CHAPTER: 2
DISCOURSE ON PRISON AND PRISONERS: COLONIAL AND POST-COLONIAL INDIA

Prison serves as a critical site to acquire knowledge of the nature of colonial rulers and the manner they exercised or negotiated their colonial power through it over the subjected Indians. Prison was such an institution that represented the ways and techniques through which colonial power was constructed and deployed in India. The colonial state in India, through various institutions tried to bring the colonised under various systems of discipline and control. Prison is one among them. Prisons in India helped to draw a line between the colonial rule and the reign of earlier rulers, especially the Mughals. It is because there was no systematic criminal justice system, prior to the Britishers. Moreover, the CJS that prevailed during the Mughal rule was condemned as unsystematic and barbaric in nature. Also, the Mughal Penal Code was quite severe as it included punishments like mutilation of limbs and physical torture. It was Akbar who brought penal reforms and stated that the rank and status of the offender should be considered while inflicting punishment. But Aurangzeb was a stern believer of the Hanafi School of jurisprudence, according to which capital punishment could be awarded only if the homicide involved a weapon usually associated with the shedding of blood; homicide by drowning or strangling were entitled only to fines. The East India Company initially followed the Islamic law of justice prevailed in the form of ‘hidaya’ and ‘Fatwa-al- Alamgiriyya’, the former for rules and principles, and the latter to supplement instructions through cases, guided by the holy Quran. For instance, once a prisoner killed an infant daughter of a person by drowning till
death and looted all her ornaments. The prisoner admitted his guilt. The intention of the murder was clear. But the Nizamat Adalat did not award death sentence for the murder did not shed blood. This kind of criminal justice continued in Islamic Law. The judicial authority exclusively belonged to ‘Qazi’, but the final sentence was required to be approved by the Nizamat Adalat. But gradually the Qazi became despotic with his discretionary powers. Also, there was no Uniform Code to administer the criminal justice in the Mughal period, everything depended on the mood of the Emperor or Nawab. To escape from such inadequacies, the Britishers thought of establishing its own legal norms and established a systematic CJS based on the principles of ‘natural justice and equal citizenship’. This Chapter provide a picture of the CJS with a particular focus on the conditions of prisoners in the Colonial as well as Post-Colonial period and the issues that affected Prison Administration, in particular, in both the periods. The discussion has helped to depict not only the political scenario of the Indian State in both the periods, but also to make a comparative study on prison and prisoners of both the periods.

2.1 CRIMINAL JUSTICE SYSTEM IN COLONIAL PERIOD:
AN OVERVIEW

On 15th August, 1772 Warren Hastings, the first Governor-General of India, drew up a plan on administration of criminal justice, which was adopted on 21st August of the same year. As per the suggestions of Hastings, Muhammad Reza Khan, the Naib-Nazim who had the power to superintend the administration of criminal justice and police established Faujdari Thana and appointed Faujdar, in 1774. A prison was attached to each Faujdari Thana under the superintendence of Faujdar.
who was required to maintain accounts of prisoners. The *faujdari prison* was intended only for a temporary stay of the prisoners who was to be presented to the Court and then put in the criminal jail after his commitment. These prisons were all temporary arrangements with no concern for life and living of the inmates. On 6th April, 1781, the Governor General and Council abolished the office of *faujdars*, and transferred their powers to the Company’s servants, which came to be known as ‘Magistrates’. The authority of the Magistrates extended to the administration of *faujdari* jails which was till then a part of the Nizamat Adalat under Muhammad Reza Khan.

Until 1790 the prisons were a part of the *Faujdari Department* and were under the general management *Naib-Nazim* and his subordinates, the Judges of the Faujdari Courts. The Regulation of December 3, 1790, transferred the management and control of the jails from the Indian to European hands with the Magistrate in-charge of jails in each district. However, the East India Company retained the punishment of Mughals, such as, mutilation, branding and whipping, which made life of the prisoners miserable. The Company rulers also used public infliction and ignominy in the form of public execution, gibbeting, tashir, public flogging and labour in fetters, as a crucial component of deterrence. The Magistrate of Burdwan cited about the incident of 15 prisoners who had been sentenced by the Nizamat Adalat to suffer the mutilation of right hand and left foot for a crime of theft. In his opinion, although these prisoners were not awarded death penalty under the Muhammedan law, but their punishment was as such that would result into a ‘slow and cruel death’. Reacting on such inhumaneness, Lord Cornwallis stopped
‘mutilation’ in 1790, and substituted “a sentence of seven years hard labour for the amputation of one limb and fourteen years for the loss of two”. Such regulations were passed to enhance the concept of ‘imprisonment’ which would be a terror to wrong-doers, while preventing it from any of the circumstances that would be shocking to humanity. The Regulation IX, passed in 1793, provided for a system of prison—a recognised and separate institution of the state. During this period, the East India Company built 143 Civil Jails, 75 Criminal Jails and 68 Mixed Jails, with total accommodation for 75,100 inmates situated in Bengal, North-West Provinces, Madras and Bombay.

Prisons under the Company grew as a result of socio-economic and political factors. The prisons were used to extract revenue and maintain of law and order—a system of economic exploitation and political control. Colonial economic policies, new land revenue systems and the ruin of local handicraft due to free competition had transformed the agrarian structure and impoverished the peasantry. The peasants protested against such oppression against the colonial state, but poverty paralysed their lives, as a result of which many of the landless peasants preferred to take the path of crime for their livelihood. In the political sphere whoever dares to go against the colonial authority is being imprisoned. Besides, the economic and political, in the social sphere, the colonial rulers tried to be the messiah of the weaker section by emancipating them from the evil practices of society through framing penal laws, such as the Bengal Sati Regulation, 1829. This regulation passed by the Governor-General Lord William Bentinck, provided that the practice of ‘Sati’ or burying alive of the widows of Hindus is a crime and illegal, and
therefore is a punishable offence. Thus, the penal laws served as an effective instrument of initiating social changes, than the civil law or bureaucratic orders. It is because penal laws are attached with punishment and this greatly helped the state to coerce people to submission\textsuperscript{16}.

The Britishers laid greater emphasis on legislating uniform penal law for the entire land with the objective to dominate, suppress and govern the people as a whole\textsuperscript{17}. At this juncture, Macaulay’s insistence to frame a uniform penal code rather than to compile a digest of existing rules and regulations was a significant and a novel step in the administration of criminal justice in the Indian sub-continent. Although Macaulay’s objective was to maintain prison discipline, but his recommendations were as such that it initiated the process of reformation of prisoners for the first time, which was until then neglected by the colonial government. Accordingly, in 1836, a Prison Discipline Committee was appointed in which Macaulay was a member came up with the historic Indian Penal Code (IPC), and the “Criminal Procedure Code” (Cr.PC), which formed the backbone of the British Criminal Justice System\textsuperscript{18}. As per the recommendations, in 1844, W. H. Woodcock was appointed as the first Inspector-General of Jails in the North-West Frontier Provinces. This was followed by similar appointments in other states—Punjab (1852), Madras, Bengal and Bombay (1854)\textsuperscript{19}. The first Central Jail was constructed at Agra in 1846. Later Central Jails were established in places like Bareilly and Allahabad (1848), Lahore (1852), Madras (1857), Bombay (1864), Alipore (1864), Banaras and Fatehgarh (1864) and Lucknow (1867)\textsuperscript{20}. 

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Till the Mutiny of 1857, the British had no choice, but to allow the local systems to co-exist, in order to achieve social legitimacy for the colonial state. The situation was like ‘live and let live’ with a pinch of imperial salt\textsuperscript{21}. But with the suppression of the mutiny and the arrest of the Mughal Emperor, Bahadur Shah II, and the adoption of the Indian Penal Code, the colonial rulers formalised the claims of the state upon each of the Indians irrespective of caste, creed and religion\textsuperscript{22}. But lack of political will and interest on the part of the government, and also the end of Company replaced by the British Crown, led to the postponement of adopting the Code. It was in 1862 that the Indian Penal Code was brought into operation\textsuperscript{23}. The salient feature of the Code was\textsuperscript{24}:

i) It laid down that people could be punished only for intentional wrong-doings;

ii) It was founded on the notion that punishment must terrorise, and stated in favour of ‘transportation of life’.

The Draft Bill on Prison was framed in 1892 with the objective to make uniform penal laws for the whole of the country at a Conference of Experts on Jail Management, held in Calcutta. This Bill was circulated to all the local governments in 1893 for observation. After that it was presented to the Governor General’s Council for consideration of the Draft Bill. This led to the passing of the Prison Act of 1894—the landmark act which became the basis of not only the Prison Administration in the Colonial period, but also after independence\textsuperscript{25}. 
2.2 FACTORS THAT AFFECTED PRISON ADMINISTRATION AND PRISONERS IN COLONIAL PERIOD

Some of the factors that laid an impact in the administration of prisons and prisoner’s life in the Colonial period are discussed below:

CASTE

Caste played an important factor in the prison management in colonial India, especially in North-India. Until 1840s prisoners in Bengal Presidency were allowed to purchase and prepare food and a place to cook in the prison yard to follow the requirement of their caste. But it led to difficulty in the jail administration and this system was stopped, and in its place the system of “Common Messing” was introduced. Dr. H. M. Cannon, Inspector of Prisons for Awadh, commented,

“No-one who has not visited a large jail at meal time, under the old system (where every prisoner cooked for himself) can for a moment conceive the Babel of jabbering and confusion, the dirt and filth from spilt water, ashes, and newly constructed mud fire-places, the waste of flour and fuel, to say nothing of the peculation and total absence of all discipline, and the time afterwards expended in cleaning up and stowing away some hundreds of brass lothas (water pots) and cooking vessels, with the accompanying hundreds of yards of string for drawing water”26.

The prisoners who were possessive of their caste, especially the Brahmins and Rajputs, revolted against the system of common messing, as it violated caste hierarchies if they dine together with the lower caste. It led to the death of 22
prisoners at Allahabad and Patna jails in 1846. As soon as the system was introduced, the Britishers were surprised to see a number of caste sub-divisions arising, which nobody heard of before. The British suspected that these divisions were created of its own to disrupt the system. At Chapra jail in Bihar, the 620 prisoners were divided into 52 messes with their own prisoner cook. The cooks were whipped for defiance of the order, but they did not stop protesting, and they got support of some 3000 to 4000 people from the people outside. Peace was restored only when the Magistrate suspended common messing. Caste was also potent factor in determining the prison labour during the colonial period. The Prison Discipline Committee opined that:

“To force a man of a higher caste to work at any trade would disgrace him forever, and be in fact inflicting a dreadful punishment not only on himself but on every member of his family. It would be looked upon as a barbarous cruelty, and excite nothing but indignation against the laws, in the strength of which the most dreadful crime would be forgotten.”

RELIGION

The Prison Act, 1894 and Jail Manuals of the Provinces had always maintained the religious spirit of the Indian society, to avoid friction between the prison authorities and the religious leaders who claim to speak on behalf of the prisoners, thereby creating chaos in the prison discipline. The Bengal Jail Manual, 1867, provided that at the time of admission to jails, any convict sentenced to rigorous imprisonment was to have his head shave after every fifteen days, but it also made concessions such as, the Hindu would retain the chooteah (chutia) or sikha (tuft), the beard of
Muhammedans to be left an inch in length, and the Sikhs and Mughals were all times were exempted. Whenever there is an issue on religion, the prisoners were found to overpower themselves, even going to the extent of dictating terms to the prison authorities. For instance, in 1855, Bengal’s Inspector of Jails ordered to confiscate of all unauthorised possessions from the prisoners including the “lotas”. In no time, rumour spread among the inmates that this seizure of lotas was actually an attempt to break caste and force conversion to Christianity. This led to severe protest against the decision of the authority within and outside the jails, which compelled the government to return the confiscated lotas.

The Sepoy Mutiny in 1857, the First War of Independence can be said as an offshoot of all the incidents occurred in the jails as the Indian sepoys were also conscious of their caste and religion. The sepoys and the rebels in the society, then, attacked 41 prisons, mainly in the North West Provinces and Western Bihar, and released over 23,000 prisoners. Gradually the colonial state managed to suppress the revolt by arresting many of the mutineers and rebels, but there were dearth of secure buildings to hold these freedom fighters.

**PATTERN OF PRISON BUILDING**

During the period of 1860s and 1870s, a number of Central and District jails in India were built on London’s Pentoville model with a central watch tower, radiating cell blocks and high perimeter walls. Salem, Lahore and Allahabad jails adopted this model. However, the Agra jail was built with a mixed design of Pentoville and Bentham’s Panopticon where a few number of prisoners were locked together at night, and places for solitary confinement in case of refractory
prisoners. The Britishers established a penal colony to send the mutineers to curb the India’s first war of independence. The construction was carried out by the prisoners deported from the main land in 1893 and completed in 1906. Cellular jail is a massive three storey structure with seven wings of unequal lengths, radiating from a central watch tower, shaped like spokes of a wheel. The architecture of cellular jail was conceptualised on the basis of ‘Pennsylvania System or Separate System’ theory in which separate confinement for each inmate was kept for complete isolation from other inmates. No communication of any kind was possible between prisoners in the same or different wings. The design of Cellular Jail is heavily influenced by Bentham’s ‘Panopticon’ where radiating wings allowed a single guard to keep watch on all the prisoners from the central tower but without the prisoner being able to see him. The influence of Panopticon theory on the architecture of the Jail allowed British rulers to keep effective surveillance on the large number of inmates with less number of guards. The main objective behind the adoption of such combination of design involving isolation and effective surveillance through minimum labours resulted in the dreaded penal facility on the remote island, is basically two-fold—i) to isolate whoever goes against the British; and (ii) to stop exchange of nationalist ideas. No cell in the cellular jail had toilet facilities. Remoteness and terror of the facility gave it a name ‘Kala Pani’ (Black Waters)\textsuperscript{31}.

**TRANSPORTATION OF PRISONERS TO ANDAMAN**

The Britishers sent about 2000-4000 mutineers to the Andaman Islands as the prisons in India were overpopulated. Often punishment was inhuman. Torture and
flogging were frequently resorted to on iron triangular frame, bar fetters and neck ring shackle, leg iron chains and gunny bag uniforms, unhygienic diet were other additional punishments for those who refused to submit to the brutal wardens. In Assam, Maniram Dewan, along with Peali Barua was caught for conspiring against the colonial government and were sentenced to death. Kandarpeswar Singha and Madhu Mallick were arrested near Jorhat and sent to Alipore Central Jail. Later, Kandarpeswar was released from prison, but was kept in surveillance in Burdwan. Madhu Mallick, Dutiram Barua, Formud Ali, Bahadur Gaonburah and several others were tried on charges of conspiracy and sentenced to transportation for life to Andamans. In 1858, Queen Victoria of England granted general amenesty on the basis of which they were allowed to return to Assam from exile.

An article of H.N. Das, the then Chief Secretary, Assam, during 1990-95, titled “Maniram Dewan in Andaman Penal Colony” raised several questions of inquiry. He wrote that while his visit to the Cellular Jail in Port Blair, the capital of Andaman and Nicobar islands, in the third storey wall of the circular central section which joined the seven wings of the 396 cell monstrous building of the cellular jail the names of the inmates at the different times are etched in the alphabetical order of the provinces to which each group belonged. Assam is mentioned at the top. Below the caption “Assam” are listed the following names of prisoners: 1) Bahadurgaonburah 2) Duti Ram Barua 3) Madhu Mallick 4) Maniram Barbhandar Barua 5) Sheikh Formud Ali. It was surprising because there is no official record in Assam about Maniram having been incarcerated in Andaman which is known as “Kaliapani” in Assamese. Even after consulting the book “The
Cellular Jail: The National Memorial” (Sangeeta Publishing House, Port Blair, 1987), of Gauri Shankar Pandey, the foremost scholar of Andaman, with a foreword by I P Gupta, the then Lieutenant Governor of the Andaman and Nicobar islands, repeated the same names in his book under the caption “The freedom fighters of the First War of Independence who were transported to the penal settlement of Andaman Islands established from 10-3-1858. According to Pandey, “the steamship “Semiramis” had left Calcutta on March 4, 1858 with 200 prisoners under the charge of Dr. J.P. Walker. There were two other Indian doctors, 2 overseers and a posse of 60 naval guards under one naval officer in that ship. Only after their arrival on March 10, 1858, the Indian penal settlement was established in Andaman known as the dreaded Kala-Pani (Black Waters)”. But the life span of Maniram Dewan is recorded as 27-04-1806 to 26-12-1858. He was put into Alipore Jail for conspirating against the British government. Later he was brought back to Jorhat. At Jorhat, Maniram was tried by Captain C Holroyd, “Commissioner Appointed under Act XIV of 1857”. Maniram was sentenced to death on February 23, 1858. On February 26, 1858 Maniram was executed along with Piyoli Phukan. The question raised by the writer is how could Maniram arrive in Andaman on March 10, 1858, the date on which the first batch of prisoners reached the island whereas according to official records Maniram was hanged on February 26, 1858.

FAMINE

Famine during 1860s and 1870s led to the increase of death rates of the prisoners died from cholera, malaria, dysentery and diarrhoea. In this regard, the Sanitary Commissioner observed that the jail population rises and falls with the price of
grain. Increase in the price of the crops led to the increase of crime rates and vice-versa. To escape from famine, the poor people deliberately committed crimes to get confined in jails, as they could get food and shelter therein. The prison was, thus, called as “apna sasural” (our father-in-laws house). Rohde, the Madras Inspector of Jails stated that “Imprisonment is a boon to the greater number, they are better clothed, and better cared for, than nine-tenths of them ever were in their lives”. To stop such culture, the government tried hard to make prison deterrent, and to stop death rate of prisoners, the Committee also recommended for the employment of medical officers to be in-charge of Central jails and District jails. Until 1860, the jails in the district were under the jurisdiction of the Magistrates. But owing to their multifarious functions, the government decided to appoint such an officer that would solve the health problems of the prisoners caused due to famine, overpopulation, and unhygienic conditions. Accordingly, in 1862, a Civil Surgeon was appointed as the Superintendent of Jails in the North-Western Provinces. This measure was successful and the Government of India issued orders in 1864 that all provinces should appoint Civil Surgeon as Superintendent of Jails.

RACE

The Britishers were very concerned to the ‘race’ factor, even in the jails and rules were framed accordingly. The rules and the treatment meted to the Indian and European prisoners would provide a clear picture of the colonial domination over the Indians. The British had always ensured that being the ruling race, imprisonment of European prisoners should not be made excessive, harsh or humiliating. They were kept separated from the Indian prisoners at Ootacamund
jail reserved for European prisoners—a small but substantial and two-storied building made on Pentoville model accommodating only 36 Europeans. In fact, the diet contained mutton, beef, bread and potatoes, unlike the monotonous dietary of *ragi* and *dal* meant for Indian inmates. The colonial state maintained its superiority and dignity even behind the walls at the cost of the dignity of Indians.\(^{38}\)

**PRISON AS A ‘HOUSE OF INDUSTRY’**

Before 1850s the Indian prisoners were used in public works—road construction, canal and railway tracks, outside the jail premises. Later to tackle the problem of escape and avoid communication from public, the colonial rulers thought of introducing prison labour within the jail premise mainly from the economic point of view rather than prison reform. F. J. Mouat, the leading proponent of Prison Workshops in India justified it as part of the Prison Discipline and Reform, and also to make the prisoners active. The colonial state converted jails into ‘Schools of Industry’, producing quality goods for sale. In 1861, Mouat stated that the production in Alipur and Hugli jails was unparalleled in prison management in the world as the former alone earned income of nearly Rs 210,000 from printing work and Rs 60,000 by manufacturing gunny bags—a total profit of almost Rs 270,000. Again, the jails of Madras Presidency produced goods worth Rs 331,832, most of which were supplied to other government departments, including uniforms, boots, sandals and blankets for the police. However, Lord Ripon stated that jail manufactures ‘*should be regarded not as a source of revenue, but as a branch of prison discipline*’\(^{39}\).
APPOINTMENT OF CONVICT WARDERS

The appointment of convict warders emerged as a great problem in maintaining jail discipline in colonial period. The prisons were largely out of their control and almost entirely in the hands of the convict warders. In the absence of trained staff and with senior prison officers loaded with administrative works led to the appointment of the convict warders. These selected inmates were given certain powers (such as supervising the jail workshops or as night-watch men in the prison wards or barracks) and rewarded with special privileges (such as being allowed to smoke when possession of tobacco was forbidden to other inmates or received small monthly payments). But these powers and knowledge of the prison perpetually made the convict warders a dictator dictating terms to other prisoners, especially the new entrants, and even the jail officers. At times, the prison community was formed with its own norms and rules. One member of the 1877 Jail Conference while criticising the system of the employment of convict officers’ said that “entrusting one group of convicts with authority over other had broken down the boundary which should strongly exist between convicts and their keepers. It is more like burlesque than serious government to take a law-breaker and dress him up and pay him to act the part of upholder of the law”. V.O. Chidambaram Pillai, a witness to the Indian Jails Committee of 1919-20 and himself a former prisoner, alleged that convict warders were the “medium of all the extortions, unnatural offences and torture in jail”. He further said that convict warders organised the physical intimidation of new prisoners in order to extort money from them or simply to make them submit to their authority. The letters or diaries written occasionally by the literate prisoners proved to be a testimony of such incidents.
Homosexuality formed a part of the networks of power built around the convict warders and the inmates. This was done through exchange of letters among the prisoners; denial of the proposal would lead to physical torture. One of such letters written in July 1917:

*Dearest Latiff (wrote by Nilokanto)*

Received your letter yesterday and came to know everything. From this day you cannot expect anything from me. I have not been giving you Rs5 or 7 monthly for so long that you might become the chokra [boy] of Gaffur. However, if you wish to be my chokra, come today anyhow........through Nos 10 and 11 wards........Mind that this is my last letter”.

**POLITICAL PRISONERS**

The period from 1919-1947 was a remarkable period in jail administration—“The jail lost its terror, and imprisonment became a badge of honour, and later a passport for a seat in the legislature or parliament, was a phenomenon, unique in history, not seen in any part of the world”[41]. While using the techniques of Satyagraha, especially Non-Cooperation Movement, Civil Disobedience Movement, many people were jailed, including Gandhi and Nehru. The Non-Cooperation movement had set in a political culture of jail-going which posed a different kind of problem for the government. Apart from the large numbers, the government was faced with a new genre of prisoners, known as political prisoners who were not forced inside the prison but had volunteered to ‘suffer’ imprisonment. The nationalist leaders utilised the prison site as an effective stage
of protest against the colonial state. In regard to the treatment in jail a Satyagrahi prisoner wrote that:

“We may not grumble at personal discomfort or the worries or pin-pricks of prison life. We do not complain of jail dress or the hard bed but where our conscience pricks we will stop and refuse to budge an inch further from where we have taken our stand”.

In Assam, Shri Kedarnath Goswami along with his brother Indranath Goswami, Shri Kalimohan Roy and Shri Bijoykrishna Ghosh were arrested during the Non-Cooperation Movement for having enrolled as Congress volunteers, which was then declared illegal. In the jail, there were some occasions for clash between them and the jail authorities, such as—

The first was in connection with the practice of saying “Sarkar Salam” every morning when the Jail Superintendent, an English Officer, visited the jail. They refused to live up with other convicts to greet the Jail Superintendent even when they were threatened of punishment.

i) Another occasion was when Prince of Wales visited India. The visit had been boycotted by the Congress and accordingly they decided to observe the boycott within the jail also. At the meal time, when all convicts had gathered altogether, they raised patriotic slogans and all convicts shouted with them. As punishment and precautions against their indoctrinating the ordinary convicts with Congress ideologies, they were segregated from the ordinary convicts and confined in a separate ward.
ii) They also took their stand against the then prevailing corrupt practices of the jail officers and ill treatment and very bad food supply to prisoners. The allegation of having taken bribe against a Jailor made by them resulted in an official enquiry within the jail\textsuperscript{43}.

The boycott of the Prince Wales had made the British Government too furious and decided to take the following repressive measures:

i) Extensive use of the Indian criminal amendment act (1908) and the Prevention of Sedititious meetings act (1911) to arrest and imprison all those involved in the movement.

ii) The Volunteer Corps was declared illegal and all the members were arrested.

iii) The jails were crowded almost every parts of India. In Assam, more than 4,000 political prisoners were confined in jails. The government had to set up prison camps to accommodate more prisoners\textsuperscript{44}.

The Report of the Indian Jails Reform Committee (1919-20) dealt with the issue of the treatment of political ‘criminals’ in the jails of British India. Political offenders were defined as persons who committed ‘certain political offences’ such as those punishable under Sections 124A (sedition) or 153A (promoting enmity between classes) of the Indian Penal Code and who were ‘generally not inspired by the same ‘motives’ as those of the ordinary inmates. Therefore a demand was made to provide special treatment to the political prisoners in matters relating to labour, diet, clothing and accommodation. But the Committee of 1919-20 discarded the demand of special treatment to political prisoners only on the basis of ‘motive’, political or non-political as an ingredient of crime. The Committee rejected the idea
of separate category of political prisoners on the basis that “crime remains crime”, whatever be its ‘motive’, political and non-political. Thus, the Jail Committee of 1919-20 had put forward the following proposals for the political prisoners:

i) The law should not expressly recognize political motive as an ingredient of crime.

ii) The idea of special treatment for political prisoners should be rejected.

iii) Special treatment should be provided for persons who were likely to be injuriously affected physically or mentally by ordinary jail discipline and treatment.

iv) Simple imprisonment should be divided into two classes—one with and one without liability to light labour, and

v) Additional amenities should be granted to persons sentenced to simple imprisonment\textsuperscript{45}.

However, the issue of the treatment of political prisoners was finally resolved at a Conference held at Shimla on 15 July, 1922, attended by the representatives of both the Central and State Government. It was decided to separate the political prisoners from ordinary prisoners on certain grounds and are termed as ‘special’ or ‘separate’ division prisoners which are allowed special facilities. The local government was entrusted with the task of identification of special division prisoners\textsuperscript{46}. India after independence continued the legacy of providing special status to the political prisoners.
HUNGER STRIKE

In colonial India, hunger strike emerged as a potent weapon of resisting colonial government in jails. The national leaders like Jatindra Nath Das, Bhagat Singh and Batukeswar Dutta after being kept in jails as political prisoners had to face many hardships and witnessed the horrible conditions prevailing within the premises. They had protested against such ill practices against the authority through the non-violent technique of Fasting or hunger strike. In 1925, Jatindra Nath Das went on hunger strike at Mymensingh Central Jail to protest the ill-treatment meted to the political prisoners. After fasting for 20 days, the Jail Superintendent apologised and then he gave up the fast. On 4th June, 1929, Das was arrested for his association in revolutionary activities and was imprisoned in Lahore Jail to be tried under the supplementary Lahore Conspiracy Case. In Lahore Jail, Das began a hunger strike along with other revolutionary fighters, demanding equal treatment for Indian Political prisoners with those of the Europeans. He found that the conditions of Indian prisoner were deplorable. The uniforms for Indian prisoners were not washed for several days, rats and cockroaches roamed the kitchen area making the food unsafe to eat, prohibited reading material or paper to write on. But after fasting for 63 days for the rights of the prisoners, Das died a martyr’s death on September 13, 1929. Similarly, Bhagat Singh and Batukeswar Dutta, imprisoned on 8th April, 1929 initiated a historic hunger strike protesting against the abusive treatment of Indian political prisoners and eventually secured some rights for them.
CIVIL DISOBEDIENCE MOVEMENT

The Civil Disobedience Movement of 1930-32 that started with the violation of salt law by Gandhiji led to the imprisonment of over 90,000—more than three times the figure in the Non-Cooperation Movement of 1920-22. The immense support gained from the poor and the illiterate, both in the town and in the country, made the National Movement even more stronger. Jail-going became one of the many forms of participation in the national movements. The Inspector General of Prisons in Bengal, E. J. Lowman, expressed the general official bewilderment when he noted, “I had no idea that the Congress organisation could enlist the sympathy and support of such ignorant and uncultivated people.....”49. The Government after the signing of the Gandhi-Irwin Pact in 1931 released political prisoner and conceded the right to make salt for the consumption of villages along the coast50. When Gandhiji was in London to attend the Round Table conference in 1931, the Government of India prepared to take steps to launch “a hard and immediate blow” against the revival of the movement. As a part of the programme, in Bengal, the Government passed several draconian Ordinances and detained thousands of political workers in the name of fighting terrorism. In September, the police fired upon political prisoners in Hijli jail, killing two. Just after Gandhi had arrived India from London, he was arrested. Within a week, leading Congressmen all over the country were behind bars. Within four months, over 80,000 Satyagrahis, most of them urban and rural poor, were jailed. The Congress and its allied organisations were declared illegal and their offices and funds seized. Prisoners in jails were barbarously treated and whipping as punishment became frequent51. In Assam
dozens of young boys were chained at night by passing an iron chain through out on their legs. Three thatched houses were filled by the Civil Disobedience prisoners in the Jorhat Jail. Standing handcuffs, bar fetters, link fetters, solitary imprisonment were the order of the day. In Assam imprisonment was not so frequent. Congress workers were arrested, kept in the police lock-up and released at midnight. More frequently, they are taken 10 / 12 even 20 miles away from the place of arrest and left in jungles.

PLIGHT OF WOMEN PRISONERS

The treatment of political prisoners particularly of ladies was harsh and humiliating. Urmila Shastri imprisoned for joining the Civil Disobedience Movement was asked by the British Magistrate to apologise, but she chose to go to jail. While staying in jail she wrote a book “My Days in Prison” (1934), based on her personal experience and observations in the prison. She wrote about the cruelty, barbarism and loss of humanity in prison, about the prisoners who had to face the fetid smells, unhygienic conditions, more often inedible food and multitude of vectors leading to illness. Dheki, Ghani and other hard labour were prescribed for the Civil Disobedience prisoners. High class ladies were given paddy husking. One high class lady prisoner was pushed by Col. Ritchie, the then Superintendent of Tezpur Jail for the inability to perform the prescribed task of paddy husking. He went so far as to pull out the bangles of some ladies confined in the Tezpur Jail by applying soap-water solution by himself as the ladies refused to pull out the bangles, the symbol of married life. The treatment meted out in the Jorhat Jail was hellish. Sreejuta Dwarika Dassi, prominent lady worker of Golaghat District
Congress Committee died in the Sibsagar Hospital following an abortion. She was five months pregnant. To the last, she was asked to go out of the jail by giving an undertaking, but she stoutly refused. She first suffered from dysentery, and subsequently removed from the jail to the Sibsagar Hospital where she died\textsuperscript{54}.

**CLASSIFICATION OF PRISONERS**

The prisoners in the colonial period were classified into three categories—A, B and C. In the jails of Assam, a condemned cell fitted with a cot, a table and a chair are provided to the higher A division prisoners. The C division prisoners are kept with and given the same food with the ordinary prisoners, the same task is allotted to the political prisoners. There are only 33 A Division prisoners. Barely 50 were placed in B division and the rest were placed in the C division\textsuperscript{55}. For most of the 19\textsuperscript{th} century little provisions was made for the separate accommodation of women and they were often relegated to the worst parts of the jail, but for political prisoners there were separate cells. In a matter of fact there were special instructions for the treatment of the political prisoners in the jails of Assam. Political prisoners were kept in cells or association wards and were allowed to communicate freely with each other but were kept as far possible from the other prisoners. On transfer they were to take their feeding utensils and bedding with them to the receiving jail. The prisoner received jail diet as laid down for ‘B’ Division prisoners in Rule 369 of the Assam Jail Manual Vol.1. Loose papers were also provided to them but only for writing personal letters to their family\textsuperscript{56}. 

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POLITICAL DISCUSSION IN JAIL

The leaders of the freedom movement during their stay in the jail often held discussions on political issues. In fact, the discussion on the formation of a Socialist Party was made in jails during 1930-31 and 1932-34 by a group of young Congressmen who were disenchanted with Gandhian strategy and leadership and attracted by Sociologist ideology. In the jails the study and discussion on the ideology of Marx and other Socialist ideas brought them together and formed the Congress Socialist Party (CSP) at Bombay in October 1934 under the leadership of Jayaprakash Narayan, Acharya Narendra Dev and Minoo Masani\(^57\). In 1940 Gopinath Bordoloi, Bishnu Ram Medhi, Fakharuddin Ali Ahmed, Gauri Kanta Talukdar, Lakheswar Barooah, the Congress Chief Tayyebullah, Omeo Kumar Das and Krishna Das were imprisoned for being Satyagrahi and sent to Jorhat Jail of Assam. There they formed a group where many discussions on the future of Assam were made seriously, especially the issue of political sovereignty of the States and requested all the prominent Congressmen to participate in the discourse. Tayyebullah called these meetings as the “Rashtra Gathan Sabha” of Bordoloi and asserted that the objective of these meetings were to find ways and means of bringing about an independent Indian national state of Assam, separated from, and independent of, India, either with the help of Indian National Army (INA) or the Japanese. Some of the important issues which were discussed in the meetings were—

- the future territorial boundary of India;
- Assam’s future political relations with India and;
Assam’s internal problems and their solution.

In regard to the relationship between the centre and the provinces, the group was confronted with two general issues which they considered the two sides of the same coin—
1) Where should the sovereignty lie—with the centre or the provinces?
2) To whom should the residuary powers be assigned?

Fakharuddin Ali Ahmed, who later became the fifth President of India, insisted on the notion of Provincial Sovereignty, delegating certain powers like defence, external affairs, etc, to the Centre. He strongly advocated granting of residuary power to the states. The members opined that under the new Constitution, the sovereignty would lie with the States subject to the delegation of some powers to the Centre. Thus, the prominent Congressmen of Assam way back in the 1940s advocated constituting provinces would delegate some power to the Centre. The minutes of the meeting which took place on 12 January 1941 at 12:50 p.m. is particularly significant. It says—

“All are agreed that the free State of India should recognise every individual in the State as an equal unit....but it would be desirable to provide for certain fundamentals in reference to i) freedom of conscience, worship and religion; ii) freedom of speech and expression; iii) protection and safeguard of the interest of the recognised communal minorities.....;iv) freedom of local language and culture; v) recognition of the sovereignty of provincial state, subject to the delegation of such powers regarding defence, international relations etc. to a central state, etc.” 58.
FROM QUIT INDIA MOVEMENT TO INDEPENDENCE

With the declaration of Quit India Movement in 1942, the people of British India as well as the Princely States joined to throw the British rule at any cost. In Assam, Gopinath Bordoloi was imprisonment for his involvement in the Movement and was sent to Guwahati Central Jail as Under-trial prisoner. Soon the jails of Assam were overcrowded with political prisoners creating administrative difficulties for the jail officers. But a few days later Bordoloi, Golok Chandra Pathak, Hareswar Goswami, Girish Chandra Choudhuri, Lakhidhar Bora and Gauri Kanta Talukdar were transferred to Sylhet Jail as they were discussing the topic of the runaway of Jay Prakash Narayan from the Hazaribagh jail of Bihar, although the discussion was said to be totally academic. As described in the book “Gopinath Bordoloi”, the Sylhet Jail was then the largest jail in Assam, but the treatment meted out to the political prisoners was harsh. Sashidhar Maliabarua, a believer of non-violence and a Congress leader was beaten to death by the Jailor. During their stay in Sylhet Jail, Kushal Konwar was hanged in Jorhat Jail, the only jail where prisoners are hanged. However, in 1947, Sylhet went to East Pakistan (now Bangladesh) and therefore Assam had to lose the Sylhet jail as well. In 1943, Gandhiji commenced a fast in jail for 21 days as his answer to the Government which had been constantly pressurise him to stop the violence of the people in the Quit India Movement. Gandhiji not only refused to condemn the people’s resort to violence but blamed the Government. He said that it was coercive activities of the government which had provoked the people. One interesting thing during the movement was that jail officials tend to be much kinder to prisoners than in earlier, and often openly expressed their sympathy.
PRISON LITERATURE

Literature produced behind the bars may be termed as ‘prison literature’. The peace and quiet environment of the jail premises inspired many inmates in the colonial period to jot down their experiences and feelings. The colonial period has produced an interesting collection of prison writings of all genres—autobiographies, letters, diaries, translation and memoirs. “The Story of My Destination” (1908) was the first of available prison writings by Lala Lajpat Rai. Sri Aurobindo wrote “Tales of Prison Life” (1910), an account of his experiences as an under-trial prisoner in Alipore Jail. Many prisoners serving sentence in Andamans wrote about the atrocities of prisoners. Reference can be made to that of B. K. Ghose’s “The Tale of Of my Exile” (1922) and Ullaskar Dutt’s memoir “Twelve Years of Prison Life” (1924). Mahatma Gandhi’s prison writings include his autobiography, “My Experiments with Truth” and “Yerawada Mandir”. In “Yerawada Mandir”, Gandhi wrote that he regarded jail as a mandir. It made no difference whether he was in jail or out of jail. In fact JawaharLal Nehru gained world recognition as an historian and scholar with his books, especially “The Discovery of India” and “Glimpses of World History” which was actually written in jail. The discovery of India was written in Ahmednagar Fort prison between April to September 1944. The book covers over 4000 years of India’s history from the Vedic period to the mid-20th century. It discusses many periods of social transformation in India’s long history. The “Glimpses of World History” is actually a compilation of nearly two hundred letters sent to his daughter Indira Gandhi to make her aware of the world history61. In Assam, while serving sentence during Quit India Movement, Gopinath Bordoloi started writing about the biography of great legends like Shri
RamChandra, Buddhadev, Jesus Christ and Mahatma Gandhi to eradicate the feeling of communalism from the minds of young generations\textsuperscript{62}. Tarun Ram Phukan wrote “Stutimala” during his stay in jail\textsuperscript{63}. Other prison literature includes “The Jail Note Book” by Bhagat Singh, “Srimad Bhagavad Gita Rahasya” by Bal Gangadhar Tilak, “India Divided” by Dr. Rajendra Prasad and many more\textsuperscript{64}.

2.3 FACTORS THAT AFFECTED CRIMINAL JUSTICE SYSTEM IN POST-COLONIAL INDIA

India attained independence after facing many challenges and hardships. Leaders of the nation vowed to establish democracy in India by providing right to its citizens. Accordingly the Constitution was framed that ensured rights, justice, equality and fraternity. But the persons behind bars were left as forgotten beings languished in jails. The continuation of the Prison Act of 1894 till date is a testimony of the negligence of state towards the citizens behind bars. The law relating to prisons in India even after independence is contained in the Act of 1894 and the rules framed by the provincial government on the basis of this Act. Therefore, the issues and problems faced by the prison administration in independent India is somewhat similar to that of colonial period. Some of the important issues affecting prison and prisoners in post-colonial India are discussed below:

PRISON AS AN INSTITUTION OF BRITISH LEGACY

Just like in colonial period, even after independence, the responsibility for the administration of the prison was conferred to the provincial or the state
government. Prison was included as Entry 4 of List II (State List) of the Constitution of India. The first significant step in the direction of streamlining the organisational structure of prisons was taken after the recommendation of the Prison Discipline Committee, 1836-38 that fixed a limit of 1,000 inmates for Central Prisons and also advocated the creation of the post of IGP in each province. In 1919-20, the Committee on Jail Reforms for the first time recommended for the creation of a gaol service comprising of men trained in prison functions and skills. The same views, regarding the re-organisation of prison service were suggested by Dr. Walter C. Reckless in the course of his expert advice to the Government of India in 1951-52. Accordingly, the All India Jail Manual Committee 1957-59 and the Working Group on Prisons, 1972-73 hold elaborate discussion on the scope and function of the prison department and recommended the creation of a separate cadre of prison services, headed by an in-service IGP. Until recently the IGP continued to be appointed from amongst officers of the Police Department, Social Welfare Department, Medical and Health Service. However, in a significant change in policy decision in regard to prisons’ security, the state government of Assam has decided to appoint a senior Indian Police Service (IPS) officer as the Chief of jails in Assam after a gap of nearly two decades. In the last two decades, the post of Inspector General of Prisons was held by a senior Assam Civil Service Officer. Further, the post has been upgraded to the rank of Additional Director General of Police (ADGP) with the first choice for the post being Jyotirmoy Chakravarty. Unlike Assam, almost all the States have IPS officers as in charge of jail security. Haridas Kachari, an IPS officer, was the last to occupy the post of IGP (Prisons) in early 1990s in Assam. Sources further said that the Home Department,
in view of the recent cases of jail breaks, has decided to go for a complete overhaul of the jail security and infrastructure. The authorities at the helm of affairs are of the opinion that with a police officer in-charge of the jail security, it would be easy to improve the vigil both inside and outside the prisons in the state.\textsuperscript{66}

**CLASSIFICATION AND SEPARATION OF PRISONERS**

Another legacy from India’s colonial past is the classification scheme for prisoners as per the directives laid down in 1894. Inmates are divided into three categories—A, B and C. A and B inmates are persons who “by social status, education, habit of life have been accustomed to a superior mode of living. Category C is the residual category consisting of prisoners who are not classified in A and B. Those high class and caste, those with property or lineage or education, are set apart from the poor, uneducated, low caste. Thus, in the independent India, the British Raj is still alive and well in the prison.\textsuperscript{67} As per Section 27 of the Prison Act, 1894, female prisoners are to be separated in a way that they could not have any access to the male ward. Even among male prisoners it is directed that juveniles, convicted and under-trials are to be kept separate from each other. But this has not been followed in reality by the jail authority. Except the juveniles and women, all the categories of prisoners are kept together.\textsuperscript{68} Hiranya Kumar Bhattacharya, a Police Officer who was imprisoned for his active involvement in the Assam Movement was sent to the Hazaribagh Central Jail of Bihar as an Under-trial prisoner, but had to stay along with the convicted prisoner.\textsuperscript{69}
AUTHORITARIAN NATURE OF GOVERNMENT

At times the post-colonial Indian state proved to be authoritarian, especially during the period of Emergency in 1975 by Mrs. Indira Gandhi, the then Prime Minister of India, that degraded the democratic set up. It was shocking to the whole of the country that being the daughter of Nehru, the leader who fought for democracy had turned to be a dictator. Whoever protested against her was put behind bars. By imposing the Maintenance of Internal Security Act (MISA), thousands of people who were considered to be threat to the Congress government were jailed. Some notable leaders arrested under this Act were Atal Bihari Vajpayee, L. K. Advani, George Fernandes, Jay Prakash Narayan, etc. Hiranya Kumar Bhattacharya during his stay in the jail very often had to sleep empty stomach and met several prisoners who had been suffering for many years for the negligence and corrupted officials. In Hazaribagh Jail, he was denied to consult with his lawyer which he said was the violation of his fundamental rights which was not curtailed by the National Securities Act. Bhattacharya said that one can realise the pain of losing of fundamental rights only in the jail premises.

RAMPANT CORRUPTION

Kiran Bedi, after joining as the Inspector General (Prisons) of Tihar Jail witnessed horrible condition of prisoners languished within the closed walls in the hands of corrupted administration. She said that “human beings in the form of inmates were herded like animals in a cage. There is no one to rescue and remedy their agonies and pains. If, any one dares to complain against the authority, the authority with
immense powers makes their life horrible by snatching their rights given as per law”. She also stated that “very often prisoners’ rights are converted to privileges which can be witnessed right from the entry till his /her release. For every basic human need, a prisoner has to pay the price for it. Kiran Bedi was surprised to see corruption in Tihar Jail prevailing widely as an accepted norm. The researcher herself experienced such an incident of corruption when a jail staff asked money for meeting the prisoner in the Central Jail, Guwahati for academic purpose. Kiran Bedi said, “There was corruption in every sphere of Jail Administration. Right from the moment, the prisoner came to the jail, for every little human need, he/she had to pay the cost till finally released.”

CONVICT WARDERS AND PRISON HIERARCHY

The system of appointing a few selected prisoners as convict warder or officer in the colonial period still exist and continues to be an important part of the Jail Administration in India after independence. In Assam, the convict officers are known as ‘Mate’ in charge of different departments/ works known as ‘Saali’, such as—water saali, kitchen saali, vegetable saali, etc. A few literate inmates are selected to work in the office to help the officers in their administrative work. These particular inmates appointed as convict officers stay at the apex of the prison hierarchy, who are basically selected from the lifer category. Along with them the hardened criminals with heinous offence makes their own prison rules to which the other prisoners are bound to obey. The Mulla Committee in a report noted:
“It was alleged (by prisoners) that certain prisoners enjoyed special confidence of the authorities for which they were allowed extra privileges, including free movement all over the jail compound. In matters of basic amenities, like diet, clothing, interviews, letters, etc., prisoners were being discriminated against. The allotment of labour was also not based on any fair criteria.”

OVERCROWDING

Like the colonial period, Overcrowding is also a big problem in independent India. The ‘Prison Statistics India 2015’ Report published by the National Crime Records Bureau (NCRB) reveals that one of the biggest problems faced by the prison inmates is Overcrowding. It paves the way for other problems such as such as poor hygiene and dearth of space to sleep. The Report stated that “keeping in view the human rights of prisoners, it is essential that they are given space and facilities in jails”. The occupancy rate at the All India level at the end of 2015 was 114.4%. Dadra and Nagar Haveli is reported to be the most overcrowded prisons at 276.7%, followed by Chattisgarh (233.9%), Delhi (226.9%), Meghalaya (177.9%) and Uttar Pradesh (168.8%).

UNHYGENIC

Hiranya Kumar Bhattacharya in his book “Kararuddha Jibanar Bakaruddha Kahini” wrote that he was stunned to see that the Hazaribagh Central Jail bearing historical importance both in colonial and post-colonial India was in such a horrible condition. In the freedom struggle movement many leading national leaders such as
Rajendra Prasad, Khan Abdul Gaffar Khan, Subhash Bose, etc were imprisoned. After independence, in times of Emergence many leaders were put in this jail. In spite of the stay of such notable leaders, the condition of this jail had been pathetic, especially the sanitary and kitchen. Kiran Bedi while serving as the Inspector General of Tihar Prison from 1993—1995 witnessed many incidents that would shock humanity. For instance, the breakfast was not provided and lunch served at 11:00 am. Meals were doled out from rusted iron containers which were used for multipurpose activities like washing clothes, storing water and bathing. They were even used for the collection and carriage of dry garbage by the inmates. But its main use was to carry cooked food dal or vegetables for distribution to the prisoners. Occasionally, some containers were covered by unclean towels, belonging to one of the inmates, which got half-soaked in the broth. The distance to take the food to the prisoners invariably turns cold. Bedi personally detected insects and other assorted particles floating in the vegetable broth. KiranBedi in her book “Its Always Possible: Transforming one of the Largest Prisons in the World” described an interrogation with the Assistant Superintendent (store) during a meeting. The Officer responded Bedi’s questions in the following manner:

“Bedi: Why are you using such old rusted containers for carrying food? Why don’t you replace these with stainless steel ones?

Officer: Madam, stainless steel containers break easily. They have no resale value either. He/she further stated that these iron containers are sturdy and durable. We bought them for 15 or 20 years ago. Still they are serving the purpose.
Out of anger Bedi shouted: Would you serve food to your own family in such durable containers? If yes, go on. If no, then let’s be ashamed of what we are doing.”

PLIGHT OF WOMEN PRISONERS

Kiran Bedi stated that women prisoners were subjected to the most humiliating experiences, which robbed them of what little dignity and self-respect they reached the prison with. On the basis of the personal experience in the Tihar Jail, one of the largest jails in the world, according to Kiran Bedi, women prisoners face the following problems:

- Serious overcrowding
- Victims of misbehaviour
- Threatened against making any complaints.
- Allegations of being cheated by lawyers
- Suffered from feelings of hopelessness
- Vulnerable into being lured into committing unlawful activities
- Pitiable living conditions
- Impoverished and poorly literate

Shamin Modi, Assistant Professor at the Tata Institute of Social Sciences (TISS), Mumbai, a human rights activist working for the rights of the Adivasis in the Harda, Betul and Khandwa districts of Madhya Pradesh, was put in women’s jail in 2009 on the pretext of false cases such as dacoity, looting, kidnapping and kidnapping with an intention to murder. During her stay in jail, she witnessed that
woman prisoners had to suffer double discrimination. Once she came out in bail, she started raise voice against the atrocities meted to the women prisoners and spread awareness about prisoners’ rights in jail. Her experiences in jail was shared in an interview. 

“The jail officers would hang inmates upside down, or keep them standing for hours. Strip search was very common...They were very creative about finding new ways and methods of humiliation.....It was unbelievably filthy—rats all over the place. A total of 35 women slept in the space meant for 15. During periods, no cloth or sanitary towels were provided—so damp, dirty blankets, or any other rotten material was used. You were no longer human……”.

PLIGHT OF UNDER-TRIAL PRISONERS (UTPS)

Machang Lalung was an under trial for 54 years and he was never produced before any court. The problem of many under-trial prisoners is that they have to stay in jails with the convicted for long period even though no offences has actually been proved against them. It is possible that at the end of the trial they are discharged, but nothing can bring back their irretrievably lost dignity, the years spent behind jail walls, and the stigma, separation and abuse they suffered in the institution of prison. India is said to be the largest democracy in the world, with a long list of fundamental rights and incorporated directive principles with an objective to establish a welfare state. But there are many citizens inside the jails whose rights are being violated by keeping them as under-trials for years. As per the ‘Prison Statistics India 2015’ Report, 67% of the people in the jails of India comprised of
the UTPs. Three states identified to have a high proportion of UTPs are—
Meghalaya (91.4%), Manipur (81.9%) and Nagaland (79.6%)\(^82\).

**JUDICIAL INTERVENTION IN PRISON ADMINISTRATION**

With the advent of independence and coming into force of the Constitution, the concept of criminal jurisprudence in India has undergone a radical change. The constitution has conferred some valuable human rights—especially Article 21, which provides that no person shall be deprived of his life and personal liberty except according to the procedure established by law. But in spite of all these constitutional safeguards and the new concept of criminal jurisprudence which emerged after independence, the horrible conditions of Indian jails did not receive serious attention, either of the Government or Courts. Prison laws remained in bad shape. It was in the late seventies that the Supreme Court noticed the horrible conditions of the Indian prisons and took positive steps to improve the same. The Supreme Court judgement in the Maneka Gandhi v. Union of India (1978) 1 SCC 248 gave a new direction to the rights of prisoners. It laid down that the procedure established by law must be reasonable, fair and just, otherwise the law would be violative of Article 21. Thus, the judiciary entered into the neglected field of prison jurisprudence and made very important pronouncements in the subsequent series of cases and also gave directions in a number of spheres of prison administration which would serve as a Bible to the State and jail administration\(^83\).

The Britishers had, thus, evolved the Criminal Justice System—a novel concept which was both *momentous and delicate*\(^84\) and the system is still continuing in India till date. No doubt Indian Government after independence sought to bring
reforms in the prison administration by accepting the correctional philosophy of reformation, but the whole prison system functions in such a way that it feels like that the “British Raj” is still alive in prisons with all the characteristics of domination and rule of authority over the persons behind bars.

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5 Singh, Radhika, op. cit., pg21-22, footnote no. 90.


7 Misra, BankeyBihari, op. cit., pg315.

8 Choudhuri, N. R., op. cit., pg27.


16 Shankardass, Rani Dhavan (ed.), op. cit., pg276-77.
17 Misra, B. B., op. cit., pg 311.


19 Cited in Arnold, David & Hardiman, David (ed.), op. cit., pg 163-64.


21 Shankardass, Rani Dhavan (ed.), op. cit., pg 266-67

22 Singha, Radhika, op. cit., preface pg ix & 299

23 Ibid, pg 299

24 Shankardass, Rani Dhavan (ed.), op. cit., pg 270.

25 Choudhuri, N. R., op. cit, pg 36.

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29 Ibid, pg 165


34 *Maniram Dewan in Andaman Penal Colony*. (December 6, 2015), The Assam Tribune.

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36 Choudhuri, N. R., op. cit., pg32.

37 Manaworker, M. B., pg95.

38 Arnold, David, & Hardiman, David, op.cit, pg170.

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42 File No. 1/ 1932 (Part I) page 16 (From the Congress Correspondent) 12 /4/1932.

43 PHA File No. 327 / 1940, “Statement of Shri Kedarnath Goswami, Moran, Darrang”.

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54 PHA File No 327, 1940, “Miscellaneous Papers—(Regarding Politics).

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66“IPS officer to head jails in State”. (July 4, 2015), The Assam Tribune.


68 The Assam Jail Manual, pg 222


70“Maintenance of Internal Security

71 Bhattacharya, Hiranya Kumar, op. cit., pg 102-06.


73Ibid, pg 63.
74 Bedi, Kiran, op. cit, pg126.


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81 Bhattachrya, Hiranya Kumar, op. cit., pg522-23.


83 The Assam Jail Manual, pg 3-4.

84 Singha, Radhika, op.cit., pg 1-2