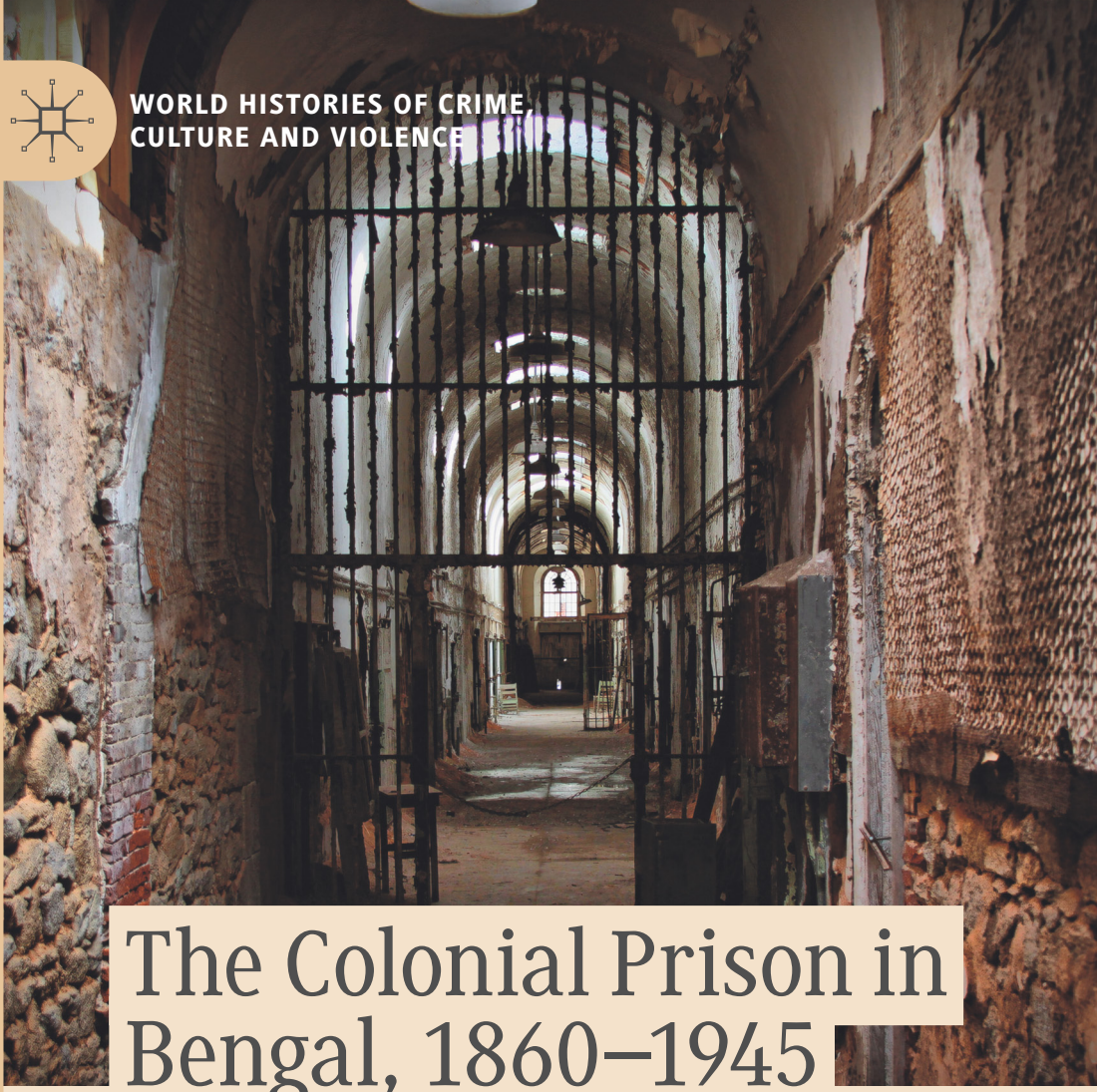

WORLD HISTORIES OF CRIME, CULTURE AND VIOLENCE

The Colonial Prison in Bengal, 1860–1945

History, Governmentality, and Colonial Experiences in Literary Writings

Animesh Bag

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CHAPTER 1

Introduction: History and the Development of the Colonial Prison in Bengal

A man accused one Sancar of larceny, who pleaded not guilty, and as the theft could not be proved by legal evidence, the trial by ordeal was offered to the appellee, and accepted by him; and after obtaining permission from the Honourable Company's government, it was conducted as follows ... The Pandits of the court and the city having worshiped the god of knowledge, and presented their oblation of clarified butter to the fire, formed nine circles of cow dung on the ground; and having bathed the appellee in the Ganges, brought him with his clothes wet, when, to remove all suspicion of deceit, they washed his hands with pure water; then having written a state of the case, and the words of the Muntra, on a palmyra leaf, they tied it on its head; and put into his hands, which they opened and joined together, seven leaves of pippal, seven of jend, seven blades of darbha grass, a few flowers, and some barely moistened with curds, which they fastened with seven threads of raw white cotton. After this, they made the ball red hot, taking it up with tongs, placed in his hands: he walked with it, step by step, the space of three *gaz* and a half, through each of the seven intermediate rings, and threw the ball in the ninth, where it burnt the grass that had been left in it. He next, to prove his veracity, rubbed some rice in the husk between his hands, which were afterwards examined, and were so far being burned, that not even a blister was raised on either of them. Since it is the nature of the fire to burn, the officers of the court, peoples of Benares, near five hundred of whom attended the

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ceremony, were astonished at the event; and this well-wisher to mankind was perfectly amazed.[1]

Prison Under the Company's Administration

Maria Graham in her travelogue, *Letters on India* (1814) while referring to some of the painful judicial practices both in ancient India and under the regime of East India Company (hereafter the Company) in the early nineteenth century, mentioned this trial by a red-hot ball that took place in Benares (at present Varanasi) in 1783. With the presence of almost five hundred people, as she observed, the ritualistic trial was organised, maintaining Hindu rites. More importantly, everything was approved by the Company's government. This instance of convicting in open public gatherings suggests how law and judiciary were a compromise of *dharmic* (religious) rituals and governmental order in late eighteenth-century India. Even after conviction, immediate punishments, mostly corporeal including amputation, impalement, and flogging were sanctioned to ordinary criminals like thieves, burglars, dacoits, and suchlike in public forums. "Dungeons were reserved for political offenders (e.g., those accused or suspected of conspiring against the royalty)."[2] Historically, carceral imprisonment was not used as the chief punitive method in colonial India including Bengal; often rooms in a remote fort, castle, and palace were used to detain convicts before trial, but it was hardly used for imprisonment.

In colonial Bengal, the Company started implementing its laws for managing civil and criminal proceedings before it received the full legislative authority from the Parliament in 1797. The Company established two major courts in Bengal in their 1772 legal framework, *Diwani Sadar Adalat* for civil purposes and *Nizamat Sadar Adalat* for criminal cases. Each district then had two additional courts: a *Mofussil Diwani Adalat* for addressing civil disputes and a *Faujdar Adalat* for dealing with criminal offences.[3] While it is evident that in civil courts, Europeans such

[1] Maria Graham, *Letters on India* (London: Longman Hurst Press, 1814), 102–104.

[2] Sumanta Banerjee, *The Wicked City: Crime and Punishment in Colonial Calcutta* (New Delhi: Orient Blackswan, 2009), 546–47.

[3] Nimai Majumder, *Justice and Police in Bengal 1765–1793* (Calcutta: Firma K. L. Mukhopadhyay, 1960), 97.

as the Company officials, council members, and other British employees were given preference to preside, the criminal courts continued to follow the Nawabi order, which was primarily maintained by Muslim authorities like Qazis and Muftis. With the adoption of the Cornwallis Code in 1793, colonial India took its first substantial step towards establishing formal laws. The Governor General of Bengal, Warren Hastings (1772–1785), however, laid the groundwork for colonial India's legal system. Hastings proposed a compilation of ancient Indian scripts and made them available to the English judges to increase the Company's dominance over Indians. These texts were first translated into Persian from Sanskrit, which were later translated in 1776 by Nathaniel Brassey Halhed into English. Halhed observes that the "materials may be collected towards the legal accomplishment of a new system of government of Bengal, wherein the British laws may, in some degree, be softened and tempered by a moderate attention…."[4] This orientalist approach towards learning about a diverse, foreign nation like India provided the British a deceiving sense of authority, at least on the Enlightenment reasoning that calls for a guarantee of the "gain of humanity," in Metcalf's words.[5]

Notably, the Company had not fundamentally altered much of the *nizamat* or criminal legislation that was already in place. It "emerged from the late eighteenth century as the jointly authored product of officials of the East India Company and of their chosen and interested Indian informants."[6] Since they were more concerned with the civil system, which was directly connected to revenue extraction, the prior legal system was partially corrected. The legislation during the Company era could be viewed as "a colonial construction (that) meant to accommodate the economic interests and imperial designs of the new rulers in Bengal."[7]

& B. N. Pandey, *The Introduction of English Law into India: The Career of Elijah Impey in Bengal, 1774–1783* (London: Asia Publication House, 1967), 25.

[4] Nathaniel Brassey Halhed and Robert Coleman Hall Brock, *A Code of Gentoo Laws, or Ordinations of the Pundits* (London, 1776), XI.

[5] Thomas R Metcalf, *The Ideologies of the Ra,* (Cambridge: Cambridge University Press, 2008), 10.

[6] Rosalind O' Hanlon and David Washbrook, "Histories in Transition: Approaches to the Study of Colonialism and Culture in India," *History Workshop Journal* 32.1 (1991): 110–127.

[7] Nandini Bhattacharyya Panda, *Appropriation and Invention of Tradition: The East India Company and Hindu Law in Early Colonial Bengal* (New Delhi: Oxford University Press, 2008), 2.

Besides, the 1773 Regulating Act which institutionalised the Supreme Court of Calcutta had already led to the parallel governance of the Company and the Crown in Bengal.[8] This conflict between the Company and the Courts eventually resulted in to the issue of jurisdiction, particularly regarding tax collection and geographical extension. The British government's determination to establish English administration of law and justice in India was further reflected in the Pitts India Acts, introduced in 1784. On the other hand, the Company started to establish big structured prisons in the 1790s to gain more control over crime and population. Over the next two decades, 35 prisons were constructed in Bengal Presidency including Midnapore Jail in 1792, Burdwan Jail in 1797, and Alipore Jail in 1810 that emphasised on the introduction of imprisonment as the primary punitive method.[9] Before this, two types of jails, the 'House of Correction' in Barabazar and the 'Ambassador's House Gaol' in Lalbazar established in the 1730s existed. In *The Good Old Days of Honourable John Company* (1882), Willam Carey's references to the three European men who were "burned in the hand and sentenced to be imprisoned with hard labour in the House of Correction for two years" while six criminals had received death sentences at the general gaol of Calcutta on August 1, 1795, illustrates this.[10] Due to its limited capacity, the Lalbazar jail was eventually moved to Maidan, where Sheriff Hare intended to construct a new 'House of Correction.' Interestingly, until 1865, two different penal facilities simultaneously operated on the same Maidan outskirts. Contrary to the House of Correction, which was supervised directly by the Calcutta police commissioner, Harinbari (Hurrin Baree), or the Calcutta jail (changed its name quite a few times) was supervised by the sheriff who was required to report directly to the Supreme Court. The Sheriff of Fort William, Charles Moore while talking about the brief evolution of Harinbari jail mentioned that.

[8] Jörg Fisch, *Cheap Lives and Dear Limbs: The British Transformation of the Bengal Criminal Law 1769–1817* (Wiesbaden: Franz Steiner Verlag, 1983), 4–5.

[9] Sharmistha De, "Europiyo Kayadi: Jailkhanar Bisheshi Atithi," (European Prisoners: The Foreign Guest of Jail) *Garib Sahebnama: Oupanibeshik Bharate Prantik Europiyo Samaj 1770–1947* (Wretched Shahib Nama: The Neglected European Communities in Colonial India 1770–1947) (Kolkata: Bookpost Publication, 2023), 201–233.

[10] William Carey, *The Good Old Days of Honourable John Company: Being Curious Reminiscences During the Rule of the East India Company from 1600–1858* (Calcutta: Quins Book Company, 1882), 103.

> For many years after the establishment as a jail, the building on the Maidan, which has lately been demolished was more than an ample to accommodate the prisoners, the guard, and the jail officials. By 1799 the Hurrin Baree was in a bad state of disrepair and the respectable sum of Rs. 34,000 was spent on a thorough overhauling and in the construction of two small new ones…The convicts' compound was to the north of the building, the debtors' compound was to the south. Till 1803 the prison is spoken of as the "new jail" and sometimes "the jail and Hurrin Baree"; later it is known as the "Calcutta jail" and by 1828 as the "great jail"; after 1850 it again becomes the "Calcutta jail," and so continues till it passes out of the hands and the control of the sheriff.[11]

However, the British government under T. B. Macaulay's supervision found several fundamental flaws in this existing legal and penal structure. Macaulay in his 'Minute on Education' significantly pinpointed,

> The fact that the Hindoo law is to be learned chiefly from Sanscrit books, and the Mahometan law from Arabic books, has been much insisted on, but seems not to bear at all on the question. We are commanded by Parliament to ascertain and digest the laws of India. The assistance of a Law Commission has been given to us for that purpose. As soon as the Code is promulgated the Shasters and the Hedaya will be useless to a moonsiff or a Sudder Ameen.[12]

The Jail Discipline Committee was eventually established on January 2, 1836, under the direction of Macaulay, to reform both the current body of statutory provisions and the penal system. The criminal law under the Company with its arbitrary authoritarianism was "tied up with earlier institution, personnel and legal-sacral text" what Macaulay mainly wanted to do away with to establish a systematic rule for controlling and disciplining the colonial population.[13] It was promised that the implementation of the 'rule of law' would replace "the model of the Mughal-Indian political system (which) was absolute and arbitrary,

[11] Charles Moore, *The Sheriff of Fort William from 1775 to 1926* (Calcutta & Simla: Thacker, Spink & Co, 1926), 37–38.

[12] Thomas Babington Macaulay, "Minute, dated the 2nd February 1835," *Islamic Studies* 54.3/4 (2015): 237–248.

[13] Radhika Singha, *Despotism of Law: Crime and Justice in Early Colonial India* (New Delhi: Oxford University Press, 2000), X.

unchecked by any institution, social or political…formed the ideological infrastructure of British rule in India."[14]

The 1838 Prison Discipline Committee Report (hereafter PDC) thus put forward the outline of the first modern prison system in India with several 'recommendations of improvements' relating to work, diet, solitary confinement, and transportation. The committee having scrutinised the condition of prisons viewed that without the application of major penalties, "this discretionary power has often been exercised very beneficially" to the prisoner.[15] This led to the introduction of the intramural hard labour for every convict in place of the old extramural job (sometimes working on the streets) that they feared might offend a high caste Hindu zamindar and would spark agitation. In the case of prison diet, while keeping in mind racial issues and indigenous caste practices, the committee advised that "no convicted prisoner be hereafter allowed to cook his own victuals, but that a Brahmin and Mussulman cook be provided for each Gaol."[16] Notably, the common messing system, which did not let the prisoner to cook food for themselves or obtain it from outside, was not introduced in the Bengal Presidency until 1860. This penal reform, arguably, introduced a new 'science of punishment,' which offered "the right calculus of terror and deterrence."[17] Nevertheless, it remained "an archetypal colonial institution" as well as the 'key site' in which the fundamental principles of the colonial state and its subjects were clashed and formulated.[18]

This study focuses on the colonial prison in Bengal after the Sepoy Mutiny in 1857, particularly from the 1860s onwards when the Indian Penal Code (hereafter IPC) was introduced, as the Mutiny radically altered the imperial attitude towards the colonial subject. It became more coercive and disciplinary by nature thereafter. "The Mutiny of 1857

[14] Bernard S. Cohn, *Colonialism and Its Forms of Knowledge: The British in India* (Princeton: Princeton University Press, 1996), 64–65.

[15] *Report of the Committee on Prison Discipline* (Calcutta: Baptist Mission Press, 1838), 18–19.

[16] *Report* 1838, 34.

[17] Anand A. Yang, "Discipling 'natives': Prisons and prisoners in early nineteenth century India," *South Asia: Journal of South Asian Studies* 10.2 (1987): 29–45.

[18] David Arnold, "The Colonial Prison: Power, Knowledge and Penology in Nineteenth-Century India," *Subaltern Studies VIII, Essays in honour of Ranajit Guha*, ed. David Arnold and David Hardiman (New Delhi: Oxford University Press, 1996),148–87.

showed them the insecurity of their military power. The inauguration of regular census reports showed them how large the population of India was, and how small a minority they were."[19] Remarkably, to counter the empire's uncontested power, especially for the fear of its new imprisonment system in nineteenth-century India, mutineers during the rebellion of 1857–58 raided 41 prisons and freed 23,000 prisoners.[20] As a result of the rebels' mass escape and widespread jail vandalisation, coupled with the lack of available prison space on the part of the authorities, a major penal crisis was raised. Thus, in the post-1860s, the prison administration of India compelled to implement many of the reformative measures recommended by the 1838 PDC. This officially transformed colonial Bengal into a modern disciplinary state, where the prison stood as the emblem of the humanitarian punishment system.

The official codification under the Crown rule discarding the indigenous and Company's arbitrary punitive system proclaims modernity and the Western vision of progressivism. It, in other words, vouched for the imperial legal equality that took "effect throughout the whole territories which are or may become vested in Her Majesty by the Statute 21 and 22 Victoria, Chapter 106, entitled, "An Act for the better government of India.""[21] However, the notion of being modern in the colonial context must be remembered was contingent, primarily as rhetorical verbose because the government was itself biased in nature. The colonial law and its application appeared to be internally debilitated by imperial agendas that prioritised race, class, and caste. "The power to punish, in this context, was a negotiated product of political bargaining between semi-autonomous interests within and without the colonial government."[22] On the other side, the Mutiny added to the complexity of the circumstance. It brought forth a direct contradiction between the oppressive, racist government and the exploited colonised subject desperately struggling for freedom. Therefore, the colonial prison system in contrast to

[19] Kenneth Ballhatchet, *Race, Sex and Class under the Raj* (New York: St. Martin Press, 1980), 6.

[20] Clare Anderson, *The Indian Uprising of 1857–8: Prisons, Prisoners and Rebellion* (London: Anthem Press, 2007), 1–2.

[21] *The Indian Penal Code (Act XLV of 1860)* (Calcutta: Superintendent Government Printing, India, 1919), 25–26.

[22] Satadru Sen, *Disciplining Punishment: Colonialism and Convict Society in the Andaman Islands* (New Delhi: Oxford University Press, 2000), 2.

the modern state became a locale where violence and tyranny could be projected as the institutional punishment.

This book thus investigates alternative histories of the colonial prison in Bengal from 1860 to 1945 that entails the question of colonial governmentality related to the prison structure, i.e., its architectural design and bureaucracy on the one hand and the evolution of colonial experiences on the other. The study aims to examine what the colonial state projected in the official penal records, and how it was conceived, responded to, and experienced by the Bengali colonised subject as produced in the nineteenth and twentieth-century literary writings including fiction, dramas, and life writings. It would raise the question whether the colonial prison was the place where all individuals were treated equally as it claimed to be in the IPC in 1860, or if experience varied depending on one's class and caste identity. Additionally, it will emphasise the colonial subject's acquaintance with the internal mechanisms of carceral imprisonment including strict routine, solitary isolation, and torture, especially after the emergence of the revolutionary activism in Bengal. This eventually alludes to learning how the colonial subjects, in turn, negotiate, resist, and subvert such coercions within the prison. Finally, is there any significant departure observed in the case of Bengali woman's penal experiences including both the ordinary and the political, and what role does their gendered body play in the context of gender politics and imprisonment in colonial Bengal?

It must be mentioned that even though the Bengal Presidency consisted of three provinces then—Bengal, Bihar, and Orissa—until the 1912 Bengal, Bihar, Orissa, and Assam Laws Act, this study would not include prisons of Bihar and Orissa. It shall thus be investigating prisons located in the Lower provinces of Bengal, which are currently the state of West Bengal and erstwhile East Bengal (at present Bangladesh). Additionally, it must also be stated that this study does not take into account political or general offenders, convicts, and revolutionaries who were deported to the Andaman Islands' Cellular jail, even if they shared a Bengali ancestry or had activities in colonial Bengal. However, this research may occasionally mention them in this discourse. It also does not include European prisoners or officials in the primary sources, who may have had first-hand knowledge of the colonial prison in Bengal. Moreover, this study will exclude house arrest as a form of imprisonment since it is not directly linked to the institutional power structure though the disciplinary mechanism cannot be ruled out in such cases.

Finally, it should also be mentioned that the period this book covers ranging from 1860 to 1945. Although the PDC which conceptualised modern reformative measures in the prison system in colonial Bengal in 1838, it was in 1860 when the IPC was introduced, which initiated the foundation of the modern colonial state. Additionally, there was the Mutiny effect in 1857 as stated earlier. Therefore, 1860 could be taken as the breakthrough year for the colonial prison. Besides, after the Second World War in 1945, colonial Bengal took a different political and ideological turn, followed by the establishment of interim government in India in 1946, which requires a separate analysis. Thus, this book concentrates on this particular historical era when the militant revolutionary movement emerged along with general nationalist activism was in full swing in Bengal.

Anxiety of European Influence: Towards a New Penology

The reformation of the punishment system in colonial India has its origin in late eighteenth-century England when the West was going through major legal-structural ramifications, especially related to the state, law, and its subjects. This led to the implementation of carceral imprisonment as the main method of punishment in colonies. One of the key prison reformers who played influential role in modernising the system was John Howard (1726–90) who in *The State of the Prisons in England and Wales* (1777) highlighted the miserable states of inmates due to the lack of proper management including the insufficient supply of food, scarcity of medicine, as well as extremely hard labour schedule of inmates.[23] Howard presented his detailed report about each institution he had visited, as opposed to making dramatic denunciations of despotism and cruelty, illness, and promiscuity including "the exact fees taken by the gaolers, the cubic contents, window space or depth below ground of each apartment, the number, sex, age and grade of the prisoners confined together or apart, the exact types of chain or irons used," the water supply condition and so on.[24] One of the chief factors of this disorganised state of

[23] John Howard, *The State of the Prisons in England and Wales* (Warrington: William Eyres, 1977), 7–8.

[24] Sidney Webb and Beatrice Webb, *English Prisons under Local Government* (New York: Routledge, 2018), 107.

affairs in Europe was to utilise prison mainly as a detention centre before 1776. This was indicated in Howard's 1776 prison census report in which he listed 653 petty criminals who consisted of only 15.9 per cent of the whole number of inmates imprisoned in England and Wales.

> Of the rest, 59.7 percent (2,437 individuals) were debtors, and 24.3 percent (994 individuals) were felons, divided into three classes-those awaiting trial, those convicted and waiting for execution or transportation, and those few serving actual sentences of imprisonment. From these figures it is apparent that the prison before 1775 was more a place of confinement for debtors and those passing through the mills of justice than a place of punishment.[25]

Prison, on the other hand, was introduced in response to the extravagant mandate of the death sentence as codified in the British criminal law generally known as the 'Bloody Code.' In theory, this law was rigid, quick to order the death sentence to almost every offender alike to a murderer or a petty offender like forgery of a petty deed of sale.[26] Previously in England, barbaric forms of punishment were practised including pillory, whipping, gallows, transportation to penal colonies, etc. Such public display of torture rituals demonstrates the state's authority and power over the subject as well as runs a risk of undesirable subversion of the state's supremacy. The crowd who was there to witness the act of punishment used to actively participate in the event. They sometimes attempted to reduce the pain of the convict against extreme cruelty or often tried to ensure that the criminals were properly punished.[27] This ensued an unexpectedly hostile correspondence between the subject and the state, especially while the government was trying to establish its uncontested legitimacy. Prison, therefore, became the gateway for the state to retreat the act of punishment from the public gaze to maintain its control and dominion.

The Enlightenment thinkers including Cesare Beccaria (1734–98) and Jeremy Bentham (1748–1832), as well as a few religious groups like the

[25] Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industry Revolution 1750–1850* (London: Macmillan, 1978), 17.

[26] Ignatieff, *A Just*, 17.

[27] Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New Delhi: Penguin Books, 1991), 7–10.

Evangelicals and the Quakers, tried to convince the governing classes that new forms of punishment, primarily imprisonment with hard labour, should be employed instead of public corporal punishments like branding, hanging, and whipping in the end of the eighteenth century. Punishment, they argued, ought to be impartial and rehabilitative.[28] The Quakers believed that by working hard and practicing meditation, some offenders' attitudes could be changed. They asked for segregation of male and female prisons as well as holding violent criminals away from petty offenders. In 1790, Philadelphia's Walnut Street Jail implemented these principles, which later identified as the Pennsylvania method.

Among the earliest critics of punishment was the Italian philosopher, jurist, and criminologist Beccaria who particularly identified the fallacy in theological perceptions of crime and sin. He advocated that "the idea of *common utility*" should serve the foundational tenet of the human justice system, and thereby suggested "a separate law for each citizen, but a new law for each crime" (emphasise in the original).[29] In his 1764 work, *On Crime and Punishment* which can be regarded as the first treatise on penology, Beccaria avowed against the use of physical torture, inconsistent sentencing, leveraging personal alliance with offenders, and even the jury's arbitrary discretion. Although he did not prescribe for the implementation of imprisonment itself, he urged for fines and hard labour instead of the death penalty. Later, the Quakers took steps to introduce cellular incarceration replacing the earlier brutal methods of punishment. This new idea spread rapidly across American colonies before making its way to Europe.

Among others, Bentham, a philosopher and jurist, and French Criminologist, Alphonse Bertillon (1853–1914) had extensively contributed to the evolution of the prison system in nineteenth-century Europe. Notably, the conceptual underpinning for Bentham's panopticon writings was John Locke's denial of original sin, which influenced him to dismiss the idea of irredeemable criminals in the process. Although Bentham like others also described criminals as "defective mechanism," they could, he believed, still be made subject to correction with some exceptions. Their sense of guilt and remorse, according to this penal ideology informed,

[28] Michael Ignatieff, "State, Civil Society, and Total Institutions: A Critique of Recent Social Histories of Punishment," *Crime and Justice* 3 (1981): 153–192.

[29] Cesare Beccaria, *On Crime and Punishments,* trans. David Young (Indiana: Hackett Publishing House, 1986), 16.

could be effectively aroused by "the scientific application of pain."[30] He suggested that to succeed, the public spectacle must be abandoned, and hard labour, surveillance, and medical care must be placed to in a carceral facility. Bentham for "the joint purposes of *punishment, reformation, and pecuniary economy*" invented a new architectural design of prison that he called a panopticon where every cell block would be facing the central watchtower (emphasise in the original).[31] The mechanism of panopticon system would be effective because of the invisibility of prison guards or the invisibility of power that would unconsciously reach into an individual's psyche and make surveillance productive. It will "induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power."[32] The Bentham Tower of surveillance, therefore, can be considered as "the carceral superego" that keeps the prisoner's struggle for freedom (ego) in check.[33] With its enclosed but exposed space, this innovative penology aimed to penetrate the criminal's physical body and seize their consciousness. "The expiation that was once inflicted on the body must be replaced by a punishment that acts in depth on the heart, the mind, the will. This change was the result not so much of a change of attitude—less cruelty, less pain, more kindness, more 'humanity'—as of a change of objective."[34]

Along with Bentham, James Mill (1773–1836) brought significant improvements to the prison administration, particularly related to convict labour. They disagreed with the assertion made by others such as Elizabeth Fry and Howard, that productive labour in prison could reduce the effect of isolation and the degree of punishment. In one of his articles published in the *Encyclopaedia Britannica* in 1823, Mill "advocated strenuously the plan of "reform by industry," as against Elizabeth Fry's panacea of "reform by religious emotion," and also against the "commonsense school" of Sydney Smith and others, which sought only penal

[30] Sen, *Discipling*, 14.

[31] Jeremy Bentham, *Panopticon Writings*, ed. Miran Bozovic (London: Verso Books, 1995), 50.

[32] Bentham, *Panopticon*, 201.

[33] Fred C. Alford, "What Would It Matter If Everything Foucault Said About Prison Were Wrong?" Discipline And Punish" After Twenty Years," *Theory and Society* 29.1 (2000): 125–146.

[34] Alan Sheridan, *Michel Foucault: The Will to Truth* (London and New York: Routledge, 2005), 135.

deterrence."[35] He promoted the industry-based reformation system that is divided into punishing and profitable segments. A convict, in the first place, should be assigned to punitive labour as part of the deterrent punishment before being given to productive labour. These work schedules taken together will eventually contribute to the criminal's rehabilitation procedure.

The colonial government in the post-Company period largely adopted the new legislative practice in India following the European civilised, secluded methods of punishment. The institutionalisation of prisons and adoption of a uniform penal code are illustrations of their efforts to reinforce the centrality of the legal system, similar to England. While its application exhibits anomalies, this validates the legitimacy of the colonial government. The colonial vision of the legal order as drafted by Macaulay in the IPC was to justify the legitimacy of the colonial government that could also gain subordination of the colonised subject. He claimed that the penal code was based on humanitarian principles to prevent individuals from harming one another rather than being only an ethical code. "Thus, the death penalty was reserved for murder and for treason, the highest offences against the state; and neither flogging nor the pillory—or its Indian equivalent, public exhibition of the offender on an ass—was permitted as a mode of punishment"[36] He insisted on the application of imprisonment chiefly.[37]

> The general features of the system of Prison Discipline recommended by the committee are these viz. that a Penitentiary for all prisoners sentenced to more than one year's imprisonment shall be established in the centre of every 6 or 8 districts, and that a better system of classification of pioneers shall be adopted: that each prisoner shall have a separate sleeping place: that solitary confinement shall be much restored to: that monotonous, uninteresting labour within doors shall be enforced upon all prisoners sentenced to labour: that prisoners shall be deprived of every indulgence not absolutely necessary to heath, and that the management of each penitentiary

[35] Webb and Webb, *English Prisons*, 161.

[36] John Clive, *Macaulay: The Shaping of the Historian* (Cambridge: Belknap Press, 1987), 147.

[37] Tapas Kumar Banerjee, *Background to Indian Criminal Law* (Bombay: Orient Longman, 1963), 360.

> shall be committed to an able trustworthy superintendent, either European or Native.[38]

Thus, Benthamite humane model of prison coupled with Mill's utilitarian philosophy could be observed in Macaulay's interventions in this new legal framework for colonial Bengal. To stand with the fervour of the age, public display of executed bodies of criminals and *godna* or branding of the convicts had been abolished in 1849. Following Bentham, the colonial jail architecture in Bengal also underwent a considerable transformation, moving from forts to squat-shaped buildings with impenetrable walls and iron gates placed in a remote region of the city. The Jail Act of 1894 and the Jail Code of 1864 both made strong arguments in favour of a well-made prison structure with an efficient water supply and hygienic conditions. Owing to this lack of insanitation facility, "during the 21 years, from 1833 to 1854, the *Mortality*, per 1,000 of strength, amounted to 72.5 in Bengal, that, during the 23 years, from 1831–32 to 1853–54, it amounted to 61.5 per 1,000 in Bombay; and, during the 10 years, from 1844 to. 1853, to 61.3 in Madras" (emphasise in the original).[39] It was largely due to the fact that most of the jails in Bengal except the Calcutta Great Gaol till 1864 had "temporary buildings, constructed mainly for the confinement of the road-makers by night."[40] John Mulvany in his article, "Two Notable Prison Administrators in Bengal: Fredrick J Mouat, Alfred Swayne Lethbridge" mentioned that they brought considerable changes in prison administration in Bengal. The Inspector General of Prison of Bengal, Fredric J. Mouat (who worked between 1855 and 1870), correspondingly, called for the proper construction of the prison including the drainage system, ventilation, and sanitation. He mentioned in 1867 jail report that "[B]engal also began a new era of convict control in 1853…The prisons generally were badly built, were to the last degree insecure, were often placed in irreclaimably unhealthy positions, and accumulated within their walls every defect of

[38] Eric Stokes, *The English Utilitarians and India* (London: Oxford University Press, 1959), 218.

[39] Joseph Ewart, *The Sanitary Condition And Discipline of Indian Jails* (London: Smith, Elder & Co., 1860), 1–2.

[40] *The Calcutta Review* (Calcutta: The Calcutta General Publishing Co., 1916), 75.

administration…".[41] Observation on health and labour of the convicts became the moral concerns of the government. Under the influence of Howard and Bentham, the reform committee "argued that the requirements of penal discipline could be achieved in a healthier, more humane, and less costly manner if extramural labour were banned and replaced by intramural work."[42] Prisons were thus unreliable places of confinement without enough security and structural identity until the mid-nineteenth century. For resolving this problem, W.H. Woodcock was appointed as the inspector of jails in India's North-Western provinces to introduce centralised control similar to that of Pentonville Prison in London.

However, it must be remembered that the colonial prison system, which had its English origin, differed significantly from its British counterpart in terms of punitive ideology. While segregation and reformation were sought in Britain, prisons served as an instrument to bring the colonial subject under the colonial government's political and financial tutelage in colonial India. New penology across Europe, particularly in England was developed to rectify individuals who violated institutional codes due to inappropriate socialisation mostly belonging to the margin of the society. In this context, it would be critical to comprehend the case of homeless individuals in England. The Vagrancy Act which had a long history of revision tried to address the issue of vagrants once again in 1744. It stated that "rogues, vagabonds, and beggars, and other idle and disorderly persons" including jugglers, minstrels, gypsies, and pretending astrologers "were to be whipped, or sent to the House of Correction, and afterwards conveyed to the place of their settlement or of their birth."[43] Later in the Victorian era, genuinely unemployed people who were on the move in the quest of employment as well as professional vagabonds and beggars were also included in the vagrancy category.[44]

[41] Fredrick J. Mouat, "On Prison Discipline and Statistics in Lower Bengal," *Journal of Statistical Society of London* 30.1 (1867): 21–57.

[42] David Arnold, "Labouring the Raj: Convict Work Regimes in Colonial India, 1836–1939," *Global Convict Labour,* edit. Christian G. De Vito and Alex Lichtenstein (Leiden: Brill, 2015), 199–221.

[43] John Lambert, *Vagrancy Laws and Vagrant, a Lecture* (Salisbury: Brown & Co., Canal, 1868), 19.

[44] Gareth Stedman Jones, *Outcast London: A Study in the Relationship Between Classes in Victorian Society*, (London: Verso, 2013), 125.

This concept of the vagrant, marginal people, as well as the legal application on them, was directly relevant to colonial India, where the entire racially determined mass has been identified as criminals for their nomadic lifestyles. The English penal law as Martin Weiner in his work, *Reconstructing the Criminal* (1990) rightly pointed out, was intended to mould a "*self-distancing individual* capable of disciplining his impulses and planning his life" according to the moral and behavioural standards set by the society (emphasise in the original).[45] Contrarily, any reformation by moral instruction, teaching, and giving rewards for maintaining good conduct in the 1838 PDC was vehemently rejected in colonial India while it was evident in the act that the objective of the newly established prison was to inflict pain on the convict's body.[46] Furthermore, it is imperative to highlight that the colonial government continued to exercise its sovereign power of corporeal torture inside and outside of the prison. The Madras Torture Commission Report published in 1855 collected responses from British officials regarding the employment of torture in various criminal cases could manifest this. In 1854, W. Knor, Esq., who was the Governor of Fort St. George at Ganjam's Acting Agent stated:

> The use of torture or force, for it seldom amounts to torture, to enforce payment from a needy and money-loving Hindoo, was a lesson taught by their Mahomedan masters, and never forgotten; it is now part and parcel of their creed. One of the first lessons my moonshee gave me, was that a servant would rather get a thrashing than have his pay stopped.[47]

Therefore, the ideology of the colonial state could be perceived, was to teach subordination rather than rehabilitation, dominance rather than integration, and crushing the outlawed population through the institutional pathologisation of the body, where the prison acts as the chief repressive apparatus. The introduction to the modern penal ideology in colonial Bengal thus despite being influenced by the European ideals

[45] Martin J. Weiner, *Reconstructing the Criminal: Culture, Law, and policy in England, 1830–1914* (Cambridge: Cambridge University Press, 1990), 47.

[46] A. P. Howell, *Note on Jails and Jail Discipline in India, 1867–68* (Calcutta: Supt. Govt. Printing, 1869), 1.

[47] *Report of the Commission for the Investigation of Alleged Cases of Torture at Madras* (The House of Commons, 1855), 68.