PART I
HISTORICAL BACKGROUND
CHAPTER I

DEVELOPMENT OF JAIL ADMINISTRATION

The concept of prison was different in the past. Prisons, as places of detention, are common to most societies but to punish criminals by confining them in a jail is a modern practice. In ancient Greece, underground chambers were used as prisons in the seventh century B.C. We find a reference to it in the Greek literature. Joseph was kept under detention in Egypt 2,000 years before the birth of Christ. Jails were established in Rome in the fifth century B.C. by Justinian as a means of safe custody of prisoners. Imprisonment as a form of punishment was also not unknown in England, because, it was used in a few cases in the Saxon England. Henry II and Henry III of England used the system of confinement of prisoners.¹

Plato, the Greek philosopher, also realised the necessity of prisons for the safe custody of different classes of prisoners. He remarked, "Let there be prisons in the city, one for the safe keeping of persons awaiting trial and sentence, another for the amendment of disorderly persons and vagrants, those guilty for misdemeanours ....a third to be situated away from the habitations of man and to be used for the punishment of the felon."² Thus, Plato suggested the establishment of three classes of jails, one for the detention of the under-trials, the other for the treatment

¹ Howard, D.L. - The English Prisons, p.3.
² Ibid.
of disorderly persons and the third for the punishment of the felon.

The ecclesiastical authorities, in the European countries, made use of prisons as places of punishment in the thirteenth century mainly because they had no authority to impose death penalties.

About the nature of punishment and treatment of prisoners in the past, Howard remarked that throughout the history of mankind, they have shown remarkable ingenuity in devising and inflicting punishments upon their fellow men. Death penalties were very common and carried out most painfully during the Middle Ages. In the medieval period, social degradation in many forms was applied as a punishment. In certain societies physical torture was also inflicted as a means of punishment.

So far as the treatment of prisoners was concerned, the eighteenth century was more humane than the Middle Ages. In England, in the middle of the eighteenth century, many county authorities were responsible for the maintenance of prisons in their capital towns, but almost as many were in private hands. Very often the owner of a prison did not run it himself.

Johan Howard's proposals for prison reform have influenced the modern jail administration. Howard's proposals for the reform of prisons were of great value. There was no parliamentary attempt to reform jails until Johan Howard was

called upon to give evidence in the British Parliament in 1774. Many corrective homes were established in England in the eighteenth century under the influence of Howard. His influence on prison administration throughout the world was unrivalled.

Thus, it may be noted that though prisons as places of detention existed in the European countries in the past, they took the modern colour only in the eighteenth century. Before that, no attempt was made for the reformation of prisoners in jails.

In the case of ancient India, we find no reference as to the existence of a uniform and an organised prison system. Kings and potentates who ruled over ancient India had no clear ideas about the confinement of law-breakers in prisons. The nature of prison administration differed from person to person. This fact is clearly noticed in the treatment of offenders and the maintenance of jails. Benevolent rulers meted out liberal treatment to prisoners, but in autocratic states the prisoners were tortured brutally.  

The fundamental concepts of modern penal theory, such as, individual study, classification and segregation were expressed in ancient Hindu books of law centuries before Plato. Organised penal system was not unknown to some of the Hindu rulers some 3,000 years ago. When India was invaded by foreigners, the law-breakers were dealt with greater severity.

Kautilya's Arthasastra mentions the organization and the administration of prisons. It is stated there that the Director of Stores should build a prison with an underground cell as an armoury and separate prison houses for those convicted by judges and for those punished by high officers. Provision must be made for separate apartments for women. These halls should be surrounded by a ditch so that prisoners might not escape. They should have a well, a latrine and a bathroom with protection against fire and poison. The Chamberlain was in charge of the jail. 7

The confinement of prisoners in jails was prevalent during the Mughal period. Here also no attempt was made for the reformation of prisoners. They were punished severely for any misbehaviour in jails.

The East India Company, the predecessors of the British Government in India, undertook to establish law and order in the dominions under its control in 1784. Many jails were established for this purpose. Thus, the beginnings of the modern Indian prison system dates back to 1784. By 1836, 43 civil jails, 79 criminal jails and 68 combined civil and criminal jails existed in Bengal, Madras, Bombay and North Western Provinces. 8

The Committee on Prison Discipline, 1836, laid emphasis on the classification and separation of prisoners. 9 At first there was no separate jail for the juveniles. It was only in 1843, that a Juvenile Reformatory School was established in Bombay. This school was established through the

9. Ibid.
exertions of an Englishman, Dr. Buist. It was an asylum for orphans and vagrants. The aims of the school were the reformation of juvenile offenders arrested by the police and the encouragement of apprenticeship amongst the working classes.

This institution had undergone many changes and it is now the best juvenile institution in the country. At present, it is known as David Sasson Industrial School with a capacity for 440 juveniles. It is administered by the Bombay Children's Aid Society.¹⁰

The Reports of the Indian Jails Committees of 1889 and 1919 are the two important landmarks in the history of prison administration in India. The Committee of 1919 investigated the prison administration in India in all its aspects and suggested various measures for its improvement.

Many important steps were taken to improve prison administration during the two decades, 1905 to 1925. These reformatory activities have been elaborately discussed by Lt. Col. W.J. Powell in "Indian Prisons(1926)".

The Committee on Prison Discipline, 1836, mentioned four objectives of imprisonment:—

i) deterrence of society,
ii) deterrence of individual,
iii) incapacitation, i.e., preventing by incarceration from further crime, and
iv) reformation.

The Committee considered the first objective as the most important and did not have much faith in the last, i.e., reformation of prisoners. But the Committees of 1889 and 1919 suggested some measures for the efficient administration of

¹⁰ A Report on Juvenile Delinquency in India, 1950, p. 11.
jails and laid emphasis on the reformation of prisoners. The Model Prison Manual of 1960 also has the same object in view.

The publication of the Report of the Indian Jails Committee, 1919-20, gave an impetus to prison reforms in India. However, since Indian Independence, a new spirit of humanism has become the guiding principle of all prison reforms. The philosophy of punishment and the functions of prisons have undergone great changes since then.

In the case of Assam, jails in the real sense of the term did not exist in the past, during the pre-British days. There is no reference to the administration of jails. The system of imprisonment of prisoners was almost unknown in ancient Assam. Law-breakers were generally punished and set free. According to Gait, the criminal law was characterised by the greatest harshness and mutilation. No record was kept of criminal trials, but in civil cases a summary of the proceedings was drawn out and given to the successful party. Death penalty was very common during the Ahom administration. In the case of offences against the person, the general principle was that of "an eye for an eye and tooth for a tooth", and the culprit was punished with precisely the same injury as that inflicted by him on the complainant. Thus, from the account given by Gait regarding punishment during the Ahom period it is inferred that sentences of imprisonment were not inflicted and therefore there was no necessity for jails.

Kasi Nath Tamuli Phukan points out that criminals were to be punished by examining the nature of crime. The King

could punish offenders according to his will. He was not
guided by any rule. The 'Dangariaas' could also punish
the offenders.\textsuperscript{13} The task of killing offenders was performed
by the 'Chaudangs' in the Upper Assam and by the 'Buruks'
in the Lower Assam. So, we find that Tamuli does not refer
to imprisonment of prisoners.\textsuperscript{14}

The great historian, Surya Kumar Bhuyan also does
not refer to the imprisonment of prisoners by the Ahom Kings.
While discussing the system of punishment, Bhuyan points out
that they were inflicted in a very exemplary and rigorous
manner. As a consequence, there was very little crime. The
people lived in perpetual dread of the inevitable consequences
of the violation of law and order.\textsuperscript{15}

Thus, we find that punishment of prisoners with
imprisonment was rare in Assam during the Ahom period and it
is clear that there was no necessity for prison in those days.
There were some places of punishment where offenders were
punished for their offences and released immediately.

Jail administration in Assam began with the British
administration of the Province. Assam was acquired by the East
India Company in 1826. At first criminal and civil functions
were performed by the panchayats consisting of three or four
Assamese gentlemen. There were two or three panchayats in each
districts. Judicial cases were decided by the British
Magistrates and Judges with the assistance of panchayats.

\textsuperscript{13} 'Dangariaas' - High Officials of the Ahom Kings.
\textsuperscript{14} Tamuli Phukan, Kasinath.- Asom Buranjji Saar, p. 82.
Along with the establishment of civil administration in Assam, Jails were established in different places for the safe custody of prisoners. So, the beginnings of jail administration can be traced back to 1826, so far as Lower Assam was concerned. As Upper Assam was under Raja Purandar Singh till 1838, jails were established there later on. Jails were first established in the district headquarters. Subdivisional jails were established after a long time.

The oldest jail in Assam was the District Jail of Sylhet. Because, the Sylhet District came under the British control long before the occupation of Assam by the East India Company.

In 1874, when Assam was constituted into a Chief Commissioner's Province, there were nine jails and eight lock-ups.

After Partition (1947), the jails at Sylhet, Sunamganj, Habiganj and South Sylhet went to Pakistan. The Kohima jail ceased to be under the control of the Government of Assam since the creation of Nagaland. In 1964, there were seventeen District Jails and one Open Air Agricultural- Cum-Industrial Colony.

Thus, during the period 1874 to 1964, there was no increase in the number of jails. Of course, some jails went to Pakistan and Nagaland, but their place was occupied by new ones.

Besides district jails, there were lock-ups, public works jails and subsidiary jails at different times. Lock-ups were kept under the control of the Magistrates and were administered by the Police Department. They existed in most of the sub-divisional headquarters upto 1899. In those days roads

The jails and lock-ups in 1874 were Goalnara, Dhubri.
and buildings were also constructed with prison-labour and hence many temporary public works jails were established in those places where major construction works were undertaken.

During the period, 1826 to 1874, when Assam was a part of Bengal, the jails were administered by the Inspector General of Prisons, Bengal. During this period laws and rules were not many. A Central Act was enacted by the Imperial Legislative Council in 1894 for the administration of prisons. The Act of 1894 repealed and replaced the Prisons Act of 1870. Under the new Act Provincial Governments made their own rules for the day-to-day administration of the jails. The jails in Assam were administered under the Bengal Jail Code.

When Assam was merged with East Bengal in 1905, the Jails in Assam automatically came under the control of the Government of that Province. The jails were still administered under the Prisons Act of 1894. The Government of East Bengal was responsible for the administration of jails in Assam. All the jails were supervised by the I.G.P., East Bengal. There was no change in the day-to-day administration of jails. In 1912, when partition was annulled and Assam was constituted into a Chief Commissioner's Province, she had her own system of jail administration.

Before 1874, the rules and orders issued by the Government of Bengal and the I.G.P. of Bengal were enforced in Assam.

Gauhati, Barpeta, Tezpur, Mangaldai, Nowgong, Sibsagar, Jorhat, Golaghat, Dibrugarh, North Lakhimpur, Sylhet, Hailakandi, Shillong, Jowai and Silchar.


The jails of Assam in 1964 were Dibrugarh, Sibsagar, Silchar, Tura, Golaghat, Nowgong, Shillong, Tezpur, Dhubri, North Lakhimpur, Nowgong Special Jail, Goalpara, Gauhati, Jorhat, Mangaldai, Karimganj and Aial. An Open Air Agricultural-cum-
When Assam was formed into a separate administration these rules and orders remained in force subject to some changes made by the Chief Commissioner or the Inspector General of Jails, Assam. There were thus two sets of orders in force in Assam, viz., the Bengal Jail Code of 1876 and those subsequently issued by the local authorities. Later on these local orders were codified in 1885. There was no separate jail code for Assam.

When Assam was constituted into a Chief Commissioner's Province, the Chief Commissioner of Assam agreed with the Government of India that the jails in Assam could be administered under the Prisons Act of 1870. But he requested the Government of India to empower him to appoint the I.G.P. and exercise certain powers which might be necessary so far as this part of India was concerned.

The Governor General-in-Council passed the Assam Jail Regulation, 1875. It enforced the Prisons Act of 1870 in Assam. The above regulation empowered the Chief Commissioner of Assam to exercise the powers of the I.G.P. until such an officer was appointed for this Province. Thus, the Prisons Act, 1870, was in force in Assam till the passing of the Prisons Act, 1894.

In 1889, an attempt was made to compile a jail manual for Assam, but the work was stopped pending the submission of a report on the administration of jails in Assam by Mr. J.J.S. Driberg. He submitted his report in 1890. But no effort was made to frame a code for Assam till the enactment of the Prisons Act, 1894.

The draft jail manual was prepared in 1895, but it was not approved pending the issue of the Bengal Jail Code of 1896. Another manual was prepared in 1897, but it was destroyed by the earthquake. It was then redrafted and the task was completed in 1899. This is the first Jail Manual of Assam.

The Jail Manual of 1899 was in force for about thirty five years. It was replaced by the Jail Manual of 1934.

The jails in Assam are still governed under the Jail Manual of 1934 with necessary corrections here and there. Recently, the Government of Assam has taken up the drafting of a new jail manual for this State in the light of the Model Prison Manual of 1960. But till now, the drafting of the manual has not been completed.

The Assam Jail Manual of 1899 was drafted on the basis of the following rules and regulations. 21

1. The Prisons Act IV of 1894.
2. The Prisoners' Act V of 1871 as amended by Act III of 1900 - as amended by Act I of 1903.
3. Regulation III of 1818 (Bengal Code) for the confinement of State prisoners.
4. Act XXIV of 1855, an Act to substitute penal servitude for the punishment of transportation in respect of European and American convicts and to amend the law relating to the removal of such convicts.
5. Act VIII of 1897, the Reformatory School Act.
6. Act XXXVI of 1858, an Act relating to Lunatics and Lunatic Asylums.

Most of the rules of the Jail Manual of 1899 were incorporated in the Jail Manual of 1934. During recent years, the Probation of Offenders' Act, 1958, the Assam Prison (Leave and Emergency Release) Rules, 1968 and the Assam Superintendence and Management of Jails(Supplementary Provision) Rules, 1968 have brought many changes in the administration of jails in Assam.

Some provisions of the Civil Procedure Code (Act XIV of 1882 as amended), the Criminal Procedure Code (Act V of 1898 as amended) and the I.P.C. (Act XLV of 1870 as amended) which relate to the confinement of prisoners, the exemption of sentences, appeals and the like were complied in the administration of jails.

We have so far reviewed the development of jail administration in Assam. We find that the total number of jails has not changed even though overcrowding is a general feature in all the jails in Assam. It is also noted that the jails were administered by different Local Governments at different times, as a result of which no concerted effort could be made for the sound organization of jail administration and ultimately the interest of the prisoners suffered. It is seen that Assam is very slow in bringing about reformations and changes in the administration of jails. Another matter to be noted in connection with the administration of jails is that there are no special jails for different classes of prisoners except the Nowgong Special Jail which was established in 1950 for the detention of security prisoners.