PART VII
CONTROL
Jail Department is one of the branches of administration of the Government of Assam. The Government is, therefore, ultimately responsible for its efficient administration. It follows that it must have the power to control it. Thus, responsibility and control go together.

Control over administration is necessary to maintain its efficiency. It also makes officials alert, energetic and honest. Those officials who are lazy, inefficient and indifferent are punished. Punishments are of various kinds, dismissal, transfer, degradation and other disciplinary actions. Control also brings authority into existence justice. When justice is denied, the controlling authority may interfere in the matter and maintain it in the administration.

Though control over administration is essential it should not annihilate local initiative. Frequent interference with the lower authorities is undesirable. Control should be helpful and positive.

Jail administration is purely a government organization. It is under the control of the Government at all levels. So, the question of autonomy in jail administration does not arise. There are different types of control. Executive control is one of them.

Administrative control:— So long Assam was a Chief Commissioner's Province, the Chief Commissioner was responsible to the Government of India for the administration of jails in Assam. He was also the local controlling authority.
authority over the administration. The Chief Commissioner submitted annual and periodical reports of administration of the Province to the Government of India. The sanction of the Government of India was necessary for certain works. The Governor General-in-Council directed, supervised and controlled the administration of the Province.

The Chief Commissioner supervised and controlled the administration of jails. During the period, 1874-77, there was no Inspector General of Jails in Assam to supervise the jails. The Chief Commissioner administered the jails through his Secretary. Then the Chief Commissioner was both the supervisory and controlling authority of the Jail administration of the Province.

In 1877, the Inspector General of Jails became the controlling and supervising authority over the jails. Since then, the Chief Commissioner was not directly responsible for the administration of jails in the Province.

The Inspector General of Jails was controlled by the Chief Commissioner of Assam. He had to submit annually an administration report to the Chief Commissioner. The Chief Commissioner reviewed the report and commented on it.

As the Inspector General of Jails was the Chief Executive Officer of the Jail Department, he supervised and controlled the administration of individual jails. The Superintendents of Jails were directly under his control and

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3. Prisons Act, 1894, Section 5.
he directed and regulated their activities. The Inspector General of Jails could interfere with the day to day activities of any jail when necessary.

The Superintendent was responsible to the Inspector General of Jails for the administration of the jail. The Superintendent directed and supervised all the activities of his subordinate officers in the jail. This was the position as long as Assam was a Chief Commissioner's Province.

When Assam became a Governor's Province, the Governor-in-Council was held responsible for the administration of jails. A member of the Executive Council was placed in charge of the Jail Department. He was the controlling authority over jails on behalf of the Provincial Government. Matters relating to Jail Department were controlled by the Executive Council. Further, there were criticism, discussion and suggestions by the members of the State Legislature.

After the introduction of Provincial Autonomy, the Jail department was placed in charge of a Minister and the State Legislature had control over the jail administration. The members of the Legislature discussed and criticised the administration of jails. They influenced jail administrators and made them cautious. This arrangement continues till today.

From the very beginning, jail administration is under the control of the Home Department of the Government of Assam. The Home Department assists the Minister in charge of Jails in the formulation of policies and in exercising control over high officials of the Jail Department. Thus, the Home Secretariat of the Government of Assam plays a very important part in
controlling jail administration.

Supervision -: The I.G.P. or the Joint I.G.P. supervises all the activities of a jail. The I.G.P. may call for an explanation on any aspect of administration. The Home Department of the Government may supervise all the activities of the I.G.P. The I.G.P. is directed by it in administration of jails.

Inspection -: The I.G.P. must inspect jails. During his inspections he must note the state of affairs in jails. He must sent an inspection note to the jail concerned. Inspection is of great value, because, jail officials remain alert and keep the office records upto-date. They also keep the jail in proper order in all aspects.

Sanction -: The Government is the sanctioning authority in many matters of jail administration. Without the sanction of the Government certain things cannot be done by the Jail Department. Subordinate Officers also require the approval of superior officers in several matters. In certain matters of jail administration the sanction of the I.G.P. is necessary. Thus, we find that through sanctioning power the Government can control jail administration effectively.

Appeal -: When Officers are punished or dissatisfied in regard to any matter, they can submit representations or appeals to the higher authorities for the redress of their genuine grievances. This makes the officers cautious and judicious in their activities. Because, their actions are subject to approval or revision by higher authorities.

4. AJ. H., 1934, Rule 11.
5. Ibid, Rule 7.
Financial and audit control - : Expenditure should be incurred according to rules. For some expenditure prior sanction of the Government is necessary. To see whether expenditure is legal, there is audit of expenditure. The Jail Department has got its own audit staff. It verifies the accounts from time to time and brings out cases of irregularities. The Auditor General of Assam also gets the accounts of the Jail Department audited thoroughly by the audit personnel. Auditors exercise control over the financial administration of jails. This is a very important machinery of control over administration.

We may now conclude that administrative control is very effective for various reasons. First, administrative officers are not guided by partisan considerations. Second, administrative control is exercised by a body of officials who are experienced and professional. Finally, decisions are taken quickly and there is no delay in their execution, because, officials are in constant touch with jail officers.

Legislative control - : The State Legislature may control the administration of jails. Jails are administered under the Acts passed by the legislature. Legislature can also mould them by means of legislation.

Before Independence, the legislative control was not effective. Even then, legislators criticised the Government about its unsympathetic attitude towards jail.

jail administration and pointed out many drawbacks in the administration. They also suggested certain measures for the reformation of jail administration, specially regarding the treatment of prisoners.

But after Independence, the State Legislature began to evince keen interest in the administration of jails. There are several means by which the State Legislature may exercise control over administration. First, legislators may put question and elicit answers from the Ministers. They may criticise the administration and put pressure on the Ministry to commit himself to a particular course of action. Second, by means of adjournment motion a member may draw the attention of the Government towards the activities of the administration. Third, by amending the existing legislation the legislature may curtail the powers of officers and introduce reforms in jails. Fourth, the legislature may appoint enquiry committees to look into jail administration and suggest measures for its reformation. Finally, by passing resolutions, members may ask the Government to adopt a particular line of action. But it may or may not be accepted by the Government.

But legislative control is not effective. Further, jail administration does not attract its attention. Legislative control is ineffective for several reasons. First, the legislature is overburdened with many activities. So, it has no time to look into the details of the jail administration. Second, the members are not in a position to see whether jails are administered according to the laws passed by the legislature.
Third, the legislature enacts laws no doubt, but it is not the authority to enforce them.

Although legislative control has many defects, still it is in a position to draw the attention of the Government and the people towards the drawbacks of administration. The administration cannot ignore the criticisms always. It becomes alert and tries to remedy the defects. The administration fears legislative criticism very much as it can reach the remotest of its recesses and expose them to public view. Moreover, the executive is responsible to the legislature. It can hold office with the majority support of the legislature. The legislature may take drastic action against it by expressing a want of confidence which would result in the resignation of the cabinet. Thus, the Government cannot ignore the legislature. It tries to make the administration efficient. But it is a fact that the legislature cannot exercise day-to-day control over the administration of jails.

Judicial control: Jail administration is subject to judicial control exercised by the Courts. The courts protect the rights and liberties of the citizens.

There are various means by which the judiciary may control administration. First, administrative acts and decisions are subject to judicial review. The actions of an administrative officer can be questioned if he acts without legal power or beyond power given to him. Normally the courts do not interfere with purely administrative action. They generally review the

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quasi-judicial decisions of administration on the ground of its being ultra vires or its failure to follow the prescribed procedure. Second, an aggrieved party will have the right to appeal to the courts against administrative acts and decisions when authorised by law. It is known as statutory appeal. Third, a suit may be brought against the Government by a private person in torts or contract. Fourth, civil proceedings may be instituted against a public officer for anything done in his official capacity. As regards criminal liabilities, the previous sanction of the Government is required for starting criminal proceedings in respect of acts done by officials in their official capacity. Without the sanction of the Government the courts are forbidden to take cognizance of the official's offence. Finally, there are certain extraordinary remedies to protect the rights and liberties of the people. They are habeas corpus, mandamus, prohibition, certiorari, quo-warranto and injunction. Courts other than the Supreme Court and the High Courts have not been allowed to issue these writs. The application of the writs is dismissed below.

Habeas Corpus - Habeas Corpus literally means 'you shall produce the body'. It is a writ issued to the person to produce the body of the prisoner. It may be directed to a public official who imposes physical restrain over the person of another. The purpose of this writ is to determine whether the person seeking its benefit is legally detained or restrained in his liberty.

8. Criminal Procedure Code, Section 197.
Thus, it prevents illegal torture upon individuals by the officers.

**Mandamus** -- Mandamus means a command. Public officers may be directed by the Court to perform a particular duty. The chief use of mandamus is compelling public officials to carry out their legal duties.

**Prohibition** -- Prohibition can be issued only against a public authority. It prevents the court below from having any further proceedings in the matter in controversy. It plays some part in controlling administrative tribunals with quasi-judicial functions. It is of little significance as an instrument of control over jail administration.

**Certiorari** -- Certiorari literally means 'to be made certain'. It is important in the case of quasi-judicial functions of administrative officers. This writ cannot be issued against purely administrative action of the Government or public officer. Thus, it is not an effective means of judicial control over administration.

**Quo warranto** -- Quo-warranto means 'what warrant or authority'. The purpose of this writ is to oust a usurper from public office. It is not a remedy against official misconduct or for testing the legality of official acts and hence it is not an effective means of control over administration.

**Injunction** -- The Supreme Court and the High Courts have the power to issue injunctions in appropriate circumstances. By issuing injunctions, public officers may be directed to do

or refrain from doing a particular thing. It is an important means to control public officials in their activities.

Judicial control, however, is not effective. Judiciary never takes initiative in any matter. The initiative must be taken by some one interested in the affair. Judicial control is ineffective for several reasons. First, the delays and technicalities of the judiciary diminish its usefulness. Second, it is very expensive. Third, a suit cannot be brought against public officers in certain cases without the sanction of the Government. Finally, public officers are defended by the Government if they commit any blunder in the discharge of their public duties. As a result of that, they do not bother about the omissions and commissions while performing their duties.

Although judicial control is not effective, the judiciary is in constant touch with jail administration. Sentences inflicted by judicial courts are executed by the jail authorities. When the execution of a sentence is over, the warrant is returned to the issuing court. Thus, the Court finds a scope to scrutinise the warrant and to see if it has been properly executed. Moreover, sentences are to be executed strictly according to the terms as laid down in the warrant. Certain sentences can be executed by the jail authorities only when they are confirmed by the High Court. Of course, the judiciary has got nothing to do with the daily administration of a jail.

We have reviewed the various means of control. Of all of them, the most effective is the administrative control. All others are not effective for obvious reasons as mentioned above.