstrate its strength and reach before the people. In this method of punishment, the body of a convicted used to inflict pain through various kinds of torture.

The whole logic and method of punishment was changed by the birth of the modern prison system, a result of the shift in the logic of power in the advanced Nation-states of the West in the eighteenth century, as Michel Foucault and later, Michael Ignatieff, have demonstrated through their works. It was a shift from the period of public spectacles of the tortured body of the individual deemed to have committed a crime to the period of disciplining, incarceration, and surveillance of those convicted of crimes. Newly codified rules and regulations aimed at control over punctuality, posture, bodily functions, concentration, and

sublimation of immediate desires and emotions. ‘Panopticon’, an architectural model for penal institutions, as imagined by Jeremy Bentham in 1791, became the definitive statement for the new concept of penology. The ‘Panopticon’ made it possible for the prison authorities to subject all the jail inmates to psychological fear in anticipating the constant “gaze” of the authorities, thereby inducing a rigid adherence to the rules of the prisons.

Michael Ignatieff’s *‘A Just Measure of Pain: The Penitentiary in the Industrial Revolution 1750-1850’* also discusses the emergence of the penitentiary in particular socio-economic circumstances of the nineteenth century. He characterized the prison which emerged during the industrial revolution as a weapon of class conflict or an instrument of social control by the combined efforts of the philanthropic and administrative reformers. This study focuses on the emergence of penitentiaries in England from 1770 to 1840. Like Foucault, he also differentiates the prison as a new mechanism of reform and punishment, unlike the earlier repressive public theatres for the infliction of pain over the body. According to him, the penitentiary came to be the bearer of reformer’s hopes for a punishment capable of reconciling deterrence and reform, terror, and humanity. Ignatieff’s study gives more stress on the religious and philanthropic impulses behind the institutional reform of the nineteenth century. While Foucault’s account of disciplinary ideology retains the secular rationalist tone of its initial enlightenment formulation, Ignatieff stresses the fusion of the secular rationalism embodied in Benthamism with the Quakers and Evangelical language of conscience epitomized by Elizabeth Fry. The economic crisis that happened in England from 1815 to 1848 created many tensions in the society by a large number of paupers, unemployed youths, etc. This led to massive imprisonment there. The discussions on the effective control and use of these classes rested on the individual’s reform in the prison by certain codes of behaviours and daily routines. The crucial task behind the reform of character was to persuade the poor to accept the benevolent intention behind institutional deprivations. Like Foucault, Ignatieff considers the emergence of prison as a state mechanism for effective control and use of the population which satisfied the motives of the newly emerged capitalists and the philanthropists.

With the establishment of colonial power, the modern concepts like the rule of law and institutions like prisons came to India. In India, the company government took different kinds of strategies to firmly establish its control over the population. Unlike the development of modern disciplinary systems in the specific socio-economic situation in the West during the nineteenth century in the background of the Industrial Revolution, in the Indian context these structural modernities imperative for a modern state were imported without adequate socio-economic developments from the West, and therefore the historical processes that had accompanied such developments in the West were missing in the Indian context. The prisons in the colonial Indian context thus developed a contradictory development pattern as opposed to the West, due to the colonial logic of coercion and force of whole communities for better control of the subjugated peoples.

Various scholars have clearly explained the way British colonial power operated their legal and penal systems in India. Instead of looking its development in a single way of Nationalistic or anti-colonial approach, the new studies started a more critical and theoretical approach by putting those colonial power apparatuses within the social reality of India. Jorg Fisch’s work *‘Cheap lives and Dear limbs: The British transformation of the Bengal Criminal law, 1769-1817’* analyzes the changes that happened in criminal law during

the colonial period, which enabled the colonial government to establish greater control over the ruled. According to him, the colonial legislation towards a new system of criminal justice was based on the Western notions of reason, humanity, justice, habit, private/public, etc. At the same time, these notions were tied to the colonial logic of governance. Author argues that, “the introduction of European law could either mean the adoption of the code of the mother country or the development of new law, adopted to the special purpose of colonial rule, but built on European principles, on European thoughts.” He examines the debates regarding the formulation of a new legal system, especially criminal justice under the colonial government. There were relativistic and natural law approaches. All viewpoints were towards a synthesis of both western and indigenous laws in which both the colonial purposes and Western notions of reason, humanity, justice, etc were combined in a satisfactory manner.

Radhika singha analyzes the way the colonial legal system was developed during the earlier phase of colonialism. She also tells about the penal reform that happened in 1830's. This study's focus is on the tactical policies of the company government towards the formulation of a new legality in India. Author argues that, lawmaking is treated as a cultural enterprise in which the colonial state struggled to draw upon existing normative codes- of rule, rank, status, and gender- even as it also reshaped them to a different political economy with a more exclusive definition of sovereign right. There was neither a complete establishment of the English 'Rule of Law' nor an unchanging situation of indigenous law tradition. The company government intended to replace indigenous legal practice in a gradual way by formulating a normative legal system in the early period. Through the negotiation with the existing indigenous system company aimed to reorder the law and civil authority and to establish circuits of communication with the ruled. The company's new legal definition and negotiations provided an indivisible sovereignty that claimed equal abstract and universal subjecthood.

The discussions on penal reform that happened in the 1830's were a result of the ending of the company's trading monopoly and the closer association of its government with the parliament. Company's penal reform policies during 1830's were bounded with the basic objectives of making a standardized prison treatment to reorder the identity of the offender in a more uniform and standardized way of punishment which resulted in the recommendations for reducing the role of public punishments like outdoor labour and to give closer attention to the jail regime. Collection of statistical data about the prisoners, introduction of more rigid classification and separation of prisoners according to age, sex, etc, and uniform regulations in the daily routines of the prisoners like the common kitchen and common messing were important penal reform agendas. These debates and recommendations aimed to form a more systematic prison system that functions as an institution of effective punishment to offenders. This work clearly depicts the ambitions and form of power operation by colonialism in a totally unfamiliar social condition.

David Arnold's article '*Colonial Prison: Power, Knowledge and Penology in Nineteenth Century India*' analyzed the contradictory nature of the colonial prison system in India from its modern western logic. According to him, Colonial prisons in India were not successful in the making of 'docile bodies' as told by Michael Foucault due to the caste conflict between the inmates of Indian Jails. Common kitchen and dining regardless of prisoner's caste needs was most important provision that led to several protests and hunger strikes, assaults, and eventually riots inside the prison. As disciplinary institutions based on modern western

principles became challenging in India during this period. Thus, the colonial government formulated new strategies by internalizing the contradictions and stratifications of the Indian society.

With the emergence of nationalism, the colonial penal discourses got new dimensions. The newly emerged middle-class sections of mid-19<sup>th</sup> century, whose identity as a modern man combined with their traditional caste identities and notions, started new negotiations with the colonial governance and its penal system. These negotiations resulted in the construction of new definitions for the colonial legal subjects based on their social and cultural backgrounds. Anindita Mukhopadhyay's study *'Behind the Mask: The Cultural Definition of the Legal Subjects in Colonial Bengal (1775- 1911)'* clearly traces the formulation of new cultural definitions of legal subjects in colonial Bengal during nineteenth century. The new legal identity asserted by the educated elite sections of Bengal especially *Bhadraloks* tried to differentiate themselves from the identity of lower castes or *Chotoloks* in colonial legal system.

The newly developed middle-class understanding of legality came in its expression in the colonial power apparatuses like criminal courts and jails. The educated elites of colonial India were highly influenced by the Rule of Law by 1830's and they were ready to accept its principles of governance. At the same time, they realized that, under the Rule of Law the two arms of power, criminal court and jail could easily breach their newly found identities of respectable and aware legal subjects. This forced them to do certain negotiations with the government for special privileges unlike the lower castes. The upper caste and newly emerged educated middle class sections wanted special treatment inside the prison that separating them from lower castes prisoners. The total results of these negotiations were the construction of certain binaries like 'good' and 'bad', 'criminal' and 'noncriminal' within the colonial framework of Rule of Law that was closely tied to the indigenous socio-cultural hierarchies.

New policies and negotiations started in the prison and criminality discourses with the emergence of the National movement. *'Political prisoners in India'* written by Ujjwal Kumar Singh discusses the formation of a separate category of political prisoners during the period of Indian National movement. The book analyzes the way in which a self-portrayed political and legal identity of the 'political prisoner' was derived and how this was influenced in the colonial penal system. By the early decades of 20<sup>th</sup> century, "the 'prisoner-criminal' image, counterpoised frequently with the 'prisoner-citizen' image, owes much of its origin to the Nationalist construction of the category 'political prisoner' as opposed to the ordinary/ criminal prisoner." The Nationalist assertion of political prisoner identity inside the jail was aroused during the period of Gandhian Nationalist movements of 1920's and 1930's. This period witnessed a political culture of 'jail-going' in which the prison became largely a politicized space. Nationalist prisoners demanded their status as 'political prisoners' that separate them from ordinary prisoners and provide certain privileges in Jails.

The assertion of 'political prisoner' status by the Nationalist prisoners had different intentions. According to Ujjwal Kumar Singh, by demanding political status the Nationalists presented themselves as equal to and the same as the colonizers. The Nationalist language of equality confronted the notion of colonial difference which validated the exceptional nature of colonial rule. The assertion of political prisoner identity was also intended to differentiate the Nationalist prisoners from other prisoners who were imprisoned for participating in various popular movements. It was evident in the policy of Colonial government that excluded the

‘revolutionary terrorists’ and communists from this ‘hallowed’ category by branding their activities as ‘conspiratorial’ and ‘dangerous’. Apart to the revolutionary movements, there were struggles led by various social sections like lower castes, peasants and tribes against the hegemonies of indigenous elites. The status of political prisoners asserted by the Nationalist prisoners also wanted to separate themselves from the prisoners who were imprisoned for taking part in these movements.

There are a few other brilliant works that expose the colonial agendas and its consequences by establishing a modern penal system in India. Anand. A. Yang’s ‘Disciplining Natives: Prison and Prisoners in Early Nineteenth-century India’, ‘Legible Bodies: Race, Criminality, and Colonialism in South Asia’, ‘The Indian Uprising of 1857-8: Prisons, Prisoners and Rebellion’ by Clare Anderson, ‘Disciplined Natives: Race, Freedom and Confinement in Colonial India’ by Satadru Sen are prominent among them. All of the above analysed writings open the door to the critical understanding of the colonial state apparatuses in a non-linear or unconventional way, unlike the colonial or nationalist perspectives.

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