

**HUMAN RIGHTS IN CAPTIVITY: JAIL
ADMINISTRATION AND IMPLEMENTATION OF
PRISONERS' RIGHTS IN ASSAM**

**A Thesis submitted to the Gauhati University for the Degree
of Doctor of Philosophy in Political Science in the Faculty of
Arts**



Submitted by:

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CERTIFICATE

This is to certify that Barnali Sarmah wrote her thesis entitled, "*Human Rights in Captivity: Jail Administration and Implementation of Prisoners' Rights in Assam*" under my supervision for fulfillment of Doctor of Philosophy in the Department of Political Science. The thesis is the result of her investigation, and neither thesis nor any part thereof was submitted for any other degree or diploma of this or any other university. I recommend the adjudication of the thesis as per existing rules of the university.

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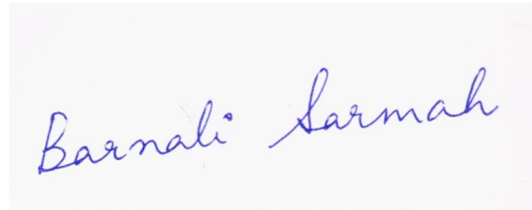
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A rectangular box containing a handwritten signature in blue ink. The signature reads "Barnali Sarmah" in a cursive script.

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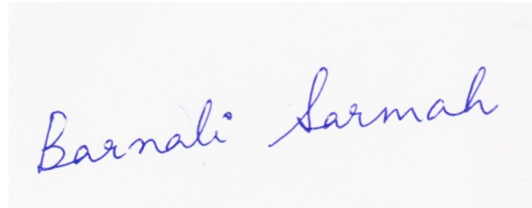
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ABBREVIATIONS

IGP	Inspector General of Prisons
CJS	Criminal Justice System
UTP	Under-Trial Prisoner
OAJ	Open Air Jail
IPC	Indian Penal Code (IPC)
Cr.PC	Criminal Procedure Code
UN	United Nations
UDHR	Universal Declaration of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
SC	Supreme Court
PRC	Peoples Republic of China
NCRB	National Crime Records Bureau
KKHSOU	Krishna Kanta Handique State Open University

CHAPTER 1

INTRODUCTION

The human rights approach starts from a presumption that every human being, for the fact of being born as ‘human’, is entitled to certain rights. A special category of human being, known as ‘prisoners’, however, had to bear the loss of such rights as a consequences of imprisonment. The essence of imprisonment is deprivation of liberty and the task of prison authorities is to ensure that this is implemented in a manner which is no more restrictive than is necessary. It is not the function of the prison authority to impose additional deprivations on them¹. Liberty of the person constitutes the backbone of living a dignified life. Denial of this right is to paralyse an individual’s spirit to live a normal life. In certain circumstances judicial authorities may decide that it is necessary to deprive such right to a particular category of people for a period of time as a result of the individual’s anti-social actions. They are then handed to the care of the prison administration as ‘prisoners’ entrusted with the responsibility to convert them into law-abiding citizens. Deprivation of liberty to this category, however, does not mean denouncement of all their fundamental rights. And any restriction on these rights has to be justified as appropriate to the aims pursued by the restrictions. But in the process of reforming the criminals into human, the custodian of the prisoners are found to indulge into using torture and blackmail, thereby converting their rights into privileges. Nelson Mandela who had served prison sentence for more than two decades in the isolated Robben Island wrote in his autobiography “Long Walk to Freedom” that, “*Prison not only rob you of your freedom, it attempts to take your*

identity. Everyone wears a uniform, eats the same food, follows the same schedule. It is by definition a purely authoritarian state that tolerates no independence or individuality. As a freedom fighter and as a man, one must fight against the prison's attempt to rob one of these qualities"². He further said, "*No one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones...*"³. The state being the legitimate and aggregate structure of power in a society has the exclusive power to 'punish' the transgressor of state's law as well as the only institution from where one can seek justice for any wrongdoings. Armed with power and authority, the modern state has turned out to be the principal threat to the enjoyment of human rights. The state keeps busy in giving slogan of transforming prisons into correction and reformation centre, but in reality the prisoners living in the mercy of the authority stand far from the concept of correction. The government has always kept the prison department in the last row of priority, and even in the criminal justice system, it stands at the tail-end. The state has yet to understand that to invest on the prison and the prisoners is an investment on the quality of life⁴.The prisoners do not dare to make complaints for the fear of further torture and most importantly, for the fear of losing their chance of getting privilege from the authority, which are actually their rights, but not being aware of. This has made the prisoners to form the most 'vulnerable' 'unpopular' and 'marginalised' group of all human categories that often gets trampled by the state itself in the name of reformation and correction. In an interview an Honourable Retired Justice of the Gauhati High Court and presently a Human Rights Activist stated that,

“Prison is a different world where Jailor is the king. The authority can do and undo anything as they are out of sight from the public. Among all the categories, the prisoners are the most vulnerable group to face the ultimate violation of human rights. Knowing the hard reality, we have to be mere spectators because the system is wholly corrupted. Even when a prisoner completes his or her term of sentence, he or she has to wait for two to three years for release order either because of the negligence of authority, lengthy procedure or administrative delay. Actually prisoners are not considered as ‘human’. They live at the mercy of the jail authority”.

Honourable Hassan Jallow, the then Attorney General of the Gambia, in a speech which he made at a conference on penal reform in Banjul in 1992⁵ stated:

“Very often when we discuss the question of human rights or when human rights are mentioned to the public, prison conditions are the last thing people think of. Human rights seem to be related more to people who are actually not in custody, who are at liberty. Yet, obviously the rights of people who are incarcerated, who are forcibly held together and grouped together in hundreds, need to be considered as well. There is need to respect the rights of those in custody within the limits of the law relating to their confinement there, as much as the rights of those who are outside the prison itself”.

Persons in custody are therefore helpless, because on the one hand a burgeoning jurisprudence of human rights awakens the oppressed and the suppressed to their rights and remedies, and on the other, an emerging totalitarian regime, overt or

covert, contradicts the energetic democratic framework of human rights⁶. In other words, the life of the prisoner is marked by two stark realities- one is deprivation of normal requirements of freedom, sex, food and expression, another is the totalitarian power exercised by the custodians⁷. This contradiction between the right to be human and human rights on the one hand, and the punitive deprivation of fundamental freedoms and dignity of the individual as an easy method of defending society against its criminal members, on the other, is the dilemma that requires indepth analysis⁸. Therefore, the prison administration happens to be a critical area for the observance and implementation of human rights in a civilized society. As confinement debars the prisoners to fight for their own rights, unlike other categories of human beings, it is the bounden duty of the state to facilitate certain minimum standards for their care and maintenance, and opportunities for the preservation and growth of their human attributes. As the person in person cannot be reduced to the status of a 'non-person', the jail administration has to provide an environment compatible with human dignity and conducive to his reformation and re-socialisation⁹. In this context a quote written by Andre Gide, a French thinker and writer, can be cited, *"Everything has been said already, but as no one listens, we must always begin again"*¹⁰. Albert Einstein in his Address at Chicago University on February 20, 1954, stated that, *"The existence and validity of human rights are not written in the stars. Those ideals and convictions which resulted from historical experiences, from the craving for beauty and harmony, have been readily accepted in theory by man and at all times, have been trampled upon by the same people under the pressure of animal instinct. A large part of history is therefore replete with the struggle for those human rights in which a*

final victory can never be won. But to tire in that struggle would mean the ruin of society"¹¹. Human rights are of utmost necessity "*not for life but for a life of dignity, a life worthy, a life worthy of a human being*". Human rights are less about the way people are than about what they might become. The advocates of human rights believe in the principle, "*Treat a person like a human being and you will a get a human being*"¹².

1.1 PRISON: THE TAIL-END OF CRIMINAL JUSTICE

ADMINISTRATION

The method of dealing with crime by the government is basically known as the criminal justice system¹³. The Criminal Justice Administration is comprised of three separately organized parts--- the Police, the Courts, and the Prisons and corrections. The police is responsible for controlling crime and maintaining law and order, the courts are prosecuting agency, and finally the aim of the correction is institutionalizing the activities of the offender and rehabilitating the person to full and useful participation in the society¹⁴. However, each of these agencies is by no means independent of each other. The action by the Criminal Justice Agencies against law breakers serves three distinct purposes beyond the immediate punitive one¹⁵---

a) It removes dangerous people from the society who pose a violent threat to its very survival.

b) It deters others from criminal behavior which in general creates conditions conducive for social living.

c) It offers society an opportunity to transform law-breakers or anti-social individuals into law-abiding citizens of future.

Prison or jail, thus, constitutes an important part of the Criminal Justice System (CJS) as it is entrusted with the important responsibility of turning law-breakers into law-abiding citizens. The success and failure of the CJS are measured in the field of corrections. When a person is adjudged guilty of having committed a crime and sentence to imprisonment, prison is usually the place where he is to be kept while undergoing sentence. During this period, reformatory measures have to be carried out by the jail authority to fulfill two fundamental objectives of government—i) the protection of society and; (ii) the rehabilitation of the offenders¹⁶.

Jail is known to be the oldest penal institution, also called as ‘prison’ in many countries. In the West, in 16th century, prison emerged as confined spaces where beggars, vagrants or dissenters were usually sent for petty offences. Accordingly the English Bridewell House was opened in 1552¹⁷. The practical beginning of imprisonment as the normal method of punishing criminals started in the last quarter of 18th century. However, it was in 19th century that imprisonment became the major form of punishment, and following in 20th century, certain individualized measures of offenders were introduced into prison sentences, leading to the emergence of the concept of prison as “Correctional House”¹⁸. Since no state is

free from crime and criminals, the institution of prison has become integrated for every country and India is not an exception. A well-organised system of prisons is known to have existed in India from the earliest times. The Dharmasutras dealt with the civil and criminal law and is regarded as the earliest works on Hindu legal system. It is on record that Brahaspati laid great stress on imprisonment of convicts in closed prisons¹⁹. However, it was during the pre-modern Mauryan period that Jail Administration was evolved²⁰. Kautilya in his 'Arthashastra' stated that rulers in ancient India made frequent use of fortresses to lodge their prisoners. He was personally of the view that as far as possible prisons should be constructed by the road-side so that monotony of prison life is reduced to a considerable extent. In ancient India, greater emphasis was laid down on the spiritual aspect of human life and therefore, the prisons were so modeled as to provide sufficient opportunity for penance and remonstrance. It was a common practice to keep the prisoners in solitary confinement so as to afford them an opportunity of self-introspection²¹. There is no systematic description about the construction of prisons, but available sources reveal that during the reign of Ashoka, Sannidhata was in charge of Jail Department who was to select sites for the location and construction of prisons. Prisons were designed like forts and castles with cells and small compartments²². In the medieval period the criminal justice administration was based on the principles of Mohammedan Law and to administer the justice system is the responsibility of the King or Sultan. Prisoners awaiting trial were detained in prison in the Muslim period of India. One of the duties of the Kotwal was to check the number of persons in the prison²³. It is during the British rule that prison and prison administration came into existence in concrete form. After independence,

the prisons were divided into several categories--Central Jail, District Jail, Sub-jail, Women Jail, Borstal School, Open Jail, Special Jail, and other jails. The Central Jails have both custodial and treatment staff which include medical doctors, psychologists, welfare officers, social workers, teachers and vocational instructors. The hierarchy of custodial staff in the prison system takes the following form: Superintendent, Jailor, Deputy Jailor, Assistant Jailer, Head Warders, Warders and other staff. The criteria of Central Jail vary from state to state. However, the common feature throughout India is that prisoners sentenced to imprisonment for a long period (more than two years) are confined in the Central Jails, which have larger capacity in comparison to other jails²⁴. As per the Prison Statistics 2015 Report²⁵, there are 1,401 number of jails in the country, of which 134 are Central Jails. Madhya Pradesh has the highest number of 11 Central Jails followed by Maharashtra, Punjab, Rajasthan and Tamil Nadu with 9 each. Karnataka and Delhi have 8 jails. Assam has 6 Central Jails—Guwahati, Jorhat, Tezpur, Dibrugarh, Silchar and Nagaon. Arunachal Pradesh, Meghalaya, Andaman and Nicobar Island, Dadra and Nagar Haveli, Daman and Diu and Lakshadweep have no Central Jail²⁶.

Generally, a prison which is presumed as a “cage”²⁷ is a place for detention or imprisonment. However, the Prisons Act, 1894 in Section 3(1) defined “prison” as any jail or place used permanently or temporarily under the general or special orders of a state government for the detention of prisoners, and includes all lands and buildings appurtenant thereto, but does not include—

- a) Any place for confinement of prisoners who are exclusively in the custody of police.
- b) Any place specially appointed by the State Government under Section 541 of the Code of Criminal Procedure, 1882, or
- c) Any place which have been declared by the State Government, by general or special order, to be a subsidiary jail.

The State and Centrally administered territories are served by a network of prison institutions comprising of—

- i) Central Prisons: it is meant to house life convicts and other convicts with sentence of three years and above.
- ii) District Prisons: It is primarily meant for prisoners with sentences of up to three years and for under-trials
- iii) Sub-Jails: It is meant to house small time convicts and the local under-trials who for reasons of health or nearby family commitments are lodged in such jails.
- iv) Special Jails: In addition to these jails, the states also have the benefits of diversified institutions which ensure segregation on a scientific basis, such as jails for women, institutions for high-security prisoners and so on.
- v) Open Jails: It is meant to house those lifers who has served one third of his term of sentence and has shown good behaviour throughout his stay in the closed jail.

Unlike the model of diversified prison institutions prevailed in many institutions prevailed in many states, the Delhi Prison has followed a unified prison model that has a unique composite character. This prison is an “all-in-one” prison that performs the functions of diverse categories of prisons. Thus, the Delhi Prison house convicts, long term and short-term under-trials and detainees, male as well as female prisoners, local and foreign prisoners, ordinary prisoners as well as maximum-security prisoners and so on²⁸.

The administration of the prison administration is the sole responsibility of the states as ‘Prisons’ is a State subject under List II of the Seventh Schedule to the Constitution of India. The Central Government is largely concerned with policy formulation and planning services. All prisons are managed by the State Government or by Union Territory Administration and is under the Ministry of Home Affairs. In each state, the Head of the Prison Administration is the Inspector-General. He has a few Deputy-Inspectors general to look after the jails in each of the various geographical ranges into which the state is divided²⁹. As per the Prison Act of 1894, for every prison, there shall be a Superintendent, a Medical Officer (who may also be the Superintendent), a Medical Subordinate, a Jailer and such other officers as the State Government thinks necessary. The management and administration of prisons fall exclusively in the domain of the state governments, and is governed by the Prison Act of 1894 and the Prison Manuals of the respective state governments with a few amendments whenever necessary. The states have primary role, responsibility and authority to change the current prison laws, rules and regulation³⁰. The existing statutes on regulation and management of prisons in the country, based on which the State Government frames Rules and Manuals is

given in Appendix 1.1. The important statutes that govern the jail administration of Assam are given below:

1. The Prison Act, 1894 (with Assam Amendment)
2. The Prisons (Assam Amendment) Act, 1956
3. The Prisons (Assam Amendment) Act, 1967
4. The Assam Prisons Act, 2013

As per the information received from the Office of the Inspector General of Prisons (IGP), a Jail Manual Committee is yet to be formed to prepare a new Jail Manual for Assam Jails following the instructions of the Assam Prisons Act, 2013 and the Model Jail Manual of 2016. It is to be noted that the rules of Jail Manuals differ from State to State. However, no State can disobey the Principal Act of 1894, amended from time to time. Recently an attempt was made to amend some of the provisions of the principal Act of 1894 and accordingly a Bill was placed in the Parliament titled “The Prisons (Amendment) Bill of 2016, March 1, 2016, by Shri Mullapally Ramachandran, M.P., to make it more humane and civilized. Some of the important provisions included in the new Bill are cited below³¹—

- i) In case of a pregnant prisoner, her diet and work allocation shall be determined as per medical advice.
- ii) A pregnant prisoner shall be entitled to grant of conditional parole for thirty days from the expected date of delivery or thirty days from the date of delivery if the delivery takes place while she is in prison.
- iii) The jail authorities shall be responsible to ensure basic hygiene in the jail premises and precincts of a prison by putting the prisoners on the job of

maintaining hygiene and in the absence or unavailability of prisoners, by appointing temporary workers in such manner as may be prescribed.

- iv) The State Governments shall establish separate prisons to keep habitual and hardcore offenders separately from the first time offenders and the offenders convicted for lesser crimes.
- v) The State Government shall provide skill training including computer classes, tailoring, carpentry, cooking, gardening, and language classes, in such a manner as may be prescribed, to the prisoners.
- vi) The officers of a prison shall conduct workshops and seminars on such subjects as would be helpful for rehabilitation of and for educating the prisoners. For this, the State Government shall appoint adequate number of professionals, educators and counselors in such manner as may be prescribed. In spite of such efforts, poor implementation of the recommendations of the Statutes prison has failed to establish itself as an institution of reformation and correction. It is because the most vital areas where prisoners' rights get violated are yet to be amended, especially— Wage System, Prison Visiting and Access to Furlough. It is the also the most neglected part of the government for which the process of implementing its provisions through Jail Manuals would take time. Nobody is interested to acquire knowledge of what is actually happening in jails in the name of reforming, re-socialising and rehabilitating the prisoners; how prison personnel convert inmates' rights into privileges; and why a prisoner could not raise voice against the violation of their rights? The attitude of officers and the provision of the prisoners' rights depend on the status of the

prisoners within and outside. Prison as institutions of state control have remained shrouded in mystery as it does not come under public scrutiny. Neither have the authorities encouraged a free flow of information regarding prison institution nor the researchers has evoked sufficient interest in studying prisons as a subject on its own. As a consequence prison literature has remained perpetually impoverished³².

1.2 PRISONERS AND HUMAN RIGHTS: A NEW THERAPEUTIC PHILOSOPHY

Crime and criminals is the by-product of a social system. The roots of crime lie deep in the society of which individual is an integral part. V. R. Krishna Iyer, an eminent Judge of the Supreme Court stated that to imagine that an individual is solely blameworthy for the conduct of crime is an illusion. Society makes many contributions with its own distortions, and the criminal is more a behavioural projection of a crime-prone society. He viewed that *“Every sage has a past and every sinner a future”*. Therefore, the new Therapeutic Penology and techniques of Reformation and Rehabilitation based on the respect for human rights of prisoners is encouraged with the belief that an element of basic goodness or finer values is inherent in every individual which could be nurtured, cultured and redeemed by reformative methods to make the criminal a useful citizen who would know his/her duties as well³³. It is believed that there are quite a large number of offenders who are otherwise well behaved and are persons of respectable class of society but they fall a prey to criminality on account of momentary impulsiveness or due to situational circumstances. Again there is yet another class of prisoners who are

otherwise innocent but have to bear the rigours of prison life due to miscarriage of justice³⁴. V. R. Krishna Iyer, therefore, said³⁵,

“No man is born wicked, but he becomes so when society makes him sick. Society prepares the crime, the criminal commits it. Therefore, the cure for criminality is not to be sought in the genetic code of the delinquent or in treating him as a savage in a circus, to be ordered into desired behaviour by a whiplash. Nor is it right for some people to pretend, in an elitist self-righteous manner, that they are good, but the others, branded criminals by the legal system are irretrievable. If crime is a disease then the sentence must have a hospitalization or out-patient perspective...Of course, society must strongly condemn crime through punishment, but brutal deterrence is fiendish folly... It frightens, never refines; it wounds, never heals. Progressive penology must gravitate towards the therapeutic processes which heal and humanize, restore and socialise, and reconcile criminal punishment with dignity of personhood”.

A time was there when prisons were considered as a somewhat isolated, mysterious and frightful place where offenders are imprisoned for having committing an offence. They were regarded as primitive place of barbaric torture and vindictive agony. And there was no question of any relief, even if he was tortured or beaten in prison, or subjected to other inhuman treatment. However, with the increasing concept of human rights it has been realized that prisons are not isolated institutions, but are a part of society, and prisoners are human beings and not “aliens”, who has the right to enjoy rights, subjected to restriction as per law. With the changing concept of punishment in the light of human rights, under modern

correctional philosophy complete deprivation of prisoner's rights is said to be unrealistic. Moreover, for the last few decades, the swing of pendulum from punishment to correction has encouraged the penal institutions to expose the inmates to probation, parole and correctional facilities. Imprisonment is increasingly used as a tool for the correction and treatment and training of the offenders³⁶. Accordingly, initiatives were taken by various democratic countries to introduce reformatory measures to convert the criminals into law-abiding citizens. The US Supreme Court, by 1975, have whittled down the 'hands-off' doctrine and sustained the indubitable proposition that constitutional rights did not desert convicts but dwindled in scope³⁷. Article 1, the Code of Criminal Law of China, "is formulated in accordance with the policy of combining punishment with leniency in light of actual circumstances". This principle implies—on one hand—defense of society's interests and the rights of its citizens against criminal encroachment and—on the other hand—a just treatment of convicted persons and their rehabilitation³⁸. In India also, in a number of cases, the Supreme Court has said that the Constitution does not say 'good bye' to the offender on his imprisonment, but it follows him even within the 'stone walls'³⁹. Reference can be made to that of Sunil Batra's case in which Justice Krishna Iyer said:

".....Part III of the Constitution does not part company with the prisoner at the gates, and judicial oversight protects the prisoner's shrunken fundamental rights, if flouted, frowned upon or frozen by the prison authorities"⁴⁰.

1.3 THEORIES OF PUNISHMENT: SHIFT FROM PENAL TO CORRECTIONAL

It is a myth that the more cruel the sanction, the more obedient the citizen. From time immemorial punishment has been inflicted on the offender in various forms with the objectives to protect the society and prevent others from committing offences against the authority. The history of early penal systems of most countries reveals that punishments were torturous, cruel and barbaric and deterrent in nature such as flogging⁴¹, mutilation⁴², branding⁴³, stoning⁴⁴, pillory⁴⁵, and fines. The Deterrent theory of Punishment punishes criminal as a means to serve the end of prevention of crime from society⁴⁶. Bentham justified the Deterrent Theory on the basis of the Utilitarian Principle—“the greatest happiness of the greatest number” that a given action produces. An action such as punishment is right or justified as this measure would benefit the society at large. To him the end of punishment is to discourage crime, which he termed as ‘mischief’. A criminal is punished to be made an example to prevent others from committing the same crime⁴⁷. It is believed that the state must inflict enough pain so that the offender could not think of committing crime anymore. It also expects the prison inmates to lead a poor and uncomfortable life than the obtained in the society⁴⁸. Bentham, however, said that punishment is itself a mischief, or evil, since it inflicts pain, and according to the principle of utility “it ought only to be admitted in as far as it promises to exclude some greater evil”⁴⁹. Besides Bentham, Thomas Hobbes and Cesare Beccaria, the exponents of this theory believed that since people are rationally self-interested, they will not commit crimes only if the cost of committing crimes is much more

than the benefits of engaging in undesirable acts. However, Bentham, Hobbes and Beccaria clearly stated against the excessive punishment as it will not reduce crime, rather it will increase crime. Thus, they believed that “punishment that is too severe is unjust, and punishment that is not severe enough will not deter criminals from committing crimes”⁵⁰.

Retributive Theory is another theory of punishment prevailed earlier with the idea of vengeance or revenge based on the idea that evil should be returned for evil. While Deterrent Theory considered punishment as a means of attaining social security, the Retributive Theory treated it as an end in itself. The theory is based on the assumption that it is right for the wicked to be punished, because man is responsible for his actions and he ought to receive his due⁵¹. Aristotle, Kant and Hegel are the key exponents of the Retributive Theory. Aristotle regarded punishment as a ‘negative reward’, that is, the society gives him what is his due without depriving him for he has earned by committing the crime. Reacting against the Utilitarian principle of ‘greatest happiness of the greatest number’, Kant argued that “punishment can never be administered merely as a means for promoting another good either with regard to the criminal himself or to society. The penal law is a ‘categorical imperative’. Hegel also advocated this view. It means if human being acts irrationally, morality involves an imperative or command that directs individuals to do or not to do something. Punishment is itself the end for the crime committed by the criminal⁵². In regard to the nature of punishment, Retributive Theory can be divided into two forms⁵³:

1. Rigorous: According to this form, punishment is inflicted according to the

character of the offence. If the offence is severe, the punishment should be severe; and if the offence is light, the punishment should be light, irrespective of other circumstances. “Eye for an eye and tooth for a tooth”—is the motto of this view. Therefore, a murderer should be awarded capital punishment and there exist no concession in this respect under any circumstances.

2. Mollified: According to this form, the state while punishing takes into considerations the motives and intentions of a wrong-doer. All possible factors such as the age of the criminal, his intention, provoking circumstances, etc. must be taken into account under which the crime was committed before punishing him. In case of capital punishment also, it recommends taking into consideration of certain circumstances that compelled him to be unruly. Mollified Retributive Theory of Punishment believed in ‘justice tempered with mercy’⁵⁴. In the book “A Manual of Ethics” the Mollified form of Retributive is regarded as the most satisfactory theory of punishment⁵⁵.

Critiques like Rashdall condemned the Retributive theory as ‘vindictive theory’ and instead advocated for the Reformatory Theory⁵⁶. The Reformatory Theory justified punishment on the basis that it acts as an opportunity to take steps to reform (reformatory practices) the criminal and thereby reduce crime. However, unless reformatory steps are coupled with the belief that offenders deserve to be punished these practices are unlikely to produce any result. Ted Honderich stated that punishment apart from reformatory steps is necessary because “if an action is

not one that is punished by the state individuals may not realize the extent of its wrongfulness”⁵⁷. It admits that punishment has to be existed in the criminal justice system for the smooth functioning of society because in its absence there will be chaos, confusion and disorder in the state and the weak will be exploited and victimized by the strong⁵⁸. The difference is that with the increasing importance of Human Rights, the Theory of Punishment has shifted its focus from Penal to Correctional. The Reformatory Theory favour punishment neither as a means to attain the end of happiness of greatest number nor as the end of negative reward for committing crime. Here the end is to transform an anti-social individual into a law-abiding citizen of society and that too through fair means such as by adopting various reformatory measures such as Implementing Human Rights, Parole, Probation, Open Air Jail, Vocational Trainings, Education, etc. The Reformatory Theory maintains that crime is a kind of disease and the criminal should be treated well so that he may be able to recover from this disease. They maintain that just as a disease is diagnosed before the actual treatment, so crime should be diagnosed and proper treatment should be given to the criminal⁵⁹.

Generally, it is assumed that Reformatory Theory is an alternative to the Retributive and Deterrent Theory of Punishment. However, the term ‘Reformatory Punishment’ is said to be an ‘oxymoron’—two terms having opposite meaning. Ted Honderich pointed out that “punishment is a practice which aims to cause distress. A practice which does not have this feature is not punishment⁶⁰. Again reformatory practices do not involve the infliction of distress or suffering. Similarly, J. D. Mabbot said that any practice “which makes his (an imprisoned man) food sufficient to sustain health, which counters permanent tendency to

brutality on the part of his warders, which gives him a dry or even a light and well-aired cell, is pure gain and does not touch the theory of punishment”⁶¹. Prof. N. V. Paranjape⁶² while discussing the Reformatory Theory of Punishment viewed that,

“...it must be pointed out that though reformatory treatment involves benevolent justice, yet the detention of the offender in prison or any other reformatory institution for his reformation or readjustment is in itself a punishment because of the mental pain which he suffers from the deprivation of his liberty during the period he is so institutionalized. Therefore, it is erroneous to think that institutional detention for reformation is not in a form of punishment. In fact, surveillance and close supervision is itself punitive though it involves no physical pain or suffering.

It is observed that the reactions of the society towards criminals have shifted from retributive theory of punishment to deterrence followed by reformatory theory that helps the offender to rehabilitate or re-socialise in the mainstream of society’⁶³. This trend towards humanizing punishment and reducing its brutalities, gave rise ultimately to a new concept called ‘Correction’. The Reformatory Theory supported by Criminology regards crime as a pathological phenomenon—a mild form of insanity, an innate or acquired physiological defect, and therefore criminals are required to be cured, rather than punished. At the same time every crime is not a case of insanity, or social maladjustments, but full-fledged proper crime. Ethics says, *“The crimes which are deliberate violations of moral law should be punished, because they are not caused by physiological defects”*⁶⁴. Salmond observed that as recidivists and hardened criminals do not respond favourably to the reformatory measures, deterrence in certain cases especially for abnormal is necessary⁶⁵.

1.4 FOUCAULT ON PRISON AND PUNISHMENT: SHIFT FROM BODY TO SOUL

Foucault in his famous work “Discipline and Punishment” mentioned about an account of brutal public execution of Robert Damiens, a former soldier in the French army, who was found guilty of regicide, on January 5, 1757. In 1840 Foucault cited of a different kind of punishment in the form of time table prevailed in a French Juvenile Penitentiary. Foucault then commented, “We have, then a public execution and a time-table”. The first being the brutal and cruel, the second represented the new, ‘gentler’ way of punishment—a civilized and humane approach to punishment⁶⁶. It is found that before 18th century, punishment was barbarous, ceremonial and the main focus was on the body. Punishment was inflicted publicly to set an example that a terrible vengeance would be inflicted upon those who disobey the law of the sovereign. At the end of 18th century public execution was criticized and calls for reformation started which paved the way for the emergence of a new approach to punishment in which the public aspect was removed by keeping the whole process behind the walls of an institution⁶⁷. According to Foucault, it gave birth to the institution of prison as a modern mechanism of power with the aim ‘not to punish less, but to punish better’. Foucault then outlined four major differences between modern and pre-modern approaches. These are cited below:

1. Punishment is no longer a public display in modern period.

2. What is punished is no longer the crime but the criminal, the concern of the law being not so much what criminals have done as what (environment, heredity, parental actions) has led them to do it.
3. Those who determine the precise nature and duration of the punishment are no longer the judges who impose penalties in conformity with the law, but the 'experts' (psychiatrists, social workers, parole board) who decide how to implement indeterminate judicial sentences.
4. The avowed purpose of punishment is no longer retribution (either to deter others or for the sake of pure justice) but the reform and rehabilitation of the criminal.
5. Pre-modern punishment violently assaults the criminal body, but is satisfied with retribution through pain; modern punishment demands an inner transformation, a conversion of the heart to a new way of life. But this modern control of the soul is itself a means to a more subtle and pervasive control of the body, since the point of changing psychological attitudes and tendencies is to control bodily behaviour. As Foucault puts it, for the modern age, 'the soul is the prison of the body'⁶⁸.
6. Foucault's work "Discipline and Punish" is an account for a modern penal system where importance is given to the reformation of the soul, rather than the punishment of the body. To Foucault, the body will always be affected by punishment, because we cannot imagine a non-corporal punishment—but in modern system, Foucault says, the body is arranged, regulated and supervised rather than tortured. The body-soul shift is central point of discussion in his book "Discipline and Punish"⁶⁹.

Foucault then argued that effort of reformers were not motivated solely for the welfare of the prisoners, rather they wanted to create an institution through which power can operate on society and have control on it. On Foucault's account, this modern system of power can be termed as 'discipline'. Discipline refers to the techniques adopted by Foucault, such as timetables, drills, and exercise, through constant surveillance to regulate the body through activity and in his words, to produce 'docile bodies'—"bodies that not only do what we want but do it precisely in the way that we want"⁷⁰. The criminals are transformed into 'delinquents' in prison, defined as 'abnormal' as against the 'standard norms of human behaviour' created by the human sciences or bodies of knowledge, such as criminology, sociology, psychology and medicine. Delinquents are kept separated from the rest of the society to control their bodily behaviour through the disciplinary techniques. Observation and the gaze are the key instruments of disciplinary power⁷¹. To him the watchtowers along city walls are a classic example. But modern power has raised the technique to a new level. The modern architecture builds structures in a way that fulfill the functional needs of ordinary people and at the same time 'render visible those who are inside'. For Foucault, the ideal architectural form of modern disciplinary power is Jeremy Bentham's Panopticon—a proposal for maximizing control of prisoners with a minimal staff. In the Panopticon each inmate is in a separate cell, separated from and invisible to all the others. Further, the cells are distributed in a circle around a central tower from which a monitor can look into any cell at any given time. The principle of control is not the fact but the possibility of observation. The monitor will actually look into a

given cell only occasionally. But the inmates have no way of knowing when these occasions will arise and so must always assume that they are being observed. The result is to induce in the inmate a state of consciousness and permanent visibility that assures the automatic functioning of power⁷².

Prior to prison, disciplinary techniques existed in other areas of society—army, school and factories, as special institutions that distinguished themselves from the surrounding world through their special internal order. However with the passage of time the concept of discipline changed its nature. Initially it functioned as a ‘negative’ technique that was able to prevent or limit what was unwanted, but over the time there was an emphasis on discipline playing a ‘positive’ role by increasing the utility. For instance, in army discipline can enhance the individual’s skill and ability to play active role in wars, in factories the individual worker’s agility to improve production, and disciplinary teaching would not only strengthen body and mind of the students, but also improve skills and use them in doing task. Discipline, thus, became constructive as well as productive. Gradually this disciplinary technique of controlling individual’s body and behaviour was applied to prisons to convert the criminals into law-abiding citizens. And In prison inmates are put into surveillance to make them disciplined with the purpose of improvement of their personality and eventual return to society⁷³. To Foucault prisons resembles with other institutions of society like schools, army and factories, not because they look similar, but for examining and classifying them as individuals and trying to make them conform to the ‘norm’. The prison supervises the morality of the prisoner after crime; it is also a workshop, and a hospital where cure and normalization take place. This combination has made prison as penitentiary⁷⁴.The combination of

disciplinary techniques—hierarchical observation and normalizing judgement gives rise to the third technique of Foucault, ‘examination’. Foucault said, “It is a normalizing gaze [that] differentiates them and judges them. The examination is a prime locus of modern power/knowledge, since it combines into a unified whole ‘the deployment of force and the establishment of truth’”. It both elicits information of those (criminals, students, workers, etc) under scrutiny and through the norms it sets, controls behaviour. The examination turns the individual into a ‘case’ which serves two purposes—a scientific example and; an object of care, or control as said by Foucault. It is done by recording the prisoner’s behaviour into documents and on the basis of the information the power system, along with the experts (such as psychiatrist, doctors, social workers, parole board, etc) would control and at the same time reform the delinquent. Thus, the power system has changed over the time—“in the pre-modern period, the exercise of power was itself typically highly visible (military presence in towns, public executions), while those who were the objects of knowledge and remained obscure. But in modern age the exercise of power is typically invisible, but it controls its objects by making them highly visible”. The criminals are highly visible object of knowledge, which are being observed, supervised and controlled by the authority and other invisible functionaries associated with the correctional process⁷⁵. Prison is the place in which punishment is organized silently as a treatment. Other forms of punishment were unthinkable because the prison was so closely linked to the functioning of society that it became self-evident. Foucault argued that a stage has reached where discussions are on what to do with the prison, and not how to do without it. Foucault clearly stated that the prison is not a marginal building on the edge of the

city, but closely integrated into the society. As our society is built on liberty, prison as the deprivation of liberty is the obvious punishment. The self-evidence of the prison is also based on its dual role—first, in depriving liberty of the criminals, and second, in reforming them. Prison, thus, is a complicated institution⁷⁶.

Critics argued that the institution of prison has proven to be a failure as a reformatory and instead has produced delinquents by its constraints and very environment. The prison riot in France in 1972-74 served as an example of failure of the 1945 reforms. But these universal maxims of prison reform are still operating. Foucault said that in a society, the system of discipline of prison, the rational technique for managing prisoners, the rise of criminality and strategies of reform prevails. This is the ‘carceral system’. The carceral system contains both the failure and success of the prison. To Foucault, failure is a part of the prison system. In spite of its failure, prison backed by the political power retains till date for the fact that it is the only institution where delinquents are kept apart from others with the deprivation of liberty for the fact of imprisonment, and at the same time disciplinary techniques are applied to reform them for the benefit of the society⁷⁷.

1.5 BROAD OBJECTIVES

The broad objectives are significant as it would identify the areas of investigation and lead to systematic and procedural inquiry of the research work. Accordingly, the broad objectives of the present research are summarized into the following points:

1. With the increasing concept of human rights, there has been a shift from punitive to correctional philosophy, as a result of which prisoners are considered as 'human', suffering from mental malady. They are sent for treatment in the institution of jail. The prisons are no more considered as isolated, mysterious and frightful place, rather it has been considered as a part of our social system. In fact, being human and for the fact that no human is criminal by birth the prisoners can the prisoners claim for conditional rights subjected to some restrictions as per law.

2. To which extent the Reformatory theory of Punishment is being applied by the jail authorities instead of Retributive, Deterrent or punitive methods, in achieving the objectives of criminal justice system.

3. It would be of utmost importance to acquire knowledge about the condition of the prisoners that prevailed during the colonial and the changes evolved after independence as this would provide enough scope to the researcher to make a comparative study of the jail administration and its provisions made for the maintenance of the dignity of the prisoners.

4. The prisoners constitute the most vulnerable group as they cannot raise voice against the atrocities meted out by the prison personnel in the name of rules and regulations. In this regard the issue of women prisoners is much more sensitive as they have to face double discrimination compared to male counterparts.

5. The jail personnel are endowed with the responsibility of transforming the law-breakers or anti-social individuals into law-abiding citizens and rehabilitate the same in the society again. This can be possible only by providing certain opportunities to develop themselves in the form of rights. In this context, it is necessary to inquire about the role played by the jail personnel in reforming the prisoners in the backdrop of human rights.

6. What are the international covenants and protocols pertaining to the protection of the rights of the prisoners? How far the Indian State has been able to take up reform measures in improving the prison and prisoners languished in jails in the context of international norms. In the context of research, it is imperative to analyse whether the reforms undertaken by the jail administration of Assam is at par with the international norms and conditions.

7. Rights being an important feature of democracy, it is imperative to analyse how far the Indian state has been successful in protecting the 'rights' of the prisoners? The researcher has made use of the parameter of human rights of prisoners to examine the nature of Indian State.

1.6 RESEARCH QUESTIONS

The specific research questions would help the researcher in achieving the broad objectives of the research task. Thus, the above mentioned broad objectives can be fulfilled only when the following research questions are answered —

1. What is the legal-institutional framework of prisoner's rights? What is the nature of such rights?
2. What are the rights that a person behind the bars is entitled to enjoy?
3. From the point of diet, health, hygiene and sanitation, what is the condition of the prison and prisoners languished in jails of Assam?
4. To which extent the Assam jail administration has implemented the rights of the prisoners?
5. Which of the rights are mostly converted into privileges? Does it lead to violation? What is the nature of such violation?
6. What is the status of women prisoners? Do they face discrimination compared to male prisoners in regard to diet, hygiene and security?
7. Are the under-trial prisoners kept in separate cells? Do the jail authority inform about the rights they can claim even behind bars, such as right to legal aid?
8. What is the role of judiciary in regard to providing security to the rights of the prisoners? What are the judicial pronouncements made in regard to the protection of the rights of the prison inmates?

Besides the above objectives, the researcher inter alia also would like to see the following aspects:

1. What is the structure of jail administration? Are the inmates kept as per their nature of crime? Is there any difference between wards and barracks?
2. Is there any contradiction between the norms of jail administration and norms of the prison community?

3. What kind of vocational activities are assigned to the jail inmates?
4. What is Open Air Jail? Does it influence in restoring the basic dignity of the prisoners?

1.7 HYPOTHESES

The proposed study shall begin with the following hypotheses—

1. Conversion of rights into privileges leads to gross violation of the rights of prisoners.
2. Women prisoners face double discrimination than those of male prisoners.
3. Non-implementation of human rights instruments is responsible for violation of the rights of the jail inmates.
4. Lack of education among the prison inmates results in deprivation of their rights.

1.8 METHODOLOGY

It is challenging to undertake research on prisoners and prisons. Foucault pointed out that prisons have long been recognized as microcosms of the larger societies in which they exist, with their own rules and dynamics⁷⁸. At the very outset the researcher had to face difficulty to get permission of interviewing prisoners from the office of Inspector General of Prisons (IGP) situated in Khanapara, Guwahati. The experience in IGP Office was unique. The researcher had to wait from morning till dusk for several days to pass the application and reach the desk of IGP. It was informed that the government stopped the researchers and other public person to interview prisoners for security purpose. The attitude of a few staff was not satisfactory. A few try to put a person in trouble rather than providing solution

another section pay no heed to what is happening around. Just as said that humanity still exists in society. Somehow an officer in the IGP office helped in getting the permission from the IGP. The permission was granted on several conditions. If such is the condition of a free man outside, the researcher thought about the persons who are behind bars, who cannot deal with the administrators directly and has to rely on the respective prison officers who deal on behalf of them. No doubt measures will have to be taken for security reason, but to stop researchers from conducting research by the government is questionable.

Since primary data were collected from prisoners, the major part of the present study was conducted in prison. It is to be admitted that conducting a research in prison was not an easy task. The researcher had to convince the jail officials as well as the prisoners about the academic significance of the present study. The office room was allotted to conduct interview which was a very difficult part to extract information from the prisoners as they fear of the officers present in the room. There is constant watch of the officers while conducting the interview in both the jails. The environment becomes chaotic during visiting hours. But then this chaotic environment proved to be useful in getting more information from the prisoners. Some prisoners, again, caution the fellow prisoner not to utter any word against the authority, otherwise he/she would be deprived of the minimum privileges. Once in an interview with a former Justice of Gauhati High Court revealed that the jail authority calls the selected prisoners of their choice for the interview. Indra J. Singh in his book *“Indian Prison: A Sociological Enquiry”* stated that the researcher had to take precaution against encountering two contradictory views generally expressed by the prison inmates—either they eulogise the prison, its

programmes and policies, or they ventilate all their grievances before the researcher⁷⁹. Many prisoners admitted that they were reluctant to share the experiences of their jail life for the fear of authority and most importantly for the fear of losing privileges. The situation required the application of the researcher's insight to examine and understand the inmate's response in right perspective. Observation, thus, constitutes an important part of the research. In the beginning, it is very difficult to make prisoners comfortable for which interview has to be started informally. Once they are convinced they shared the experiences of jail life, but tactfully and cautiously without the notice of the officer. A women prisoner covered her mouth with her *sareewhile* saying about the problems of jail life.

Marija Lucic-Catic⁸⁰ in her article "*Challenges in Conducting Prison Research*" wrote: "*Nonetheless, the methodology that researchers use inside of prisons is largely the same general social science methodology that they use outside of them. In their efforts to stay objective, researchers in prisons tend to prefer quantitative styles of research over qualitative ones and to present their results in the form of surgically clean data. But it is impossible to "get the whole picture" without both quantitative and qualitative research because only the methodological triangulation achieved by combining qualitative and quantitative approaches can generate reliable data. The idea behind the conventional approach to triangulation is that, if diverse kinds of data support the same conclusion, confidence in the conclusions is increased*".

Alan Bryman⁸¹ in his book "*Social Research Methods*" cited the suggestion that, each approach has its own limitations or "imperfections". The combination of

methods helps to reduce the biases associated with each method and therefore improve our understanding on the problem area. Accordingly, the present researcher made use of both the Quantitative as well as Qualitative research methods, as and when required for the present study. The study is more Qualitative supported by Quantitative data to make it empirical. The research methodology is discussed below:

a: The Sample The research design was framed by stratifying the prisoners living in the two Central Jails of Assam, namely, Tezpur and Jorhat, in the form of lifers, short termers, and under trials. These categories are further stratified on the basis of gender. The respondents from each of these strata were selected on random basis. In this research the sample population constitutes the inmates of the above mentioned two jails of Assam and the sample size would be 200 in number. The stratified random sampling method is used to conduct research. In the process of collecting data, the researcher visited the prisons to take interview of the prison inmates of these jails. The researcher gathered data from the prison record as well as involved into informal discussion with the convicts and prison officials. This has enabled the researcher to collect first- hand information about the problem of the prisoners in enjoying their rights and the inadequacies of prison administration. After collection of information from the prisoners, the responses in the data card is put into certain categories for tabulation and the same is then analysed.

b: Interview Schedule The interview was carried out with the help of a structured interview schedule keeping it flexible. Two sets interview schedules were prepared—one for the prisoners of the closed jail, another for the prisoners of the Open Air Jail. The interview schedule for this purpose comprises of questions

inviting information on various aspects of the prisoners, and also of their prison life. The interview schedules are given in 1.2 and 1.3. The contents of the interview schedules includes---

- Bio-data
- Opinion about prison
- Awareness of prisoners rights
- Jail life and jail training
- Diet, clothing and bedding, medical service
- prison visiting and furlough
- Opinion about Open Air Jail (OAJ)

The source and material of the present study includes collection of data mainly from primary as well as secondary sources. Also the researcher observed the various aspects of prison life, which included the conduct of the prisoners, their daily life inside the prison, and also their interaction with jail officials. The researcher transferred these impressions into written form and kept a record of this observation. The research work adopts observation and interview methods based on schedule. The research design was kept flexible enough to permit the consideration of any aspects that might come throughout the study.

1.9 AREA OF STUDY

As per the Statistical Report of 2007 published in “Prison Statistics India”, published by the National Crime Records Bureau (NCRB), the total number of jails in the country is 1,276, where 113 are Central Jail, 309 are District Jail, 769 are

Sub-Jail, 16 Women Jail, 28 Open Jails and 41 other jails. In Assam, there are a total of 31 jails in Assam—6 Central Jails, 23 district jails, 1 sub-jail (Haflong), and 1 Open Air Jail (Jorhat)⁸². The study exclusively concentrated on the Central Jails of Assam. Out of six Central Jails of Assam, the researcher selected two Central Jails— Jorhat Central Jail and the Tezpur Central Jail. A pilot study was undertaken in the Guwahati Central Jail. The jail administrative rules being uniform in all over the country, would serve the objectives of the study. Also both these Central Jails have historical importance as it existed right from the pre-independence period. Therefore, a comprehensive comparative study is undertaken on jail administration and the condition of the prisoners from the colonial to the post-colonial India, with special reference to Assam.

The Jorhat Central Jail at Borbhetta, which was formerly the Jorhat District Jail, constructed during the British rule in 1909 and was opened in 1911. It was a district jail till 1996, after that it was upgraded to Central Jail. Previously only male prisoners were kept in this jail, but in 1934 a female ward was introduced in the jail. During the national freedom movement of India a large number of freedom fighters were imprisoned in this jail. prominent among them were former Satradhikar of GarmurSatra of Majuli, Pitambar Deva Goswami, Fakharuddin Ali Ahmed, the former president of India, Bimala Prasad Chaliha, the former Chief Minister and Kamala Miri. On June 15, 1943, Kushal Konwar was hanged in this jail. It is to be noted that it is the only jail in North-East where there is the provision of hanging people condemned to death. After Kushal Konwar, Upen Rajkhowa was hanged in 1976, Henry Robert was hanged in 1989, and Kanpai Buragohain in 1990. The cell

where martyr Konwar was lodged has been preserved by being kept vacant and installation of a nameplate. Similarly, the cell where the Satradhikar was lodged separately is being renovated for preservation. In 2011, the Jorhat prison celebrated 100 years of existence. It has, therefore, acquired heritage value and has become a part of the history of India's Freedom Struggle⁸³.

The Tezpur Central Jail established in 1846 was formerly a district jail. It was only in September, 2002 that it got the status of Central Jail. The Tezpur Central Jail is also serving as the Detention Camp covering the districts of Morigaon, Nagaon, Biswanath Chariali, Lakhimpur, Dhemaji, Udalguri, Darrang and Sonitpur district. It means that the D-Voters are kept in this jail under the Deportation of Foreign Nationals (DFN) Act, besides the prisoners. This information was not found in written form, but is based on interview of the jail officials. It is surprising that even after more than 100 years of existence there are no proper records on the history of jail. None of the officers could produce a single document on the history of the respective jail. Files were piled up in open shelves unsystematically. Only one Assistant Jailor, Mrs. Naima Ahmed was found to be active and updated with the developments of the Jail Administration. It is because of her services towards the reformation of prisoners that she received the Women Achievers Award sponsored by the Indian Chambers of Commerce. She said that "Jail is the most sensitive zone. It is very difficult to undertake reformative measures individually because you are answerable to Government. No doubt government provides the basic facilities as per the Manual, but it is difficult to convince that there are certain areas where Government has to take extra care, especially of women prisoners". except

her, the other Officers seemed to be suspicious of the research work and for any mal-function and non-availability of records immediately blamed the previous officers. The scenario is totally opposite in case of the Jorhat Central Jail. The Jailor, Mr. Sanjib Kumar Chetia, had all the detailed Report on the Jorhat jail. He even gifted a book “*Swadhinata Xangramat Jorhat*”, edited by Sri Debeswar Doloi and Sri Tuleswar Bardoloi, written on the occasion of centenary celebration of the Jorhat Jail.

The only Open Air Jail of Assam, known as the Mohendra Nagar Open Air Jail, is located in the Jorhat District. It is situated adjacent to the Jorhat Central Jail. It covers a vast area of 162 bighas of land, but with poor infrastructure. The researcher has also conducted study on this Jail of as a part of Prison Reform measure. The total strength at the time of interview was 27 and all of these prisoners were interviewed.

1.10 SIGNIFICANCE OF THE STUDY

The increasing importance of human rights around the globe has infused an interest to initiate a scientific enquiry of the rights of a special category of human being—the prisoners. Among all the section of the society, prisoners constitute the most vulnerable group who face massive violation of rights. The most crucial part is that they always live in a dilemma—on the one hand human rights urge them to live a life with dignity with their basic rights, and on the other hand, the burgeoning authority suppresses them by converting their rights into privileges. To raise voice against such atrocities would mean inviting problems thereby making their life

miserable. The main focus of this research is to bring about an insight to the pitiful conditions of the prisoners languished in the jails for the negligence on the part of jail administration to implement the rights of the prisoners and the problems related to jail administration in imparting their duties. The study would contribute knowledge to the functioning of the prison as an institution of correction and be a parameter to measure how far the democracy has been successful in the Indian State. It also attempts to provide suggestions to stop further violation of rights of the inmates and to encourage the proper functioning of the jail administration, a crucial organ of the state to make democracy successful in true sense of the term.

The researcher, accordingly, had conducted study on the rights of prisoners and the role played by jail administration in implementing and protecting these rights. Although many books are written on jail administration and human rights in criminal justice administration, but enquiry on rights of prisoners in the context of jail administration in particular focus on Assam was not found. The utilization aspect of the study lies in its effort to identify the problems associated with jail administration of Assam and the areas on which the jail authorities violate the rights of prisoners and also in finding out measures to contain it. The researcher focused on rights related issues such as—diet, health, hygiene and sanitation, overcrowding, prison visit, etc. The study also made an effort to discuss the human rights instruments in international as well as national arena in regard to the protection of prisoners' rights. It also highlighted the role of the Indian judiciary in uplifting the spirit of democracy by protecting the rights of this vulnerable group.

Not all criminals are habitual, majority are circumstantial prisoners. In certain situation or circumstance, the offence was committed and they want to go back to

society again as law-abiding citizens. Under correctional philosophy, it is believed that penal institutions should provide such an environment where the inmates get a scope for realization and reformation. The importance of the study lies in the perspective that it has analysed the shift of the theory of punishment from deterrent, retributive to reformative. As part of the reformative measure, the researcher has conducted an extensive research on the only Open Air Jail of Assam, known as the Mohendra Nagar Open Air Jail.

Indra J. Singh while conducting a sociological enquiry stated that the area of prison administration is not research prone. Prisons and prison department is always a neglected part of the state as well as the society avoiding change and regard prison life as 'islandic' keeping it away from the purview of the broader society. This myth has exploded with the rise of various riots, strikes, escapes and confrontations between the custodians and inmates⁸⁴. The landmark judgement of the Supreme Court in a number of cases highlighted the importance of the basic rights of the prisoners to live a decent life for the fact of being human. Therefore, the present research makes an endeavour to convince that prisoners cannot be denied human rights as this would serve two objectives—first, the inmates would live a life with dignity, and secondly, the inmates would get an opportunity to reform themselves by engaging in various activities to go back to the society again. Denial of human rights would make the inmate more frustrated towards oneself and lose faith in the government. Consequently, the criminal in the prisoner would never be reformed and this would be dangerous to our society. Rather the attitude of the custodians should be as such that it lights the flame of living a respectful life once they are

back to the society. Accordingly, the researcher has conducted a study on the working of jail administration and the role it plays in the implementation and protection of the rights of the prisoners necessitating particular focus on the living condition of prison and prisoners of Assam. It is worth mentioning here that the researcher has considered only the rights of a special category of human beings—the prisoners. Also the term ‘Jail’ and ‘Prison’ are used interchangeably.

1.11 REVIEW OF LITERATURE

The literatures undertaken for study to understand the research topic and to identify the gap area are listed below:

1. Nelson Mandela’s autobiography “*Long Walk to Freedom*” is an account of his childhood days, youth, entrance to politics, and struggle against apartheid. During his struggle he was kept in a prison in the Robben Island for 27 years. The researcher took interest in the experiences of prison life of Mandela while staying in the prison. It is a prison memoir. The book reveals the atrocities meted out to the prisoners by the jail authority. Prisoners were
2. Kiran Bedi’s “*Its Always Possible: Transforming One of the Largest Prisons in the World*” is an outstanding work on the issue of violation of rights of prisoners in India and working of jail administration. She shared the bitter experiences of the Tihar Jail, one of the largest jails in the world while serving as the Inspector General of Prisons [IGP] of Tihar Jail. The

real life incidents narrated in the book exposed the bitter reality of jail administration and massive violation of human rights of prisoners. The book also gave an account of the reformatory measures undertaken by the author during her tenure as IGP in the Tihar Jail. Her effort converted the Tihar Jail into a 'correctional house' or it can be said as 'reformatory'.

3. Rani Dhavan Shankardass edited book, "*Punishment and Prison: Indian and International Perspective*", is an outstanding book dealing with various issues of criminal justice administration such as, prison administration in India, women and crime, criminal law and punishment in India, prisons in modern society, role of judiciary and also prison reforms.
4. P.D. Sharma in his book "*Criminal Justice Administration*", examines the critical issues that bedevil the varied areas of criminal justice administration—Legislature, Judiciary, Police and Prisons. The book while discussing the topics found that prisons stand at the tail-end of criminal justice system where prisoners are in plightful conditions.
5. Prof. N.V. Paranjape in his book "*Criminology and Penology*" discusses the expanding dimensions of criminological and penological developments taken place in the recent years. For the sake of convenience, the book has been split in two parts—Part I deals with the origin and development of criminal science. The causation of crime has also been elaborately discussed in this part of the book. Part II contained information regarding

penology and modern techniques of penal science. In this Part only he discusses the prison administration and also prison reforms including open prisons, parole, probation and so on.

6. Nitai Roy Choudhuri's "*Indian Prison Laws and Correction of Prisoners*" contains a total of six chapters. The book's main focus is on reformation of prisoners under the existing prison laws in India. Prisons are considered as reformation centres—an institution of correction which can be used to treat the anti-social beings in to law-abiding citizens. It also investigates into the scope of reformation of prisoners under the existing prison laws in India.
7. Darren O'Byrne in his book "*Human Rights-An Introduction*" has given an account of the evolution of the concept of human rights and its theoretical traditions. The majority of this book deals with the specific cases of violations of rights including freedom of speech, freedom from cruel and inhuman treatment and torture. It has also discussed on the role of United Nations in the protection of human rights. The book has helped in providing basis for understanding universality of human rights even in the context of cultural relativism.
8. The book "*Human Rights*", Adil-ul-Yasin and Archana Upadhyay provides an overview of the concept of human rights in a simplified form including the approaches and different perspectives of human rights. The book has dealt with the United Nations and its Conventions and the provisions

included in the Constitution of India in the light of the Universal Declaration of Rights and the Covenants.

9. *“Human Rights: A Very Short Introduction”* by Andrew Clapham attempts to discuss critically that though human rights says about living a life of dignity, yet it has to go a long way to achieve it on a global scale. The book tries to say that human rights is a contested area, with both parties to a dispute demanding that human rights law be applied in their favour. However, the author clearly stated that human rights is about securing rights for those who have been marginalized and made vulnerable.

10. The book entitled, *“Human Rights and Criminal Justice Administration in India”*, edited by Prof (Dr) Mrs. Noorjahan Bava has tried to focus on the close linkages that exists between human rights and various functionaries and authorities including the Police, Courts, the Civil Society and the Non-Governmental Organisations (NGOs) concerned with human rights from the national to international level. Amidst the various articles in this book, an article, *“Human Rights and Administration of Criminal Justice in India”*, written by S.P.Srivastava highlights the role played by the three main culprits in violation of human rights, namely, the police, prisons and the state. The former Chief Justice of India, Justice P. N. Bhagwati in his versatile and enlightened article in this book, *“Human Rights in the Criminal Justice System”*, aptly captures the essence and the letter and spirit of this book when he stresses that *“the extent to which human rights are*

respected and protected within the context of its criminal proceedings is an important measure of society's civilization”.

11. Jack Donnelly in his book *“Universal Human Rights in Theory and Practice”* tries to explicate and defend an account of human rights as universal rights. It also turned to the issue of universality and relativity of human rights. Also it discussed about the effort of the United Nations to internationalise and universalize the concept of human rights. The book dealt with various topics in relation to the concept of human rights such as democracy, genocide, humanitarianism, foreign policy, development, etc.

12. The book entitled, *“An Introduction to the International Protection of Human Rights”*, edited by Raija Hanski and Markku Suksi, aims at providing a general and, at the same time, a comprehensive picture of the international protection of human rights. As concerns the more specific contents of this book, it outlines the philosophical background and history of human rights and discusses the different categories of human rights. A good portion of this book is devoted to the work of the United Nations in the field of human rights, such as, the main UN human rights conventions and procedures, the UN organs dealing with human rights issues and the work of some of the important UN specialized agencies are described. In addition to this global overview, the book reviews the major regional systems like the Council of Europe, the Organisation of African Unity, the Organization of American States, from the perspective of human rights.

Attention is also drawn to the work of non-governmental organizations for the protection of human rights.

13. *“Foucault: A Very Short Introduction”* by Gary Gutting is an exclusive work on Foucault and his theories. The researcher mainly focused on Foucault’s concept of crime and punishment in the light of his famous book *“Discipline and Punish”*. Foucault work *“Discipline and Punish”* is an account for a modern penal system where importance is given to the reformation of the soul, rather than the punishment of the body. The chapter discusses the distinction between modern and pre-modern punishment and how the prison has become an integral part of society and has emerged as a potent institution of control by the state.

14. Another book of importance is Bankey Bihari Misra’s *“The Central Administration of the East India Company, 1773-1834”* had analysed the facts about the relationship between the British and the Dutch rulers which British manipulated with the section of the Dutch official and managed to get Bengal. It included the topics such as—State of Criminal Administration; Criminal Reforms of Cornwallis; Criminal Reforms; and Liberalization of the Criminal Law. The book has helped in extracting information about the colonial criminal justice system of this period.

15. The book *“Open Prisons and the Inmates: A Socio-Psychological Study”* by Shubhra Ghosh explored, analysed and scrutinized the socio-

psychological background and personality dynamics of prisoners of both open and closed prisoners to unravel their adjustment processes and attitude structure from a comparative point of view. The author had studied two open prisons of Uttar Pradesh where the idea of the establishment of open prisons was originated and experimented for the first time in the country.

16. Dr. Jyotsna Bhattacharya in her book "*Xamaxamayik Bharatiya Darshan*" wrote about a few scholars like B. G. Tilak, Rabindranath Tagore, Swami Vivekananda, etc. Although the book was written from the point of ethics, but it helped to know about the experiences of freedom struggle where a group of scholars had to live a miserable life in jail as political prisoners. In spite of such worse conditions the leaders showed the path of positivity through their activities in jail.

17. "*Confronting the State: ULFAs Quest for Sovereignty*" by Dr. Nani Gopal Mahanta is an outstanding work on the issues of North-East and the conflict with the mainstream India. Here the author has dealt with the extremist group elaborately. At the same time one can have an idea of the scenario that existed before independence when a few important leaders were imprisoned. These leaders discussed many serious issues during their stay in jail about the future of Assam after independence.

19. Alan Bryman in his book "*Social Research Methods*" imparts knowledge on the research methods both quantitative and qualitative, to be adopted in

the social science research elaborately. It served as a guide to the researcher while adopting the research methodology for the present study.

20. Indra J. Singh's "*Indian Prison: A Sociological Enquiry*", is a research work on the Model Prison of Lucknow, Uttar Pradesh. In the introduction part the book discusses the various problems that are usually encountered by a researcher while conducting study on prison and prisoners. It has also stated about the methods and techniques adopted for the study. The author then started with the concept of prison, its evolution and dealt with the Model Prison Lucknow, a Central Peno-Correctional Institutions where some of the reformatory methods are incorporated.

21. The book "Gopinath Bordoloi", a biography published by Assam Prakashan Parishad depicts about his journey of life, especially the political life. The book contains the struggle of Gopinath Bordoloi during the colonial rule and the experiences he gathered while staying in imprisonment. It helps to gather knowledge of the political events of Assam and the condition of political prisoners imprisoned by the British forgoing against the British Government.

The above mentioned works have reasonably succeeded in providing an overview of the concept of human rights and the area of criminal justice system. However, some of the books exclusively dealt either with human rights or criminal justice administration by giving touch to the institution of prison and the plightful

condition of the prisoners. In fact a few authors showed the importance of human rights in the jail administration, but unfortunately none of the books dealt exclusively with the jail administration and the role it played in protecting the rights of the prisoners with the objective to resocialise / rehabilitate the prisoners by making them law abiding citizens in society. Therefore the researcher thought it necessary to make an academic analysis of the rights of the prisoners necessitating particular focus on the role of jail administration in the implementation of these rights in Assam.

1.12 CHAPTERISATION

1. Introduction

This Chapter discusses the problem area and its related aspects such as Criminal Justice System, the Theories of Punishment with special emphasis on the Reformatory Theory, Foucault's view on Prison and Punishment and the increasing importance of Human Rights of Prisoners in Jail Administration. It has also specified the Objectives, Hypotheses, Methodology, Area of Study and Significance of the problem area on the basis of which the research is conducted. It has justification of taking the topic for research.

2. Discourse on Prison and Prisoners: Colonial and Post-Colonial India

Chapter 2 analyses prison as a critical site to acquire knowledge of the colonial rulers and the manner they exercised or negotiated their colonial power through it over the subjected Indians. In fact, the jails formed an integral part of the freedom

struggle movement. Many freedom fighters had to fight the freedom struggle by staying behind bars, bear the atrocities for going against the colonial authority. The Chapter also discusses the emergence of the Criminal Justice System from crude to concrete form during the British rule and the prison administration at present is a legacy of the British penal system.

3. Understanding Human Rights in Captivity: A Theoretical Perspective

In this chapter, the researcher discusses about the concept of human rights, its philosophical and theoretical background and its importance in the life of a human being to live a life with dignity. This chapter discusses the rights of prisoners from the context of United Nations and the instruments adopted by the Indian State as its signatory member. It has also discussed the importance of judiciary in protecting the rights of the prisoners.

4. Prison Administration: Its Experiment with the Rights of Prisoners of Assam

This chapter analyses the data collected based on primary and secondary sources in relation to the jail administration and its role in the implementation, protection and violation of the rights of the prisoners. For this, the researcher had collected data, facts and figures through questionnaire and interview schedule from the prisoners of the selected jails of Assam. The researcher also involved herself in an informal discussion with some of the officials and other persons associated with jail administration to know more about jail administration.

5. Prison Reforms in Assam: An Experiment with the Open Air Jail System

This chapter analyzes the only Open Air Jail in Assam known as the Mohendra Nagar Open Air Jail, situated in Jorhat, as a part of penal reform. It has emerged as an alternative to the closed prison with the objective to solve the problem of overcrowding and train the inmates before going to society after their release. In this chapter, the researcher has tried to gain knowledge about the condition of the jail, jail personnel and more importantly how far the rights of the prisoners are enjoyed compared to the closed prison

6. Conclusion

This chapter gives summary of the findings of the research work along with some suggestions. The researcher provides an overview of the study and accordingly analysed the hypotheses in the light of the collected data.

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- ⁴ Shankardass, Rani Dhavan (ed.) (2000). “*Punishment and Prison: Indian and International Perspective*”. N. Delhi: Sage Publication, pg 119.
- ⁵ Shankardass, Rani Dhavan (ed.), op. cit., pg76.
- ⁶ Ibid. op. cit., pg 68.
- ⁷ Singh, Indra J., (1979), “*Indian Prison: A Sociological Enquiry*”, Delhi (India): Concept Publishing Company, pg1.
- ⁸ Cited in Shankardass, Rani Dhavan (ed.), op. cit., pg51.
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- ¹⁵ Sharma, P. D. (1998) "*Criminal Justice Administration*". N. Delhi: Rawat Publications, pg30-31.
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- ³⁹ Meherjuddin, Mir, op. cit., pg 283.
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- ⁴¹ Flogging in India was recognized under the Whipping Act, 1864, which was repealed and replaced by similar Act in 1909 and finally abolished in 1955. Flogging as a mode of punishment is said to have existed in most of the middle-east countries, cited in Paranjape, Prof. N. V., Op. Cit., pg 223-236.
- ⁴² One or both the hands of the person, who committed theft were chopped off and if he indulged in sex crime his private part was cut off. The justification for such punishment was that it serves as an effective measure of deterrence and retribution, cited in Paranjape, Prof. N. V., op. cit., pg 223-236.
- ⁴³ Criminals were branded with appropriate mark on the forehead so that they could be identified and subjected to public ridicule. For example in America, the burglars were punished by branding letter "T" on their hand and those repeated these offence were branded "R" on the forehead. In India, branding was

practiced during the Moghul rule, cited in Paranjape, Prof. N. V., op. cit., pg 223-236.

⁴⁴ Stoning the criminals to death was in practice during the medieval period. This mode of sentencing is said to be prevalent in some of the Islamic countries. The offenders involved in sex-crimes are generally punished by stoning to death, cited in Paranjape, Prof. N. V., op. cit., pg 223-236.

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⁴⁸ Sharma, P. D., op. cit., pg15.

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⁵²Sinha, Jadunath, (2001), “A Manual of Ethics”, Calcutta, New Central Book Agency (P) Ltd., pg308.

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⁵⁴Sanyal, Jagadiswar, op. cit., pg153.

⁵⁵Sinha, Jadunath, op. cit., pg309.

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⁶¹Mabbot, J. D. (1969) “*Punishment*” cited in H. B. Acton (ed.) “*The Philosophy of Punishment*”, London: Macmillan, pg52.

⁶² Paranjape, Prof. N. V., op. cit., pg221.

⁶³Shankardass, Rani Dhavan (ed.), op. cit., pg 87.

⁶⁴ Sinha, Jadunath, op. cit., pg306.

⁶⁵Paranjape, Prof. N. V., op. cit., pg220.

⁶⁶ Garry Gutting (2005). “*Focault: A Very Short Introduction*”. New York: Oxford University Press, pg 78-81.

⁶⁷Raffnsoe, Sverre, Gudmand-Hayer, Marius and Thaning, Morten S. (2016). “*Michel Foucault: A Research Companion*”. U. K.: Palgrave Macmillan, pg172.

⁶⁸Garry Gutting, op. cit., pg 78-81.

⁶⁹ *Michel Foucault, “Discipline and Punish”*, , Retrieved from

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⁷⁰ Ibid

⁷¹ Ibid.

⁷²Gutting, Garry, op. cit., pg 84.

⁷³ Cited in Raffnsoe, Sverre ,Gudmand-Hayer, Marius and Thaning, Morten S, op. cit., pg185-188.

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⁸²“Karagarmahaparidarxakarpristhopuxokotakekangxobixoya-

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⁸³“*Centenary celebration of Jorhat Central Jail from tomorrow*”, (2011, August 8),

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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 torture¹. It was Akbar who brought penal reforms and stated that the rank and status of the offender should be considered while inflicting punishment². 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 blood³. 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 powers⁴. 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’⁵. 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 period.

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 year⁶. 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*s, in 1774⁷. 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 inmates⁸. On 6th April, 1781, the Governor General and Council abolished the office of *faujdar*s, 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 Khan⁹.

Until 1790 the prisons were a part of the *Faujdari Department* and were under the general management *Naib-Nazim* and his sub-ordinates, the Judges of the Faujdari Courts¹⁰. 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 deterrence¹¹. 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'¹². 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 humanity¹³. 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 Bombay¹⁴.

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 livelihood¹⁵. 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 submission¹⁶.

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 whole¹⁷. 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 System¹⁸. 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)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)²⁰.

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 salt²¹. 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 religion²². 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 operation²³.

The salient feature of the Code was²⁴:

- i) It laid down that people could be punished only for intentional wrongdoings;
- 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 independence²⁵.

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”²⁷.

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 exempted²⁸. 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 lotas²⁹. 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 fighters³⁰.

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)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 wardens³². 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 amnesty on the basis of which they were allowed to return to Assam from exile³³.

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, 1858³⁴.

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 deterrent³⁵, 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 jails³⁶. 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, over-population, 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 Jails³⁷.

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 Indians³⁸.

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 1917⁴⁰:

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 that⁴²:

“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 jail⁴³.

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 Seditious 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 prisoners⁴⁴.

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 imprisonment⁴⁵.

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 prisoners⁴⁶. 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, 1929⁴⁷. 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 them⁴⁸.

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 jungles⁵².

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 illness⁵³. 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 died⁵⁴.

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 division⁵⁵. For most of the 19th 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 family⁵⁶.

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 Masani⁵⁷. 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 imprisoned 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 Maliabaruah, 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 hanged⁵⁹. 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 sympathy⁶⁰.

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 generations⁶². Tarun Ram Phukan wrote “*Stutimala*” during his stay in jail⁶³. Other prison literature includes “*The Jail Note Book*” by Bhagat Singh, “*Srimad Bhagavad Gita Rahasya*” by Bal GangadharTilak, “*India Divided*” by Dr. Rajendra Prasad and many more⁶⁴.

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 Service⁶⁵. 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 state⁶⁶.

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 prison⁶⁷. 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 together⁶⁸. 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 prisoner⁶⁹.

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.⁷⁰. 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 premises⁷¹.

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 norm⁷². 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 Bedi⁷³ 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”⁷⁴.

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%)⁷⁵.

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 kitchen⁷⁶. 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. Kiran Bedi 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."⁷⁷.

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 problems⁷⁸:

- 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
- Pitiably 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,⁷⁹

“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 court⁸⁰. 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 years⁸¹. 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 administration⁸³.

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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⁶⁵ Smit, Dirk Van Zyl and Dunkel, Frieder (ed.), op. cit., pg376

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

⁶⁷Neier, Aryeh, & Rothman, David J. (1991). “*Prison Conditions in India*”,
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⁶⁸ The Assam Jail Manual, pg 222

⁶⁹Bhattacharya, Hiranya Kumar (1984) “*KararuddhaJibanarBakaruddhaKahini*”.
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⁷⁰ “*Maintenance of Internal Security*

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

⁷²Bedi, Kiran (1998). “*It’s Always Possible: Transforming one of the Largest Prisons in the World*”, N. Delhi: Sterling Publishers Private Limited, 1998, pg12.

⁷³Ibid, pg 63.

⁷⁴ Bedi, Kiran, op. cit, pg126.

⁷⁵ “*Two-third of prisoners in India are Under-trials*”, Retrieved from www.thehindu.com/news/national/Two-thirds-of-prisoners-in-India-are-under-trials/article16080519,ece (07/08/2017).

⁷⁶ Bhattacharya, Hiranya Kumar, op. cit., pg47-48

⁷⁷ Bedi, Kiran, op. cit, pg15-25

⁷⁸ Ibid, pg 88-105.

⁷⁹ Purie, Aroon, Editor-in-chief (October, 2014)., “*Extraordinary Tales of ‘Ordinary’ Women*”, cited in “*Good Housekeeping*”, Vol. 10 No 8, pg 102-03.

⁸⁰ “*SC issues notice to State Government over Jail Inmates*”, (November, 12, 2005) The Assam Tribune.

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

⁸² “*Two-third of prisoners in India are Under-trials*”, Retrieved from www.thehindu.com/news/national/Two-thirds-of-prisoners-in-India-are-under-trials/article16080519,ece (07/08/2017).

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⁸⁴ Singha, Radhika, op.cit., pg 1-2

CHAPTER 3

UNDERSTANDING HUMAN RIGHTS IN CAPTIVITY: A THEORETICAL PERSPECTIVE

Human Rights refer to those rights without which an individual cannot live a life of dignity. They are essential for individuals to develop their personality, human qualities, intelligence, talent and conscience and also to enable them to satisfy their spiritual and other higher needs. Human rights come from 'below', from a universal set of ethical principles, which seek to ensure the equal worth of each individual life, and are applicable to all people at all times and all places, rather than granted from 'above' by the state that differ across time and place¹. Edward Lawson² in the "Encyclopedia of Human Rights", defined human rights as "*the universally accepted principles and rules that support morality and that make it possible for each member of the human family to realize his or her full potential and to live life in an atmosphere of freedom, justice and peace.*" The source of human rights is, thus, man's moral nature which maintains that beneath this one must not permit oneself to fall³. Some moral values, especially liberty, equality, justice, fraternity, fearlessness, self-control and compassion, are deemed to be absolute and are relevant to mankind. These moral norms chasten man, soften his cruelty and barbarity, and raise him above animal selfishness. The quest of the universality of values will strengthen the necessary foundational security of society and save it from dehumanisation and spiritual catastrophe⁴. Human rights provide the specific mechanism to achieve these values⁵. From the point of ethics, man is an ethical being endowed with reason and by reason man can discriminate between right and wrong. This makes a man a rational being. Socrates believed

that reason plays an important role in the formation of knowledge and morality. According to Aristotle, “*Man is a rational being by virtue of which man is higher than all animals, plants and other things*”⁶. Rabindranath Tagore, one of the contemporary Indian philosophers also stated about the superiority of man over other aspects of creation. Tagore said, “*The worm is superior to the clod, the animal is superior to the worm, and man is superior to them all. God has many strings in his Sitar, some are made of iron, others of copper and yet others are made of gold. Man is the golden strings of God’s Sitar. It is on account of his superiority that man resembles his creator in many respects and is able to organise his affairs consciously*”⁷.

To Socrates, morality is the knowledge of the good (highest standard of life) or virtue through concepts (concepts which controls the will of the seeker), and concepts are formed by reason, and reason is one and the same for all. To Socrates man have knowledge of virtue and goodness, but at times they become dim and dormant in them because of the deception of senses⁸. Consequently, man indulges in evil practices. Plato, however, maintained that God is not the author of the evil and it is man who is responsible for all his evil acts, it is the body in man which is responsible for all evils. When man gives himself to bodily desires and momentary pleasures, the body is directed towards anti-social actions⁹. A crime is committed because he fails to guide his body rationally. Aristotle argued that man is not wholly rational, as man includes all the processes which characterise animals. At times driven by appetite and passion men behave irrationally violating the law of the society¹⁰. The person who violates the law of the society is termed as ‘criminal’

and is punished. Punishment becomes necessary for upholding the ideal of humanity and morality¹¹. In this context Aristotle's philosophy of justice—Distributive and Corrective, is worth mentioning. To Aristotle, justice does not come under the purview of individual ethics, but under the activity of the state. Accordingly, Distributive justice would reward for right activity; and Corrective Justice would punish man for wrong actions. Aristotle also stated that morality can be attained by controlling the appetites and passion constantly through reason. The habitual control of appetite and passion by reason is known as 'virtue'¹². Socrates believed that virtue is knowledge of how to 'control the will' through reason. And as virtue is knowledge it can be taught¹³. However, to Aristotle virtue does not arise out of mere knowledge alone, it can be acquired through 'habit', repeatedly doing right or good actions. To be a 'just' person one must break old habits and acquire new habits of living a dignified life in the society. Accordingly, the wrongdoers or criminals sent to the jail as a part of the punishment should be given an opportunity to develop virtue to reform themselves into law abiding members of the society. Conferring rights to the prisoners would serve the objective of punishment as this would convert prisons into a reformatory where each of the prisoners can develop their inner self and potentialities at its best, thereby converting them into a moral and a law-abiding member of the society. Human Rights based on the moral claims for self-development and moral realisation inherent in human being are a must for any person, especially those who because of wrong guidance of reason has fallen prey to momentary pleasure and selfish desires.

3.1 THE ELEMENT OF ESSENTIAL GOODNESS OR DIVINITY IN HUMAN: IMPORTANCE OF RELIGION

Prisoners can be regarded as those men who are guided by the motives of selfish desire and ego leading him to commit crime. The universal nature or say, the permanent nature is suppressed by the motives of self-acquisition and ego-sense. Therefore, it becomes necessary to arouse spirituality inside him to create in him the element of divinity and extract the element of essential goodness lying inherent within the individual. The contemporary Indian philosophers, especially Rabindranath Tagore and Mahatma Gandhi explained the point elaborately. To them, religion is the most reliable path to realise the divinity or the essential goodness inherent in human. Rabindranath Tagore stated about the two essential aspects of human nature— a lower one (finite or individual) and a higher one (infinite or universal or spiritual). To Tagore, the finite nature of man reveals that man shares some of the qualities and characteristics of the animal world. Like other animals he is conscious of his self and guided by the motives of acquisition or ego-sense, he also quarrels with others for the satisfaction of his needs and desires. For self-satisfaction of his desire and ego, he may tend to be even unreasonable, desperate and vindictive. On the contrary Tagore stated that the infinite nature of man is said to be the 'universal' in man consisting 'the element of Divinity' lying inside the finite self. Religion is nothing but an attempt to realise this Divinity. The importance of religion lies in the endeavour of man to cultivate and realise the divinity which are inherent in the nature of man. At this juncture, the human

personality would find its worth and essence. Tagore viewed that the modern man has forgotten the essence of religion, and therefore acts miserably¹⁴.

Similarly, Gandhiji stated that human nature comprises of permanent and non-permanent. The animal and brutish aspect of man's nature is not its permanent aspect, in fact, Divinity—the element of essential goodness present in every man, is the permanent nature of man. To Gandhi, religion is the way to attain the permanent nature of man¹⁵. To Gandhi, the essence of religion is morality and non-violence (ahimsa); love is the essence of morality, and freedom of mind from anger, hatred and revenge is the essence of non-violence. Gandhiji stated that at times man become ignorant of the moral nature in him for which he is guided by blind impulses, becomes egoistic and in his egoism man becomes isolated from the rest of Reality and engages himself in the pursuit of selfish motives and desires. Gandhi, however, stated that 'man is not an isolated being, rather a part of the whole reality'¹⁶. According to Gandhi a sincere faith in God will make man see that all human beings are 'fellow-beings' and essentially one. Thus, the love of God would turn into a love of humanity, which result into the realization of the unity of mankind and enable him to love his fellow-beings¹⁷. This belief is based on the idea that there is an 'element of essential goodness' in every man because man contains divinity within himself. Evil result because this element is either pushed to the background, or is clouded by passion, hatred and anger. The need of the hour is, therefore, to awaken this aspect in man and the moment this element of goodness is aroused, the individual himself will realize his wrong that he had done. Gandhi stated that "if we start resisting evil with evil, violence with violence, anger with

anger, then we are only adding fuel to fire”¹⁸. Gandhi said, *“Hate the sin and not the sinner. For we are all tarred with the same brush, and are children of one and the same Creator, and as such the divine power within us are infinite. To slight a single human being is to slight those divine, and thus to harm not only that being but with him the whole world”*¹⁹.

Theories based upon religious assumptions, thus, believed that since human beings were created in the image of God, a human being is a value in itself and each human being deserves inherent dignity. For instance, the teachings of world’s greatest religions such as Hinduism (to respect the sacredness of life), Buddhism (to practice love and kindness and compassion towards all human beings), Christianity (to love fellow beings and alleviate human suffering), and Islam (to practice justice, mercy, and charity, particularly towards the most vulnerable in society, despite of their many differences, emphasized on the worth and dignity of human life²⁰. Common to each of these religious beliefs is the recognition of certain universally valid principles and standards of behaviour. And these standards of behaviour undoubtedly inspire human rights thinking, and may be considered as precursor to, or different expressions of, the idea of human rights²¹. All true religions advocate the incorporation of universal moral principles in the political system with the cannons of reason, equity and justice to provide higher legitimacy to the governing mechanism²².

3.2 HUMAN DIGNITY AND HUMAN WORTH: IMMANUEL KANT

The concept of human dignity now plays a significant role in several areas of political life. One context in which the concept of dignity have become increasingly prominent is the theory and practice of human rights. Human dignity is often considered as the ‘contemporary’ conception of the old concept of ‘dignity’ generally associated with ‘honour’. Human dignity and dignity are said to be different in the following ways—

- i) Human dignity applies specifically to human beings rather than to other entities such as offices, institutions, or states.
- ii) Human dignity applies equally to all human beings in opposition to the “restrictive” conception of according dignity to the particular individuals standing at the top of the social hierarchy.
- iii) Human dignity is an inherent feature of the human personality and is not subject to conditions.

Immanuel Kant greatly influenced the development of the modern concept of dignity, and is often identified as a progenitor of the form of human dignity that grounds human rights. Giovanni Bognetti, who labels Kant the “father of the modern concept of human dignity”, explained Kant’s view of dignity as follows: *“man is a morally autonomous being, who as such deserves respect and must never be treated, in general and especially by the law, as only a means to contingent ends but always (also) as an end in himself”*²³. Jack Donnelly in a discussion of the genesis of human rights stated that, *“Only with Immanuel Kant (1724-1804) we*

finally find a fully-formed account of human dignity that is very similar to that of the Universal Declaration and is placed at the center of moral and political theory”²⁴. Thus, Kant’s conception of dignity can be understood as ‘the inherent worth of the human person, which grounds a duty to treat people not as mere means but also as ends in them’²⁵. He offered two reasons as to why person should be treated as ends and not as a mere means to an end²⁶—

- iv) Persons have intrinsic value as opposed to animals or things, and
- v) Persons have intrinsic worth and dignity because they are rational beings, free and capable of making their own decisions and goals.

Kant advocated for “Categorical Imperative” or an unconditional moral command that comes from within, which cannot be disobeyed for its universal nature, to prevent human beings to act irrationally. According to this principle, to be moral the following maxims have to be followed²⁷:

- i) *Each of us has act in such a way that we expect others to act under the same general conditions.*
- ii) *A person should never be treated as a means to an end, but rather as an end in themselves.*
- iii) *We should act in such a way as to consider ourselves as well as other persons as of equal intrinsic value.*

On these accounts, Kant’s contribution to the development of human dignity consists in attributing to each human being an equal and unconditional worth grounded in moral autonomy. Kant’s use of the term dignity was based on the idea

that “all humans are equally worthy of respect”. As a whole, it can be said that Kant have contributed to a modern shift from ‘honour’ to ‘human dignity’ by rooting respect for persons in their autonomy instead of their social status—thereby enacting a transformation that was highly significant to the development of the human rights regime²⁸. Donnelly stated that Kant’s main thrust was that, “*humanity itself is a dignity. The old notion of dignity as a special status of the nobility (and clergy) is here universalised to all humans. Humanity, which is present in even the lowliest of people, gives each individual a dignity and status that must be respected by all other individuals, society, and the state. And the details of that respect, especially in its political elements, are specified through human rights*”²⁹.

3.3 NATURAL RIGHTS AND NATURAL LAW: BASIS FOR THE EMERGENCE OF HUMAN RIGHTS

Human dignity paved the way for human rights which has its roots in the concept of “natural rights”—rights that exist in nature independently of any human laws or customs³⁰. Andrew Heywood viewed that in twentieth century these rights were ‘reborn in the form of human rights’³¹. Darren O’ Byrne in his book “*Human Rights: An Introduction*”, stated that in the medieval and early modern Western philosophy, emphasis was given on the concept of the divine right of kings and the subjects were subservient to the monarch. The only power they had over their own lives was that which was granted them by the monarch³². However, during Enlightenment religious authorities were questioned and the concept of natural law was given more rationalist foundation. At this time, *rights came to be associated with the idea of social contract, whereby individuals existing in the state of nature*

*(a condition of human life in which there is neither government nor positive laws) agree to form a society or a state to protect and promote their natural rights in a civil society, under a sovereign to which they pledged their obedience for as long as the sovereign power does not infringe their natural rights*³³. Thomas Hobbes and John Locke while discussing the theory of Social Contract stated about the protection of natural rights from their own point of view. According to Hobbes, man in the state of nature constantly competes for honour and dignity that resulted into envy, hatred and finally war³⁴. In his book “Leviathan”, he argued that man being rational, would want to come out of the situation for sure by creating an absolute sovereign where individuals would surrender all of the natural rights, except the right to life or self preservation³⁵.

Locke forwarded a classic explanation to the natural rights theory. Locke was the first to suggest that individuals possess a kind of rights known as ‘natural rights’—rights which belongs to individual for the fact of being human³⁶. He clearly stated that *“every human being has certain rights derived from nature...the source of these rights is not the government or its laws, rather it is the ‘state of nature’ characterised by an absence of government”*³⁷. In the state of nature from the natural law, man derives the natural rights of ‘life, liberty and property’. Man entered into a double contract of creating a ‘civil society’ and ‘limited constitutional government’³⁸. In the contract men will not surrender all the rights, except the power of punishing others, being interpreter of natural law, its executor as well as adjudicator. Individuals will retain the natural rights—life, liberty and property’ and it is the duty of the government to protect these rights. Violation or failure to protect the natural rights can be sufficient reason for the people to revolt

against the government, which is a trust to protect these rights. There are often similarities in ideas between the modern concept of human rights and the natural rights of Locke in following ways³⁹—

- i. Both believe in equal rights of all human beings.
- ii. Both of these rights are bestowed on human beings and the government has been entrusted with the duty to protect these rights.
- iii. Protection of rights acts as the yardstick of the legitimacy of the government.

Rousseau tried to create such a state where individual would come together and show obedience not to a particular ruler or person, but to the law alone that ensures justice and liberty. This law constitutes the voice of the general will—the will of all the citizens which always tries to attain general good and not private interests. The government acts as an agent to the sovereign people⁴⁰. He thus, gave primacy to civil liberty represented by the General Will over natural rights⁴¹. Rousseau believed that man's nature could be developed only when there will be General Will and man can attain his personality only in the great community of the state⁴².

The traces of natural rights as the progenitor of human rights can be found in the ideas and texts of the Declarations at the end of the 18th century. The American Declaration of Independence (1776) stated, “*We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness*”. Again, the French Declaration of the Rights of Man and of the Citizen (1789)

proclaimed that, “*Men are born and remain free and equal in rights and that the aim of every political association is the preservation of the natural inalienable rights of man; these rights are liberty, property, security and resistance to oppression*”⁴³.

3.4 POSITIVISATION : A LEGAL FRAMEWORK OF HUMAN RIGHTS (NATIONAL AND INTERNATIONAL)

The concept of natural rights and natural law was vehemently criticised by Jeremy Bentham. The very idea of natural law and rights was criticised by the Utilitarian philosopher Jeremy Bentham, as “nonsense upon stilts”. For Bentham, real rights were legal rights, and it was the role of law makers, and not natural rights advocates, to generate rights and determine their limits. In Bentham’s terms, “*hunger is not bread*”⁴⁴. Bentham accepted only positive law as the source of rights. Ideas of what the law ought to be have no place in law and at the same time it is abstract with no foundation. However, it has to be stated that while rejecting natural rights, Bentham emphasized on a particular right, ‘the right to security of property’ as the major condition of achieving happiness. He also justified opposition to the state if that opposition will produce less pain than continued obedience. This indicates Bentham’s support to the natural rights, although not in entirety⁴⁵. Another philosopher, Edmund Burke criticised natural rights as “useless metaphysical abstraction”. Even Burke did not completely reject the concept of natural rights, but he stated that “real rights of men were social, not natural”. He also criticised the universal nature of the natural rights theory for its failure to take account of national and cultural diversity⁴⁶. Thomas Paine reacted against Burke

for failing to feel the pain who had suffered in Bastille prison and for being unaffected by the 'reality of distress'. Paine description of people's suffering, a feeling of sympathy for the distress of others, coupled with a sense of injustice when governments resort to measures invading the perceived natural rights of the individual is said to have sowed the real seeds of human rights movement⁴⁷.

Legal rights are provided through charter or bill of rights in the constitutions of the countries⁴⁸. The Magna Carta (1215) was the earliest legal development in regard to the concept of human rights which guaranteed rights for a freeman not to be "*arrested or detained in prison, or deprived of his freehold, outlawed, or banished, or in any way molested.....unless by lawful judgement of his peers and the law of the land*". This guarantee was simply a right to trial by jury granted exclusively to property-owning class. Similarly, the English Bill of Rights of 1689 which stated that "*no excessive fine be imposed; nor cruel and unusual punishment [be] inflicted....the subjects which are Protestants, may have arms for their defence suitable to their conditions, and as allowed by law,*" was actually a political settlement between a Parliament and the King (who had abused the rights of the Protestants), in order to vindicate 'ancient rights and liberties'⁴⁹. The American Bill of Rights was in reality meant for WASP (White, Anglo-Saxon and Protestant)⁵⁰. Likewise the French Constitution denied the rights of women and exclusively dealt with the rights of man. Thus, both the Declarations attempted to instil human rights as guiding principles in the new constitutions of the new states, but it was narrow in its scope as it benefitted only a specific group⁵¹.

In the contemporary period “human rights” concept directly refers to the human rights recognised in international and national law rather than rights in a moral and philosophical sense. HerschLauterpacht’s influential book “*An International Bill of the Rights of Man*” (1945) dealt with a range of natural rights thinking and constitutionally protected rights to argue for a written Bill of Rights to be protected through the United Nations⁵². Even the Modern Theory of Human Rights in the second half of the twentieth century contend that the validity of human rights is established by specific legislation, which receive an extended treatment by two branches of law, that is, Constitutional and International Law⁵³. Accordingly it facilitated human rights domestically with constitutional bill of rights and internationally with the work of the United Nations. The United Nations provides a general framework for human rights acts that the member countries adopted. For example, in India, human rights are enumerated as fundamental rights in the Part III of the Constitution in the light of international human rights law⁵⁴.

3.5 UNIVERSALISM VERSUS RELATIVISM: A DEBATE

The United Nations Charter adopted on 26th June, 1945, in San Francisco, ushered in a new international law of human rights. For the first time in the history of mankind human rights were universalized and internationalized-rights which every individual whatever one’s origin could claim as a member of human society. Thus, the Charter of the United Nations emerged as the first international instrument which proclaimed “*universal respect for, and observance of, human rights and fundamental freedom for all without distinction as to race, sex, language or religion*”. The Charter obligated the member states to take joint and separate action

in co-operation with the United Nations for the achievement of this purpose⁵⁵. In the process, the 1948 “Universal Declaration of Human Rights” (UDHR) under the auspices of the United Nations represented the first international document with a big list of human rights, mainly based upon European experiences. Justice P.N. Bhagwati stated that the Universal Declaration is like “the vast gateway of a temple”. Its Preamble has been aptly described by Rene Cassin as “the forecourt containing the general principles of liberty, equality, non- discrimination and fraternity”⁵⁶.

The exponents of Relativist Approach to Human Rights argue that moral values are historically and culturally specific rather than universal⁵⁷. They also viewed that far from being universal, the concept of human rights has come from the West different from other cultures and values, the ‘universality’ of human rights has been used as a weapon to establish western cultural hegemony in other parts of the world through the United Nations. In this regard, the supporters of the Universalist Theory of Human Rights viewed that, *“in truth, the origins of our way of thinking about rights may lie in Western philosophy, but the idea of universal rights is, necessarily, universal and global. For most commentators, the origin of the universality lie not in the abstract Lockean world of natural law but in a modified Kantianism which encourages respect for all people based on the fundamental dignity which is inherent in human beings without distinction or exception. Such a view of universality does not appear to challenge or undermine cultural diversity”*. Jack Donnelly while defending a Universalist perspective stated that human rights have emerged alongside modernity as the latest mechanism devised to safeguard human dignity from state oppression. Donnelly listed various cultures—non-

Western—which have similar religious or ethical guidelines aimed at upholding human dignity, if not rights per se. Universalist such as Donnelly is more sensitive to cultural difference than many relativists. Indeed in suggesting that human rights are a modern reflection of a universal respect for human dignity—a respect which is found in most world cultures at most points in history and in no ways betrays a Western bias—Donnelly has gone some way to upholding a commitment to universalism beyond natural law⁵⁸. Jack Donnelly even argued that, in the 1970s and 1980s, the dominant tendency was to see universality and relativity as opposites but over the past two decades, most discussions have tried to move beyond a dichotomous presentation. Most defenders of both Universality and Relativity in the contemporary times recognise the dangers of an extreme commitment and acknowledge that both relativity and universality are essential to international human rights. Accordingly Donnelly stated for the formulation of the concept “Relatively Universal” which is thus considered as appropriate. Donnelly then explained the novel concept that *“Relativity modifies—operates within the boundaries set by—the universality of the body of inter-dependent and indivisible internationally recognised human rights. But that universality is largely a universality of possession—universalism above all draws attention to the claim that we all have the same internationally recognised human rights—rather than a universality of enjoyment. And universal human rights not only may but should be implemented in different ways at different times and different places, reflecting the free choices of free peoples to incorporate an essential particularity into universal human rights”*. Donnelly further said that, *“Most cultures—and all the ‘great civilisations’—have in the past denied human rights, both in theory and in practice.*

That, however, stops none of them today from not merely endorsing human rights but finding human rights to be a profound expression of their deepest cultural values”⁵⁹.

In other words, despite the cultural, political, regional and economic diversity of the contemporary world, there is nearly universal agreement on not only the existence but also the substance of internationally recognised human rights. For instance, Article 5 of the Universal Declaration stated, “No one shall be subjected to torture or to cruel, inhuman and degrading treatment or punishment”. Here, the problem lies in the question— what counts as torture or whether particular practices are cruel and inhuman—for it differ from society to society. In this regard, the Universal Theory of Human Rights strictly maintains that, “*Whatever our other religious, moral, legal, and political resources, we all need equal and inalienable universal human rights to protect us from threats to human dignity*”⁶⁰. Also human rights law does allow for different approaches to implementation across cultures and nations. The important point is that there is some core content to each right, and that failure to respect that content can be universally condemned⁶¹. In the domain of contemporary international law and politics, as the Vienna Declaration of the 1993 World Conference on Human Rights put it in its first operative paragraph, “*the universal nature of these rights and freedoms is beyond question*”. Human rights are universal, also in the sense that these rights have been accepted by almost all the sovereign member states—the designated ‘universe’—as establishing obligations that are binding in international law⁶². Another issue of discussion is the universality of human rights in regard to a special category of human beings, especially prisoners. It is also clarified by stating

that, “*the inclusive universality of non-discrimination on specified grounds does not mean, however, that human rights allow for no differences between the basic entitlements of different categories of people. Many human rights are conditional, in the sense that they apply only to those human beings who are in a particular situation, such as the persons being accused of committing a criminal offence, or in precise the prisoners. So the universality of rights means only that all human beings in certain situation have, or ought to have, certain rights*⁶³.”

3.6 THE NATIONAL STATE AND INTERNATIONAL LAW: THE DOMAIN OF HUMAN RIGHTS

Even if there is apparent universal acceptance of the human rights message, there is still a discord over how rights should be implemented⁶⁴. For a long time human rights were understood as being a state’s responsibility. This understanding began to be eroded with the emergence of internationalization of human rights issues, thereby modifying the traditional principle of exclusive jurisdiction by states over their subjects. In the face of this tendency, a controversy has emerged about whether human rights are essentially within the domestic jurisdiction of states, as cited in Article 2 (7) of the UN Charter, which stipulates that the United Nations should not intervene ‘in matters, which are essentially within the domestic jurisdiction of any state’, or whether they are the domain of international law. At present the respect for human rights is the domain of both the international and domestic legal systems. The borderline between them undergoes gradual shifts due to further penetration by human rights issues into international law. But in terms of proportion, domestic systems remain the main battlefield for human rights, while

international law serves as a subsidiary dimension. Internationalization of human rights, thus, follows not by restricting the sovereignty of states but rather by the mutually agreed restriction of the exercise of sovereignty⁶⁵. Also it has to be admitted that the state is the central institution available for effective implementation of internationally recognised human rights. Therefore, beyond preventing state-based wrongs, human rights require the state to provide certain (civil, political, economic, social and cultural) goods, services, opportunities and protections. This more positive human rights vision of the state also goes back to the 17th and 18th century social contract theories. Locke, for example, emphasizes that natural rights cannot be effectively enjoyed in a state of nature. In fact, society and government are not only essential to the enjoyment of natural or human rights, the legitimacy of a state, within the contractarian tradition, can largely be measured by the extent to which it implements and protects natural rights⁶⁶. Thus, the state is the chief violator as well as the hope for the protection and implementation of human rights. A more advanced typology of the obligations of states in the field of human rights was developed by A. Eide⁶⁷, in which he said that the state has the obligations to ‘respect’ (right-holders, their freedoms, autonomy, resources and liberty of their actions), to ‘protect’ (right holders against other subjected by legislation and provision of effective remedies), and to ‘assist and fulfill (the rights of everyone by using available resources to establish a better infrastructure and direct provision of basic needs). The UDHR, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR) along with its two Optional Protocols constitutes the International Bill of Human Rights⁶⁸. The United Nations has also

passed two Optional Protocols to the Civil and Political Covenants in regards--- i) individuals under certain circumstances may file complaints of human rights violations by ratifying states ;and, ii) states must take all necessary measures to abolish the death penalty⁶⁹. The international law influences greatly in enhancing the philosophy of human rights, its provisions provided the basis for the framing of bill of rights at national level. The Tehran International Conference of 1968, the first World Conference on Human Rights, ‘solemnly’ proclaimed that “*The Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community*”⁷⁰.

The basic question then is asked as to how laws enacted by the State remain unutilised. This question can be answered from the point of view of those for whom these laws are made. The authority which makes the laws and the authority which is required to implement them may not enforce the laws either intentionally or because of ignorance. If lack of enforcement is intentional the citizens will be at mercy of an organisation which promises something but does not mean to fulfil the promise. In a democracy that may be worst form of tyranny and a hostile attack on the civil liberties of the citizens. Ignorance of law, however, is no excuse, but in a society largely steeped in ignorance and illiteracy, possible even among the law enforcing authority such ignorance in fact exists in large measure. In this regard the State has the duty to consciously educate all the persons involved in enforcing the provisions of law to give each of the citizens what is their due⁷¹.

3.7 HUMAN RIGHTS IN THE CONTEXT OF PRISONERS: EFFORT OF THE UNITED NATIONS

There exist a reciprocal relationship between UDHR and the Guiding Principles of Criminal Justice Administration. This relationship underlines the fact that effective employment of human rights is a decisive factor in the removal of conditions promoting criminal behaviour and in reforming the offenders—the central pursuit of criminal justice administration. Having held this view, the United Nations prescribed detailed standards for the protection of the rights of the accused and convicted persons. To avoid accusation of being soft towards the accused, the United Nations, however, called for a proper balance between the rights of the accused / convicted with a view to protecting the community and each of its members against lawlessness. Thus the UDHR as well as their instruments lay stress on the duties of the individual towards the community and the legitimacy of restricting the exercise of human rights in order to secure respect for the rights and freedom of others. This substantive relationship between the protection of human rights on the one hand and the prevention of crime and treatment of offenders on the other has been increasingly recognized important in the organizational and procedural arrangement within the United Nations⁷². The important provisions related to the Criminal Justice Administration in the UDHR are cited below⁷³:

- i) No one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 1)
- ii) Everyone has the right to life, liberty and security of person (Article 3)
- iii) No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5)
- iv) No one shall be subjected to arbitrary arrest, detention or exile (Article 9)
- v) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence (Article 11)

The ICESCR seeks to promote and protect the following provisions in regard to the prisoners⁷⁴—

- i) The right to work in just and favourable condition (Article 6-7)
- ii) The right to social protection, to an adequate standard of living and to the highest attainable standards of physical and mental well – being (Article 9-12)
- iii) The right to education and the enjoyment of benefits of cultural freedom and scientific progress (Article 13-15)

The ICCPR, however, remains the core international treaty on the protection of the rights of the prisoners. Following provisions of the Covenant are relevant⁷⁵—

- i) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life (Article 6)

- ii) No one shall be subject to cruel, inhuman or degrading treatment or punishment (Article 7)
- iii) Everyone has the right to liberty and security of person. No one shall be subject to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law (Article 9)
- iv) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person [Article 10 (1)]
- v) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons [Article 10 (a)]
- vi) The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation [Article 10 (3)]
- vii) Everyone shall be entitled to fair and public hearing by a competent, independent and impartial tribunal established by law [Article 14 (1)]
- viii) Everyone charged with criminal offence shall have the right to be presumed innocent until proved guilty according to law [Article 14 (2)]
- ix) Everyone shall have the right to freedom of thought, conscience and religion [Article 18 (1)]

Considering the principles of the UN Charter and respecting the inherent dignity of the human person and having regard to Article 5 of the UDHR and Article 7 of the ICCPR, the UN adopted the Declaration on the Protection of All Persons from being subjected to Torture and other Cruel, Inhuman or Degrading Treatment or

Punishment⁷⁶. On 9th December, 1975 the United Nations General Assembly by consensus adopted a Declaration on Protection from Torture. Various important provisions are⁷⁷.

- Any act of torture or other cruel inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the charter of the United Nations of human rights (Article 2)
- No state may permit or tolerate torture or other cruel, inhuman, degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment (Article 3)

Besides these, there are two bodies of international law exclusively governing the treatment of prisoners. These are ---The Standard Minimum Rules for the Treatment of Prisoners; and the Basic Principles for the Treatment of Prisoners⁷⁸.

The Standard Minimum Rules for Treatment was adopted by the United Nations in 1957. However, these rules were revised in 2010 when it was recognised that while the rules were a key standard for the treatment of prisoners globally and were widely used, there had been major developments in human rights and criminal justice since 1957. The revised Standard Minimum Rules were adopted unanimously by the UN General Assembly on 17 December 2015. The revised

rules are known as the “Nelson Mandela Rules” to honour the legacy of the late President of South Africa, who spent 27 years in prison in the course of his struggle for global human rights, equality, democracy and the promotion of a culture of peace. Eight substantive areas were revised⁷⁹--

1. Respect for prisoners’ inherent dignity:

The principle of treatment with respect for the dignity and value as human beings and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment have been incorporated throughout the Rules.

2. Medical and Health Services:

The Rule clarify that healthcare of prisoners is a State responsibility, and should be of an equal standard to that available in the community and organised in close relationship to the general public health organisation.

3. Disciplinary Measures and Sanctions:

It has provided guidance on the use of instruments of restraint, procedural safeguards in disciplinary procedures and clarification of prohibited disciplinary sanctions (example-restriction of drinking water). As an overarching principle, prison staff is encouraged to use conflict prevention mechanisms to prevent disciplinary offences and resolve conflicts. Limitations on the use of solitary confinement are also included for the first time in an international standard.

4. Investigations of Deaths and Torture in Custody:

The updated provisions have introduced the obligations of the prison authority in cases of any death, disappearance or serious injury. These include obligations on reporting, investigations and notifying family or friends.

5. Protection of Vulnerable Groups:

The revised Rules have clarified that prisons need to identify the individual needs of prisoners and that measures taking account of such needs must not be regarded as discriminatory. Some provisions were on children imprisoned with their parent and outdated terminology regarding prisoners with disabilities was changed.

6. Access to Legal Representation:

Provisions were updated and expanded to cover not only pre-trial detention and criminal proceedings, but requirements of legal counsel more comprehensively based on the 2012 UN Legal Aid Principles and Guidelines. The Rules also clarify that prisoners are allowed to keep in their possession documents relating to their legal proceedings.

7. Complaints and Independent Inspections:

Provisions in regard to the information for prisoners and access to complaints mechanisms has been updated, as well as protection against retaliation, intimidation or other negative consequences as a result of a complaint. The impact of external monitoring was acknowledged by introducing the requirement of a two-

fold system of regular inspections, internal as well as external by an independent body. The Revised Rules specify the powers of inspectors and require written inspection reports and encourage their publication.

8. Training of Staff:

Provisions on training were updated to clarify the necessity of training for staff prior to entry into service as well as ongoing in-service training, both of which should reflect contemporary evidence-based best practice. A list of training requirements include security and safety, the concept of dynamic security and the use of force and instruments of restraint, as well as management of violent offenders, with due consideration to preventive and defusing techniques.

The Basic Principles for the Treatment of Prisoners was adopted and proclaimed by the United Nations General Assembly on December 14, 1990. Principles in this resolution in regard to prisoners are cited below⁸⁰—

1. All prisoners value as human beings. oners shall be treated with the respect due to their inherent dignity and value as human beings.
2. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the UDHR, and where the state is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations Covenants.

3. All the prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.
4. Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.
5. Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's market and permit them to contribute to their own financial support and to that of their families.
6. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

3.8 RIGHTS OF PRISONERS : ROLE OF INDIAN JUDICIARY

Being a signatory state to the United Nations, India after independence brought radical changes in the administration of criminal justice, keeping in conformity with the Universal Declaration of Human Rights. The Indian Constitution, however, has not enumerated any provision of fundamental rights to the prisoners specifically, but certain rights which have been enumerated in Part III of the Constitution are available to the prisoners too because of the fact that a prisoner remains a 'person' even in the prison. In this regard, one of the important provisions in the Constitution is Article 14 in which principle of equality is embodied. It provided that the State shall not deny to any person equality before the law or the equal protection of laws within the territory of India. Again, Article

19, although guarantees six freedoms to the citizens of India, prisoners for the fact of being incarceration, could enjoy only freedoms like ‘freedom of speech and expression’ and ‘freedom to become a member of an association’ within the limitation of the prison. Article 20 protects the prisoner from being subjected to any punishment or punishment conditions (including that of imprisonment) which were not prescribed by the law at the time when he committed the crime for which the imprisonment in question was imposed⁸¹. The most valuable human right of the prisoners can be found in Article 21 of the Indian Constitution. Article 21 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 these Constitutional safeguards and the new concept of Criminal Jurisprudence which emerged after independence did not improve much. It was only in the late seventies that the judiciary through the process of judicial activism have expanded the scope of the various freedoms enshrined in the Part III of the Indian Constitution and also extended their applicability to the prisoners. This has resulted into the evolution of certain minimum rights and safeguards for the prisoners⁸². The “hands off” policy towards prisoners’ right followed by the Courts so long was given goodbye and from then onwards the law in regard to prison jurisprudence has undergone a radical change by a series of decisions of the Supreme Court⁸³. The Supreme Court ruling after ruling, expounded the rights of the accused in conformity with the International Covenants. Gopalan’s case⁸⁴ sowed the seeds of the rights of the prisoners. In this case one of the main contentions raised by the petitioner, was that the phrase “procedure established by law” as contained in Article 21 of the Indian Constitution includes a ‘fair and reasonable’ procedure and not a mere semblance

of procedures prescribed by the state for the deprivation of life or personal liberty of the individuals. The Supreme Court, perhaps more influenced by peculiar circumstances existing at that time, rejected the argument of the appellant and held the 'hands-off' doctrine. The concept of 'fair and reasonable' procedure as argued in the Gopalan Case was again raised after 28 years in the Maneka Gandhi Case. This time, the Court laid down that the phrase 'procedure established by law' speaks of fair, just and reasonable procedure'. It is further laid down by the court that the principles of 'natural justice' are included in the 'fair and just' procedure which is implied in the broad sweep and content of Article 21 of the Indian Constitution. The wide interpretation given by the Supreme Court to the concept of personal liberty and the procedure established by law ultimately provided a sound basis to plead in the courts against the arbitrary and fanciful actions of the states⁸⁵. Thus, since the Maneka Gandhi's case (AIR 1978 SC 579) a humanistic approach towards the prisoners. In this case the Supreme Court interpreted Art.21 and held that the this article which provides that no person shall be deprived of his life, and personal liberty except according to the procedure established by law and that the procedure must be reasonable and fair and not arbitrary or capricious. Maneka Gandhi's case was followed by a number of decisions and the new interpretation of Art.21 given in the said case was extended to include the rights to speedy trial, free legal services, appointment of Counsel for prisoner, bail, etc. to the prisoners. Some of the landmark case in regard to the protection of human rights Supreme Court are— Charles Sobhraj v. Superintendent, Central Jail, Tihar (1978) 4 SCC 104, 107, Dilbag Singh v. State of Punjab, (1979) 2 SCC 103, 105); Sunil Batra (I) v. Delhi Administration (1978) 4 SCC 494, Sunil Batra (II) v. Delhi Administration

(1980) 3 SCC 488, Hussainara Khatoon v. State of Bihar (1980) 1 SCC 81, M. H. Hoskot v. State of Maharashtra (1978) 3 SCC 544, and many more. The Supreme Court, through these landmark cases, held that the state cannot deprive any person of the right to live with basic human dignity and hence torture or cruel, inhuman or degrading treatment or punishment which trenches upon human dignity would be impermissible under the Constitution⁸⁶. The Sunil Batra's case is considered to be a landmark as the hand off policy towards the prisoners' right followed by the courts for so long was given a good bye in Sunil Batra(I) case. Again in Sunil Batra (II) case, the Supreme Court has widened the scope of writ of "Habeas Corpus" i.e., the protection of individuals against erosion of the right to be free from wrongful restraint on their liberty. In this landmark case only, the Supreme Court gave the guidelines in respect of the Constitutional and Administrative aspects of prison justice. A summary of the guidelines are given below⁸⁷—

1. It is imperative, as implicit in Article 21, that life or liberty shall not be kept in suspended animation or congealed into animal existence without the freshening flow of fair procedure.
2. No prisoner can be personally subjected to deprivations not necessitated by the fact of incarceration and the sentence of court. All other freedoms belong to him – to read and write, to exercise and recreation, to meditation and chant, to creative comforts like protection from extreme cold and heat, to freedom from indignities, forced sodomy and other unbearable vulgarity, to movement within the prison campus subject to requirements of discipline and security, to the minimal joys of self – expression, to

acquire skills and techniques and all other fundamental rights tailored to the limitations of imprisonment.

3. Inflictions may take many protean forms, apart from physical assaults. Pushing the prisoners into a solitary cell, denial of a necessary amenity, and more dreadful sometimes, transfer to a distant prison where visits or society of friends or relations may be snapped, allotment of degrading labour, assigning him to a desperate or tough gang and the like may be punitive in effect. Every such affliction or abridgement is an infraction of liberty or life in its wider sense and cannot be sustained unless Article 21 is satisfied. There must be a corrective legal procedure, fair and reasonable and effective.
4. The prison authority has duty to give effect to the court sentence (Sections 15 and 16 of the Prisoners Act, 1900). To give effect to the sentence means that it is illegal to exceed it and so it follows that a prison official who goes beyond mere imprisonment or deprivation of locomotion and assaults or otherwise compels the doing of things not covered by the sentence acts in violation of Art19. Punishments of rigorous imprisonment oblige the inmates to do hard labour, not harsh labour. "Hard Labour" in Section 53, Prison Act has to receive a humane meaning. The prisoners cannot demand soft jobs but may reasonably be assigned congenial jobs.
5. Violation of provisions of Section 27 (2) and (3) of Prisons Act regarding separation of prisoners must be visited with judicial correction and punishment of the jail staff. Sex exercises and exploitative labour are the vices adolescents are subjected to by the adults. The young inmates must

be separated and freed from exploitation by adults. Violation of these imperatives will attack Art19.

6. Any harsh isolation from society by long, lonely, cellular detention is penal and so must be inflicted only consistently with fair procedure.
7. Subject, of course, to search and discipline and other security criteria, the right to society of fellow- men, parents and other family members, to visit cannot be denied in the light of Article 19.
8. Lawyers nominated by the District Magistrate, Session Judge, High Court and the Supreme Court should be given all facilities for interviews, visits and confidential communication with prisoners subject to discipline and security considerations. This has roots in the visitatorial and supervisory judiciary role.
9. Further, District Magistrate should personally or through surrogates, visit prisons in their jurisdiction and afford effective opportunities for ventilating legal grievances; should make expeditions enquires therein to and take suitable remedial action. In appropriate cases reports should be made to the High Court for the latter to initiate, if found necessary 'habeas' action.
10. Grievance Deposit Boxes should be maintained by or under the orders of the District Magistrates and the Session Judge which should be opened as frequently as is deemed fit and suitable action taken on complaints made. Access to such boxes should be accorded to all prisoners.
11. The state should take early steps to prepare in Hindi, and regional language, a prisoner's handbook and circulate copies to bring legal

awareness home to inmates. Periodical jail bulletins stating how improvements and habilitative programmes are brought into the prison may create a fellowship which will ease tensions. A prisoner's wallpaper, which will freely ventilate grievances, will also reduce stress. All these are implementary of Section 61 of the Prisons Act.

12. The state should take steps to keep up to the Standard Minimum Rules for Treatment of Prisoners recommended by the United Nations, especially, those relating to work and wages, treatment with dignity, community contact and correctional strategies.
13. The Prison Act needs rehabilitation and the Prison Manual total overhaul, even the Model Manual being out of focus with healing goals. A correctional – cum – orientation course is necessitous for the prison staff inculcating the constitutional values, therapeutic approaches and tension – free management.
14. The prisoner's rights shall be protected by the court by its writ jurisdiction plus contempt power. To make this jurisdiction viable, free legal services to the prisoner programmes should be promoted by professional organizations recognized by the court. The District Bar shall keep a cell for prisoner relief.
15. The final panacea for prison injustice is, therefore, more dynamic, far more positive, strategies by going back to man, the inner man. For this, the introduction of transcendental meditation courses is recommended.

Besides the Constitution, there are certain other statutes like the Prison Act, 1894, Prisoners Act, 1900, and Prisoners (Attendance in Courts) Act, 1955, where certain

rights are conferred upon the prisoners. The Jail Manuals, which have certain rules and safeguards for the prisoners also cast an obligation on the prison authorities to follow these rules. Equally, the Criminal Procedure Code, 1973 which is the only Criminal Law of India also makes a modest attempt to confer rights to the accused persons.

Judicial intervention has led to the emergence of the rights of the prisoners in concrete form. The important pronouncements made in various cases have provided a gamut of prisoners' rights. The important rights of the prisoners are cited below—

1. RIGHT OF COMMUNICATION

Communication means contact of prisoners with the outside world. Every prisoner either convicted or under-trial is entitled to communicate with his or her family members, relatives and friends on regular basis within the frames of rules and guidelines. Rule 37 and 39 of the Standard Minimum Rules for the Treatment of Prisoners suggest that “prisoners should be allowed to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits”. The Supreme Court in the light of the Rules held that “a necessary component of the right to life, the prisoner or detainee will be entitled to have the interview with members of his family and friends”⁸⁸. In *Sunil Batra (II) vs Delhi Administration* (1980) 3 SCC 488, the Supreme Court dealt with the right of a prisoner to be visited by family and friends gave constitutional status to the said right. It was held that, “*We see no reason why the right to be visited under*

reasonable restrictions should not claim current constitutional status. We hold, subject to considerations of security and discipline, that liberal visits by family members, close friends and legitimate callers, are part of the prisoners' kit of rights and shall be respected"⁸⁹. The Assam Jail Manual in Chapter XXV has mentioned about numerous rules and regulations regarding interviews and communications with the prisoners. Rule 460 states —

Superintendent's permission for interviews required—(1) No convicted prisoners shall be allowed to have an interview or to receive or write a letter except with the permission of the Superintendent which shall be recorded in writing.

An entry should be made of every interview and letter with date on convict's history ticket.

(2) Applications for interviews with prisoners may be oral or in writing at the discretion of Superintendent. If a prisoner is not entitled to an interview, the applicant shall be informed at once⁹⁰.

2. RIGHT TO FREE LEGAL SERVICE

The Superintendent shall inform every convict on first admission to jail of the period within which an appeal from the order under which he has been committed to jail may be filed. If the convict desires to appeal and is entitled to do so, every facility shall be granted to him for the purpose⁹¹. In the *M. H. Hoskot v. State of Maharashtra* (1978) 3 SCC 544, the Supreme Court observed, "Every step that makes the right of appeal fruitful is obligatory and every action or inaction which

stultifies it is unfair and, ergo, unconstitutional. There are two requirements: (i) Service of a copy of the judgement to the prisoner in time to file an appeal and (ii) provision of free legal services to a prisoner who is indigent or otherwise disabled from securing legal assistance where the ends of justice call for such service. Both these are State responsibilities under Article 21". Thus, free legal service is an essential ingredient of criminal justice. If a prisoner sentenced to imprisoned is virtually unable to exercise to his constitutional and statutory right of appeal inclusive of special leave to appeal for want of legal assistance, there is implicit in the Supreme Court under Article 142 read with Articles 21 and 39A of the Constitution of India, power to assign counsel for such imprisoned individuals 'for doing complete justice'. The Apex Court stated clearly that "*It is a State's duty and not Government's Charity*" and in its judgement instructed the States to update the Jail Manuals to include the Mandate and refusal would be punishable⁹². Article 39A of the Constitution of India provides for free legal aid to the poor and weaker sections of the society and ensures justice for all. Article 14 and 22(1) of the Constitution also make it obligatory for the state to ensure equality before law and a legal system which promotes justice on the basis of equal opportunity to all. In 1987, the Legal Services Authorities Act was enacted by the Parliament which came into force on 9th November, 1995 with an object to establish a nationwide uniform network for providing free and competent legal services to the weaker sections of the society on the basis of equal opportunity. The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987 to monitor and evaluate implementation of legal services available under Act⁹³.

3. RIGHT TO INVOKE WRIT AGAINST TORTURE

Article 5 of the UDHR stated that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. To rescue prisoners from prison arbitrariness, Justice Krishna Iyer stated that, “Protection of the prisoner within his rights is part of the office of the Article 32 and Article 226. Prisoners are also persons and where the rights of a prisoner either under the Constitution or under law are violated the writ power of the court can and should run to his rescue”. In *Sunil Batra (II) Delhi Administration* (1980) 3 SCC 488, the Supreme Court discussed the expanding the nature and scope of the writ habeas corpus and held that “*writ of habeas corpus would be available to any prisoner against any action of the jail authorities which is not commensurate with the sentence and does not satisfy the test of Articles 14, 19 and 21 of the Constitution*”. It further held that, “*the Court has power and responsibility to intervene and protect the prisoner against mayhem, crude or subtle, and may use habeas corpus for enforcing in-prison humanism and forbiddance of harsher restraints and heavier severities than the sentence carries. We hold these propositions to be self-evident in our constitutional order and are supported by authority, if need be*”⁹⁴. Thus, a prisoners, if experiences torture, can move the court directly through a writ petition for protection of his/her fundamental rights, especially right to life and liberty granted by Article 21 of the Constitution of India⁹⁵. In this regard the Inspector General of Prisons of Assam already issued a Circular on 20/6/1977, addressed to all Superintendents of Jails/Lock-ups with the subject “Reformation in Jails”. It wrote that “as a part of our Reformatory Steps in Jails, it is necessary to discontinue all crude forms of penal provisions for breach of jail discipline by the

prisoners, because they are no longer congenial to human sentiments and the present day idea of reformation in jails”. Accordingly, the following category of punishments for breach of jail discipline have been discontinued⁹⁶—

- a) Penal diets
- b) Solitary confinements. However, cellular confinements may continue as a penal provision for serious breach of jail discipline
- c) use of Gunny clothing

4. RIGHT TO EDUCATION

Education is considered as a potent means to reform prisoners. Confucious, the famous Chinese philosopher, believed that, “Without learning, the wise become foolish, by learning the foolish becomes wise”. Emphasizing on the need of education for the prisoners, the Standard Minimum Rules stated that the education of the prisoners should be made compulsory and special attention should be paid to it by the administration. Also the education of prisoners should be integrated with the educational system of the country so that after their release they may continue their education without difficulty⁹⁷. The Basic Principles for the Treatment of Prisoners included that all prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality⁹⁸. Rule 293 in the Assam Jail Manual states that every jail shall be provided, according to its size and importance, with a library of approved English and vernacular books and periodicals. Besides religious books, other suitable books of

educative value may also be included. Books may also be provided by a friend, provided that they have been approved by the Superintendent and that the sanctions the indulgence. All the prisoners who can read shall be allowed the privilege of reading books on Sundays and jail holidays and, if permitted by the Superintendent, during their spare time on working days. The privilege is, in all cases, liable to forfeiture for misconduct. Any book introduced otherwise than in accordance with this rule may be destroyed. Reading of newspapers shall not be permitted, except in special cases by order of the [State Government] who, in such cases, will approve of the newspaper to be allowed. An Assistant Jailor shall have charge of the jail library and shall allow the use of the books and journals to literate prisoners subject to such rules as the Superintendent may prescribe.⁹⁹

5. RIGHT TO SPEEDY TRIAL

The concept of fair procedure also includes a reasonably speedy trial. The reasons behind the delay of cases are—(i) the incompetent judicial staff, (ii) inefficient police system and (iii) the technical procedure followed in the courts. In the Hussainara Khattoon Case, a number of undertrials filed a petition for the writ of habeas corpus in the Supreme Court, who were in the jails of Bihar for many years waiting for their trial. The Supreme Court held that the UTPs who remained in jail without trial for periods longer than the maximum term for which they could have been sentenced, if convicted, their continued detention would be illegal and is a violation of their fundamental right contained in Article 21 of the Indian Constitution. In this regard, the Court not only stated about the right to free legal service, but also the right to reasonably speedy trial as a necessary ingredient of the

right contained in the Article 21 of the Indian Constitution. In fact, speedy trial is considered as the essence of the criminal justice system. Justice Bhagwati in this context stated that, “*although, unlike the American Constitution, speedy trial is not specifically enumerated as a fundamental right, however, it is implicit in the broad sweep and content of Article 21 as interpreted in the Maneka Gandhi Case*”¹⁰⁰. The Gauhati High Court in the KhagendraNathNarzaryOrs. Vs. State of Assam (1984) Case stated that “the Right to Speedy Trial is an integral part of Article 21 of the Constitution and prolonged detention is anti-thesis of the mandate contained therein”¹⁰¹.

6. RIGHT TO RELIGION

Every prisoner has a right to practice his own religion. The existing rules in the Assam Jail Manual provides for the freedom of religion, subject to the rule of prison discipline. Rule no 291 of the Assam Jail Manual clearly provides that interference with religion or caste prejudices are prohibited and any interference will be dealt by the Superintendent. Accordingly, the Superintendent shall grant facilities to prisoners of all religions for such daily devotions as are required by their religion and the prisoners themselves are desirous of performing. Prisoners shall, while keeping the fast, be given two rations at night and arrangements shall be made to keep a sufficient supply of water in the wards or cells in which Muhammadan prisoners are kept. They cannot be unlocked at night but they can say their prayers in the wards. The hours of labour shall, as far as possible, in the case of prisoners who fast, be reduced by one hour in the afternoon and they shall be allowed to finish their evening bathing and latrine parades before sunset.

Arrangements shall also be made to give such prisoners, in lieu of their early morning meal, for the purpose of breaking their fast just at sunset, a little sharbat made of sugar, water and fresh lime juice, and soaked gram with ginger and salt or a piece of bread. The ration for the meal between 2 and 3 A.M. should be lighter than the ordinary meal, but an attempt should be made to give some nourishing food. However, the total cost of dietary for the prisoners who fast should not exceed that of the three meals given to other prisoners¹⁰².

7. RIGHT TO HEALTH AND MEDICAL TREATMENT

The Supreme Court in a number of cases held “right to health care” as an essential ingredient under Article 21 of the Constitution. Article 21 casts an obligation on the State to preserve life. Every prisoner has a right to free medical facility, which will be provided to him during imprisonment¹⁰³. Health service is one of the important services, which is performed in all penal institutions. The main objective of it is to restore and maintain physical and mental health of prisoners, and to keep up the general and hygiene of the institution to a satisfactory standard. Chapter XXXVI of Assam Jail Manual contains detail provisions regarding medical treatment of sick prisoners. For instance, Rule 650 provides that every prisoner complaining of illness or appearing to be ill shall be sent for immediate examination by the Medical Officer or in his absence, by the Medical Subordinate. Lady doctors employed in Assam who are paid wholly or partly from public funds may be called in to attend female prisoners when necessary. Such lady doctors are not entitled to fees but those who are not paid wholly by Government may be paid their travelling expenses when necessary¹⁰⁴.

8. RIGHT TO BAIL

Granting or withholding the permission to grant bail is purely discretionary. However, this discretion is supposed to be exercised on certain justified principles. Being influenced by the concept of human rights, it is believed that the bail should be granted to the persons when there is no reasonable apprehension regarding the accused that he will run away and will avoid the appearance before the Court. The ultimate aim of the penal statutes is to save the society from the assaults of the accused as well as to make him a good citizen, capable of living in the law-abiding society. At this juncture, bail can be a very useful tool for socialising an inmate¹⁰⁵.

9. RIGHT TO FURLOUGH

One of the appropriate methods for prisoners to be able to enter community is through Parole and Furlough. Furlough is a matter of right but parole is not. Furlough is to be granted to the prisoner periodically irrespective of any particular reason merely to enable him to retain family and social ties and avoid ill-effects of continuous prison life. The period of furlough is treated as remission of sentence. Parole, on the other hand, is not a matter of right and may be denied to a prisoner even when he makes out sufficient case for release on parole if the competent authority is satisfied on valid grounds that release of a prisoner on parole would be against the interest of society or the prison administration¹⁰⁶.

10. RIGHT TO LIVE WITH HUMAN DIGNITY

Individual dignity is one of the cherished values of our Constitution. The Supreme Court upheld the right to live with human dignity in *Francis Coralie Mullin v Union Territory of Delhi* (AIR 1981 SC 746). In this case the court held that the word 'life' includes that it goes along with, namely the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings. The Supreme Court in the *Kharak Singh Case* observed that the 'right to life' does not mean the mere animal existence but also right to live with full possession of his organs—his arms, legs, etc. Unlike the traditional theory that believed in the deprivation of liberty in totality, the concept has changed a lot in modern and civilised societies. As the UDHR stated, "All human beings are.....equal in dignity. Everyone has the right to recognition everywhere as a person before the law". A man does not cease to be a human being even behind the prison bars, and is therefore, entitled to those minimum rights which are inseparable from human dignity. The International Charters have laid down emphasis on the proposition that there is a basic level on which all human beings must be treated by the law as equal, irrespective of other conditions and must, therefore, on no account be degraded below the standard of human dignity¹⁰⁷.

11. SPECIAL RIGHTS TO WOMEN PRISONERS

The Supreme Court directed that before sending a pregnant woman to a jail, the concerned authorities must ensure that the jail in question has the basic minimum facilities for delivery of child as well as for providing pre-natal and post-natal care for both, the mother and the child. As far as possible and provided the woman prisoner has a suitable option, arrangements for temporary release/parole (or suspended sentence in case of minor and casual offender) should be made to enable an expectant prisoner to have her delivery outside the prison. Only exceptional cases causality constituting high security risk or cases of equivalent grave descriptions can be denied this facility (R.D. Upadhyay v. State of AP, AIR 2006 SC, 1946). In this case, the Court also held that female prisoners shall be allowed to keep their children with them in jail till they attain the age of six years, the child shall be handed over to a suitable surrogate as per the wishes of the female prisoner or shall be sent to a suitable institution run by the Social Welfare Department. As far as possible, the child shall not be transferred to an institution outside the town or city where the prison is located in order to minimise undue hardships on both mother and child due to the physical distance. Children kept under the protective custody in the home of the Department of Social Welfare shall be allowed to meet the mother at least once in a week¹⁰⁸.

3.9 DUTIES OF THE PRISONERS

Rights and duties are two sides of the same coin. Apart from claiming rights, side by side the prisoners have certain obligations also. Accordingly the All India

Committee on Jail Reforms, 1980-1983 has recommended certain duties of prisoners, such as--¹⁰⁹

- To obey lawful orders and instructions.
- To abide by prison rules and regulations.
- To maintain prescribed standards of cleanliness, hygiene and prison discipline.
- To respect human dignity to fellow prisoners, prison staff and others.
- To refrain from making false or exaggerated allegations.
- To abstain from hurting religious feelings, beliefs and faith of others.
- To use government property with care and not to damage or destroy negligently or wilfully.
- To assist prison authorities in the performance of their duties.
- To preserve and promote correctional environment and to be responsive to it.

The success of mechanisms adopted for the protection of the rights of the prisoners depends on solely on its proper implementation. Often a curiosity arises as to whether the citizens behind bars are eligible to cast their vote in the elections. Hiranya Kumar Bhattacharya, a political prisoner in the Assam Movement, and a Police Officer himself, raised the issue that prisoners are citizens and still they are denied the right to vote during elections which unjustified democracy in India. He suggested that if all the 1219 jails were divided into certain number of constituency and give an opportunity to take part in the selection of the representatives, then there would be improvement in the jail conditions and also a sense of responsibility

and citizenship would arise debarring the leaders in involving in unlawful activities. He said when political interest would accompany the jails, then automatically the leader would actively indulge in improving the jail conditions¹¹⁰. Naresh Kumar in his book “*Constitutional Rights of Prisoners: A Study of Judicial Trends*” stated that in a democratic country like India, freedom to vote is one of the basic freedoms. Even the UDHR has stated for the right to vote. The Indian Constitution fully satisfied the need of this requirement of the Declaration by adopting the concept of ‘One Person and One Vote’ and Adult Suffrage. The ‘Right to Vote’ as well as the ‘Right to Fight Elections’ are enjoyed by the citizens and the citizenship continues inside the premises of jail also. The prisoners too have these rights but they can be disqualified under Representation of the People Act, if they have been convicted for certain offences mentioned under the Act. However, the Detenués and UTPs enjoy both these rights unrestricted if they otherwise fulfill the conditions of being a voter and being a candidate for election. Under the Representation of People Act, only those persons have been disqualified from being elected or from being voter, who have been convicted of certain offence involving moral turpitude¹¹¹.

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CHAPTER: 4

PRISON ADMINISTRATION: IT'S EXPERIMENT WITH THE RIGHTS OF PRISONERS IN ASSAM

Prison constitutes an important part of any civilised society. It is such an institution where all the law-breakers are imprisoned to reform so that they can be brought back in the society again as law-abiding citizens. Reformation is not possible in a strict environment; instead a congenial environment is required where the individual get enough scope to develop their inner goodness inherent within himself. Human rights can only facilitate such environment to the persons behind the bars, subject to certain restrictions as per law. In this context, reference can be given to the judgement of S. N. Phukan vs. State of Assam (1986) Case in which the Court stated that, *“Prisoners who are locked up in jail incarcerated and shut up against their will have certain basic rights which they can assert under the Constitution and the law, ruled their Lordships of the Supreme Court in Sunil Batra v., Sobhraj, Hussainara Khatun Cluster of Cases, 2 Nimeon Sangma v. Home Secretary, Government of Meghalaya, and other decisions. The State Government are bound to obey the rule of law and uphold the tryst with the Constitution by making appropriate laws transforming the archaic and primitive regulations and substantially comply with the Constitutional mandates. It is unfortunate that the message nay, the Commands of the Supreme Court are yet to be obeyed by the States and Union Territories within the jurisdiction of this Court have not taken the message or the command of the Supreme Court nor they have implemented the dos and donts prescribed by their Lordships in respect of the rights of the prisoners under the Constitution and the Law¹”*. At the backdrop of this situation, the

researcher has conducted a study to gather knowledge on the Rights of the Prisoners and the role played by the Jail Administration to implement and protect these rights in special context of the Central Jails of Assam. But before that the researcher has tried to give an overview of the Criminal Justice Administration in Assam.

4.1 CRIMINAL JUSTICE ADMINISTRATION IN ASSAM: AN OVERVIEW

The concern for jail administration in Assam can be traced back to the passing of the Treaty of Yandabo in 1826, through which the Britishers entered the territory². The management of the newly acquired territory of Assam was entrusted to David Scott as the new Commissioner. Scott made an effort to make justice accessible to all people without wholly upsetting the old institutions. Accordingly, in Upper Assam criminal cases were usually disposed off by the Junior Commissioner but in certain cases they were referred to the Barphukan who was empowered to pass sentence of 30 lashes, imprisonment for six months or a fine up to 50 rupees. In Lower Assam, the Senior Commissioner occupied the position held by the Viceroy of Gauhati and tried civil cases without any limit, and criminal cases not involving death sentences. A tribunal was set up under Colonel Richards to try more serious offences. But due to inadequate infrastructure the tribunal could not be set up, as a result of which a large number of criminals had to be confined in the Gauhati Jail. David Scott encouraged the prisoners to develop interest in agricultural pursuits and was taught certain crafts so as to prepare them for meaningful employment. In pursuance of Scott's policy of associating local people in the administration,

Haliram Dhekial Phukan, a respected noble was appointed as the Assistant Magistrate at Gauhati to deal with minor criminal cases³. Edward Gait in his book “*A History of Assam*” discussed elaborately on the CJS of Assam during the colonial period. He argued that the general system of CJS was based on the Retributive principle of ‘eye for an eye and a tooth for a tooth’. The form of punishment for revolting against the authority included starvation, flaying alive, impaling and hanging. Death Penalty was often inflicted, not only on the rebel himself, but extended to the leading members of his/her family. No record was kept in major criminal trials, but in civil cases a summary of the proceedings was drawn up and given to the successful party⁴.

Gradually protest against the British government began to take place. The first uprising started in 1828 under the leadership of Dhanjoy with the objective to install Gomdhar Konwar as the ruler of Assam. But the rebellion was crushed with the leaders being caught. Gomdhar was tried by the Bar Panchayat at Jorhat, found guilty and was sentenced to death. Later Captain Neufville commuted the sentence to an imprisonment without labour for seven years considering his age and the fact that he was just a mere tool in the hands of rebels. Dhanjoy was also awarded capital punishment but he managed to escape to the Naga Hills and prepared for the next rebellion against the colonial rulers. In 1829 Dhanjoy along with the supporter rebelled against the British again. This time also the British crushed the rebellion by arresting its leaders. Dhanjoy managed to escape again. Rupchand Konwar, Jeuram Dulia Barua, Peali Phukan and Boom Singpho were tried by the Bar Panchayat at Jorhat, found guilty of treason and sentenced to death. Scott

confirmed the verdict on Peali Phukan and Jeuram since he viewed that such a punishment would act as a deterrent against further insurrections. For the others, capital punishment was commuted to banishment to Bengal and confinement in the Dacca Jail for 14 years and confiscated all their property⁵. In 1834, Mr. Robertson was succeeded as the Commissioner and after him General Jenkins. At this period, the valley was divided into four categories—Goalpara, Kamrup, Darrang (including Biswanath) and Nowgong. The legal position of these four districts were defined by the Act II of 1835, which placed all functionaries under the control and superintendence of the Sadar Court in civil and criminal areas. In 1837, a set of rules, known as the ‘Assam Code’ was framed for regulating the procedure in civil and criminal cases. But in 1860, the general Codes of Civil and Criminal Procedure were extended to the Brahmaputra Valley and with the enforcement of the Indian Penal Code (IPC) in 1862, the Assam Code lost into oblivion⁶.

John M’Cosh in his book “Topography of Assam (1837) (printed by Order of the Government) wrote about various aspect of prison administration of Assam. For instance on account of prison discipline in Assam, he stated that when a culprit was accused of any crime, he was confined in jail apart from the convicts till his cause was brought forward. The prisoners were put in irons heavier or lighter according to the crime, and lodged with the great body of convicts in the criminal jail. Perhaps as per the instructions of the Government, M’Cosh wrote that the prisoners took as much pains to burnish their irons as they were a bracelet, and would not choose to escape though they had an opportunity⁷. Till the middle of Sepoy Mutiny of 1857, the situation of Assam was peaceful. But with the passing of death

sentence to Maniram Dewan and Peali Barua for conspiracy against the colonial government and with the Freedom Movement gaining momentum in all over the country, the British had to rethink of the policies of domination over the territory. Initially the Colonial Government in Assam did not take any repressive measures. But the boycott of Prince Wales was humiliating for the government and repressive measures in the form of imprisonment of number of leaders took place. With a large number of men behind bars, women came out in thousands defying the orders of the government. Those arrested under the Criminal Law Amendment Act were subjected to inhuman torture and hundreds of people languished in jail⁸.

By notification, dated the 16th April, 1874, the Government of India delegated to the Chief Commissioner all powers which were vested in the Lieutenant Governor of Bengal. As per the Report of 1885-1886, prison discipline was less satisfactory—1,502 offences for breaches of jail rules, against 32 and 772 respectively in 1886. A sparing resort to the infliction of reduced diet as punishment increased to 94 during the year from 17 in 1886. Whipping was less frequent, and the prohibition against ordering fewer than 15 stripes would further restrict the use of corporal punishment to the most serious offences⁹. In Assam jail offences were classified into two categories—Serious and Minor. The forms of punishment included corporal punishment, solitary confinement, shot drill for a fixed period, loss of marks for a period, handcuffs behind and to march up and down for a stated period, fetters for remainder of sentence, penal labour, solitary with loss of marks, wearing gunny clothes, Sunday labour and work on treadmill¹⁰. As per the Report of 1885-1886, there was a gratifying improvement in the vital and health statistics for the jail population during the year. The number of deaths

were fewer and the rate of mortality smaller than in the past ten years. Deaths fell from 86 to 46. In regard to the sanitary measures Brahmaputra water was linked up into the Gauhati Jail, the provision of the plank beds were provided at Sylhet, and protection mechanisms adopted against wind and rain in all jails. A quarterly analysis of the water-supply was made at Gauhati and Sylhet. Decision was taken to abandon the use of the public tank outside the Sylhet Jail, and to enlarge a smaller tank in the jail precincts, which it hoped would afford a purer water supply. Attention was given to the necessity of maintaining a careful scrutiny into the quality of jail rations, and of avoiding overcrowding. An unduly large proportion of the jail population consists of persons more or less educated. 63.5 per mille are said to read and write a little, and 14.3 per mille to read and write well, the total of the two classes being 77.8 per mille¹¹. According to Government's own admission, Assam Jails were very much inferior to the jails of other provinces¹².

Prisons in the 19th century India were a 'House of Industry' rather than 'House of Correction'. The prisoners were made to work nine hours as full day's work as it was said that labour in Assam was scarce and expensive. Labour were categorised as –Penal, Hard and Light. Penal labour included oil mills, wheat-grinding, stone-breaking, wood splitting. Hard labour included earth work, road work, hoeing, garden work, husking paddy, brick-making, sawing, carpentry and weaving. Light work included bamboo, cane work and weeding. In the 1930s the chief jail industries in the jails of Assam were weaving, oil pressing, bamboo and cane work, carpentry and smithy. Most of the prisoners were employed extramurally in making and repairing the station roads, gathering and breaking stones and in repairing jail buildings. The employment of the prisoners also helps them to earn Marks as Mark

System existed in the jails in order to discipline the prisoners in a strict manner. Under the Mark System convicts were awarded marks based on their behaviour, working ability and self-presentation. The mark system entitled required mark earner early release from his sentence period but only a person whose sentence or aggregate unexpired term of sentence passed simultaneously upon him amounted to two years or more was eligible for remission of sentence under the Mark System¹³.

Later, the Prison Act of 1894—the landmark Act became the main basis of the prison administration even after independence. After ‘Prisons’ was made the State subject under the recommendations of the Government of India Act, 1935, most of the developmental activities greatly depended on the initiative of the State Government. The Assam Jail Manual was first published in 1934 and later in 1987. With the increasing importance of human rights there have been a drastic change in the field of Criminal Justice Administration as well in Jail Administration, yet the Assam jails are still being run on the basis of the Jail Manual of 1987¹⁴. Although the Prisons Act was passed in 2013, the provisions are still not implemented. As informed by the office of the IGP, Assam, a Model Jail Manual of 2016 is said to have received but till date the issue has not been discussed.

4.2 PRISONERS’ RIGHTS AND JAIL ADMINISTRATION OF ASSAM: AN ANALYSIS

The researcher, out of the total 6 Central Jails, selected two Central Jails of historical importance—Jorhat and Tezpur. A total of 200 prisoners from both the Central jails selected randomly by categorising them into four categories—Lifer,

Short-Termer, Under-Trial Prisoners (UTPs.). These prisoners are again stratified on the basis of gender—male and female. Accordingly, the researcher interviewed 60 lifers, 60 short-termers, 60 under-trials and 20 women prisoners in both the Central Jails of Assam. The findings are discussed below:

AGE DISTRIBUTION OF PRISONERS

In Jorhat Central Jail, women prisoners from the age group of 18-25 consists of 30%, from 26-45 is 50%, and from 46- 60 and above is 20%. Again in Tezpur Central Jail, 10% belonged to the age group of 18-25, 60% from 26-45, and 30% from 46-60 and above. In case of men inmates of Jorhat Central Jail, 23.3% consisted from the age group 18-25, 53.3% from 26-45, and 23.4% from the age group of 46-60 years and above. In Tezpur Central Jail, 20% consisted from the first group, 60% from the second age group, and 20% from 46-60 and above. The above data reveals that majority of the prisoners (male as well as female) are from the age group of 26-45. Age is an important factor in the process of re-socialisation. This age group of people is young enough and therefore it is necessary to sublimate their energy in creative works.

Figure 1.1: Age distribution of Female prisoners of the Jorhat and Tezpur Central Jails

Names of the Central Jails	18-25 years	26-45 years	46-60 years and above
Jorhat	30%	50%	20%
Tezpur	10%	60%	30%

Figure 1.2: Age Distribution of Male Prisoners of the Jorhat and Tezpur Central Jail

Names of the Central Jails	18-25 years	26-45 years	46-60 years and above
Jorhat	23.3%	53.3%	23.4%
Tezpur	20%	60%	20%

SEX DISTRIBUTION OF PRISONERS

As per the statistical report of 2007 published in “Prison Statistics India”, published by the National Crime Records Bureau (NCRB), the total number of jail inmates as on 31-12-2007 is 3,76,396, out of which 3,60,995 (95.9%) are male, and 15,401 (4.1%) are female. As per the Fortnightly Report on the Prison Population as on 31-07-2015, there were 455 males and 20 women prisoners in the Jorhat Central Jail. Similarly the Report as on 14-03-2016 in the Tezpur Central Jail, 426 males and 28 women prisoners were registered. It is found that in both the Central Jails, the number of male inmates are more in number than the female.

Figure 1.3: Sex Distribution in the Jorhat and Tezpur Central Jail

Name of the Central Jails	Male	Female
Jorhat	455	20
Tezpur	426	28

DISTRIBUTION OF PRISONERS BY RURAL / URBAN

BACKGROUND

In both the Central Jails of Assam—Jorhat and Tezpur, 80% of the prisoners are from rural areas, and remaining 20% are from urban background. The researcher found that lack of means of livelihood and education, superstitious belief and complicated relationship status were some of the reasons of being a criminal in both urban and rural areas.

EDUCATIONAL QUALIFICATIONS

One of the reasons behind the violation of prisoners' rights is poor educational background. The researcher found that 30% of the women prisoners of the Jorhat Central Jail are Illiterate, 40% are Under-Matric, 20% are Under-Graduate, and 10% were Graduate. Again in the Tezpur Central Jail 20% is Illiterate, 30% are Under-Matric, and 50% are Under-Graduate. In case of men inmates of Jorhat Central Jail, 13.3% are Illiterate, 40% are Under-Matric, 32.2% are Under-Graduate, 13.3% are Graduate, and 1.1% is Post-Graduate. In Tezpur Central Jail, 32.2% is Illiterate, 51.1% are Under-Matric, 14.4% are Matric pass, and 2.2% are Graduate. It is found that majority of the criminals are illiterate and from poor educational background. A few never went to school and a few are drop-outs.

Figure 1.4: Educational Qualifications of the Female Prisoners in the Jorhat and Tezpur Central Jail

Name of the Central Jails	Illiterate	Under-Matric	Matric	Under-Graduate	Graduate	Post-Graduate
Jorhat	30%	40%	–	20%	10%	–
Tezpur	20%	50%	–	30%	–	–

Figure 1.5: Educational Qualifications of the Male Prisoners in the Jorhat and Tezpur Central Jail

Name of the Central Jails	Illiterate	Under-Matric	Matric	Under-Graduate	Graduate	Post-Graduate
Jorhat	13.3%	40%	–	32.2%	13.3%	1.1
Tezpur	32.2%	51.1%	14.4%	–	2.2%	–

OPINION ABOUT PRISON: CORRECTIONAL / PENAL

The question when asked directly to the prisoner to know their opinion about the institution of prison as Penal or Correctional, then they preferred to say as Correctional. But when the researcher spent time and made the inmates comfortable, the opinion about prison came out to be different. From Lifers to UTPs—everybody wanted to come out of the jail. A Swedish Minister of Justice once made an observation relating to the prison---- “*A cage is still a cage even if gold plated*”¹⁵. Winston Churchill¹⁶ said that no matter how comfortable one made a prison it would still be a prison in intent, for the “convict stands deprived of everything that a free man calls life”. It is to be noted here that the irony of the term

“free” persons such as the deprived , dispossessed , weak , and suppressed sections of every society continue to be deprived of certain amenities for a host of reasons , but the ultimate incapacitation (prison) was still seem as a unique category of deprivation.

During the interview, Short-Termer in Jorhat Central Jail said,

“Madam, you will find the faces of all the prisoners damp and unhappy. It is because jail is such a place even if we are provided with diamonds and gold, no one would have peace of mind”.

A Lifer said that jail cannot be correctional as he believed that a majority of prisoners sent by the court are innocent. He defined jail as a “village with boundaries where no one enjoys liberty”. Again, another prisoner said that “There is no difficulty in prison life. Everything can be managed by money. For habituals, jail is their “*sasurbari*” (*house of father-in-law*), they would pollute the environment and can never be reformed, instead has the capacity to make other inmates like them.

The researcher found that prisoners get adjusted with the jail environment by obeying the authority and maintaining the prison hierarchy, as there is no other way, but to wait eagerly for their release.

AWARENESS OF PRISONERS' RIGHTS

The researcher found that none of the prisoners of both the Central Jails are aware of their rights. They only know that certain facilities are available for the prisoners such as legal aid, wage system, remission, furlough, etc., which can be denied if they go against the authority. A few prisoners said *“what rights behind bars”* and *“what’s the use of knowing these rights because to claim for human rights would mean inviting problems and no one is ready to make his life more miserable by going against the authority.”* A female Lifer said that said that “slavery” exist in jails. To remain in the good book of the authority, she has worked in the officers’ house whenever they wanted.

PRISONERS' HANDBOOK / JAIL MANUAL

The researcher found that along with poor educational background, non-availability of the Prisoner’s Handbook/Jail Manual in the prison library constitutes another ground for the violation of the prisoners’ rights. Also, they are not provided with the Prisoner’s Handbook or Jail Manual and the jail officials are least bothered. A Jail Manual is a ‘digest’ of the rules and regulations governing prisons and prisoners. Two Assistant Jailors of one of the Central Jail while trying to explain stated clearly, *“Prisoners have nothing to do with the Manual. The Manual is solely for the administrative purpose and therefore should be in Office and not in the jail library”*. However, the Supreme Court in Sunil Batra (II) v. Delhi Administration Case (1980) 3 SCC 488, gave directions regarding preparation of a handbook in regional languages and circulates copies to bring legal awareness of

the inmates. In Para 43 of the same judgement, the Supreme Court has given directions for putting up a large Notice Board displaying the rights and responsibilities of prisoners. This would enable the prisoner to be aware of what his rights and duties are while he is serving a sentence rather than be a helpless, ignorant victim in the hands of the jail officials. The specific reference to Prison Manuals is made by the Supreme Court in Para 45 of the aforesaid judgement:

“.....we think it right to hold that copies of the Prison Manual shall be kept within ready reach of the prisoners. Darkness never does anyone good and light never any harm.....”

Besides, the Assam Jail Manual was last published in the year 1987. The said Manual is a half a decade old and is out of print for more than two decades. Over the years the concept of jail has changed a lot and rights of prisoners have been an issue of discussion. But unfortunately the prisons in the state are governed without adequate knowledge of the relevant laws.

PRISON LABOUR / VOCATIONAL TRAINING

The changing concept of prison labour finds a new expression in the form of vocational training, and is being considered as an important avenue of imparting useful values to inmates for their vocational and social adjustment and also for their ultimate rehabilitation in a free community¹⁷. Keeping this objective, a number of vocational trainings are imparted in the penal institutions. The vocational training or prison labour as per the Assam Jail Manual is given in Appendix 1.4. Some of

the vocational trades in the Jorhat Central Jail and Tezpur Central Jail are cited below—

- Agriculture
- Carpentry
- Weaving
- Bamboo and Cane work
- Soap Making
- Plastic utensils (example-Drum, Bucket, Mug, etc)

The prison labour system in India, primarily operates as ‘State use System’ and secondly as ‘State Account System’ just like the English labour system. Here, the prison labour is organized on the principle that jails should manufacture goods first for use in the prison department itself, second for the use of government departments¹⁸. The Assam Jail Manual in Chapter XXIII clearly states that the main object of prison labour should be the reformation of the prisoner. Hence purposeless and non-productive forms of labour should be avoided. Every effort should be made to provide the best available instruction in up-to-date methods of labour, especially in Jail industries- so as to enable the prisoner to command a living wage on release. Rule 406 provides that the Superintendent shall provide labour for convicts of every class sentenced to rigorous imprisonment. Rule408 provides that no convict shall be required to perform any labour, other than such as

is indispensable to enable the necessary Jail services to be carried on, on Sundays or on the following days which shall be designated as Jail holidays viz., Christmas Day, Republic Day, Gandhi Jayanti, Muharram, Idd festivals, etc. Rule 409 provides that no convict shall be made to labour for more than nine hours on any day, except on an emergency and with the sanction in writing of the Superintendent.

In Assam jails the different vocational trades are known as 'Saali' and the prisoners are allotted works in different saali, such as *murhasaali*, *kathsaali*, *sweeper saali*, *water saali*, etc. and in each saali there is an in-charge called as 'Mate'. There is also an in-charge of each cell. Generally Lifers get the chance of becoming in-charge. Earlier the wage amount was Rs55 per month for general labour and Rs 75 for the skilled labourper month. Recently it has increased to Rs 100 (skilled) and Rs 80 (Unskilled). Their wage amount gets deposited in their respective account. For this the Government directed the authority to create accounts in the State Bank of India for all the prisoners who get wage. The wage system has given relieved to the prisoner himself/herself, and their family and the fear of losing it makes them more serious in doing their respective task and never says against the authorities of the jail authority. It is to be noted that UTPs do not get the facility of wage as long as they live in the jail from making their condition worse.

EDUCATION

The prison educational service is the offshoot of the modern correctional philosophy. Education helps to suppress the animal instinct through reason and

provides opportunities to develop the inner self of an individual. It also creates a sense of responsibility and self-confidence in him. Gandhi stated that the aim of education should be to bring out the inherent capacities of every individual¹⁹. The Prison Department of Assam, accordingly, has undertaken several measures to educate the prisoners. In the Central Jails of Jorhat and Tezpur the Prison Department has made necessary arrangements with State Examination Boards and Universities to allow the eligible prisoners to appear in Board / University examination at State's expense. Full time teachers are allotted up to the primary level of the prisoners. A special study centre of Indira Gandhi National Open University (IGNOU), and recently the Krishna Kanta Handique State Open University (KKHSOU) has also been set up to facilitate the prisoners to pursue distant education on different subjects. Along with the vocational training, emphasis was also on formal education.

The researcher found that instead of such facilities, 90% of the prisoners are not at all interested in pursuing educational courses. Enrolment number in the registers and the actual numbers of inmates in classroom differ greatly. As informed by a prisoner only six to eight students attended in both the Central Jails of Assam. A prisoner said that they enrol themselves just to be able to write his/her name or signature in any office form. After the visit of the women ward, it is seen that a room is allotted for class, but no one is interested and the teacher very often remains absent. A few days ago the centre of KKHSOU was inaugurated in the Tezpur Central Jail. Lack of interest and ignorance of the value of education on the part of the prisoners have actually paved the way for the authority to convert the rights into privileges.

RECREATION

Recreational activities give relaxation and happiness to prisoners, especially under-trials. They mingle each other while doing these activities. In both the Central Jails, prisoners get the scope of passing time by playing indoor and outdoor games. Indoor games included mainly Ludo, Chess, Cards and Carrom. Outdoor included mainly Kabadi and Volley Ball. Some of the prisoners sit in the prison Naamghar or Mandir, read books or newspapers in jail library and watches television. An aged UTP said, *“We have no right to have the remote of the television set in front of the convicted prisoner. We have to watch according to their wishes. In my cell majority are habitual. We cannot watch with them as they utter slang words and always turns on vulgar scenes. A women prisoner said, “There is a television set in our women ward, but it is out of service. We complained number of times, but no one paid any importance. So, we don’t complain for anything and pass our time by chatting and discussing problems among ourselves”.* An UTP said, *“All the prisoners have to obey the instructions of ‘Mate’—the convict officer. Even the channels of T.V. could not be changed without his wish. He is the boss of the cell”.*

The researcher observed that all the prisoners of both the jails of all the categories were excited when they were asked whether the authority celebrate some important festivals and occasions or not. They said that Independence Day, Republic Day, Bihu, etc are celebrated with great enthusiasm and everyone remains in festive mood. Both the jail officers and prisoners get involved during those occasions. In the Jorhat Central Jail, there is a stage with the name “Chitralekha” in the male

ward where prisoners use to perform. On a few occasions like Bihu, women prisoners are allowed to come to the male ward and perform in the stage. Similar scenario is found in the Tezpur Central Jail, but the researcher found that the prisoners as well as the authority are very much active and enthusiastic in the Jorhat Central Jail.

RELIGION

The Assam Jail Manual has prohibited any interference with the religion or caste prejudices of prisoners and is allowed to pursue their respective religions and related practices as are required by their religion²⁰. Perhaps, the right to religion is the only right that are being enjoyed by all the prisoners as ‘right’ of both the Central Jails of Assam without any fear or favour. The prisoners stated that they can perform religious activities freely inside the prison walls. Many prisoners after coming from their work sit in Naamghar. They said that going to Naamghar gives them happiness that is inexplicable.

PRISON VISITING

In Sunil Batra (II) v. Delhi Administration (1980) SCC 488 Case, the Supreme Court dealt with the right of a prisoner to be visited by family and friends and gave constitutional status to the said right. The Court held that²¹:

“.....We see no reason why the right to be visited under reasonable restrictions should not claim current constitutional status. We hold subject to

consideration of security and discipline, that liberal visits by family members, close friends and legitimate callers, are part of the prisoner's kit of rights and shall be respected."

The Assam Jail Manual²² in Chapter XXV specifies the rules that offer reasonable facilities to the convicted prisoners for the interview with friend and family. Rule 458 states that the exercise of this privilege shall be contingent on good conduct and subject to the discretion of the Superintendent. Rule 459 allows the Superintendent to grant this privilege even at shorter intervals at his discretion. Rule 471 specifies the conditions under which the prisoners may be excluded from enjoying these privileges. It states that any prisoner who abuses any privilege relating to the holding of an interview shall liable to be excluded from such privileges for such time and may be subject to such further restrictions as the Superintendent may direct. Again Rule 463 states that interview with a convicted prisoner should take place only in the presence of a jail officer and any interview may be terminated at any moment if the officer present considers that sufficient cause exist for such termination. Even, the researcher found it difficult to collect information as the prisoner becomes hesitant in front of the jail officials. Rule 465 of the Jail Manual states that duration of an interview should not exceed 20 minutes unless extended by the Superintendent at his discretion.

The above mentioned Rules makes it clear that the decision of the Superintendent in granting interview facility is final, who can withhold the same at his own discretion. The duration of meeting the visitors is less and the presence of the jail officials at the time of interview violates privacy which makes the whole situation

worse as the prisoner become hesitant. This affects the Resocialisation process of the prisoners. Every prisoner eagerly waits to meet their near and dear ones, and never wants to lose the opportunity at any cost. This makes the concrete ground where the rights of the prisoners are easily converted into privileges. The jail personnel misuse their power to the extent of violating the rights of the prisoners according to their own way. In an interview a prisoner said that visiting time matters with money. If the prisoner family can bribe then he/she will get more time to talk. Also, the amount of money given by the prisoner family for the inmate is not reached in totality. For instance if the family gives Rs100, then Rs 80 will be deposited in the canteen in the name of the prisoner and Rs 20 will go in the pocket of police in the gate.

FREQUENCY OF VISIT

The Supreme Court in *Phul Singh v State of Haryana*²³ emphasized that one major method in securing the goal of rehabilitation is to keep alive the family ties of the person in the prison so that he may not deteriorate into non-person. The frequent prison visit narrows down the gap between the prisoner and his family members. In this regard the researcher found that the corrupt practices of the jail authority have discouraged the frequency of prison visitor. The researcher herself experienced such an incident of corruption when a police asked money for meeting the prisoner in the Central Jail, Guwahati, for academic purpose. A prisoner said that the frequency and length of visits permitted are usually related to the status of the prisoner inside the four walls. As most of the inmates come from a poor background they refrain from coming to jail.

ACCESS TO FURLOUGH

Every prisoner wants to avail the facility of home visit. The Assam Prison (Leave and Emergency Release) Rules 1968 [Assam Gazette, Part II-A, dated 28-8-2008, pp 2460-75] determines the conditions of granting leave to the prisoners, thereby, allowing them to visit home. Leave under this rule means a concession of temporary release, which may be granted to a prisoner. The rule of granting leave is given in Appendix 1.5. The Superintendent of jail examines the case of such prisoner who is eligible for leave to find out whether he is fit to be released or not. The Superintendent is authorized to consider the case of a prisoner on the ground of his conduct, work, progress achieved in various spheres, his attitudes towards family and community, etc. [Rule 7 of Assam Prisons (Leave and Emergency Release) Rule, 1968]. Also the Superintendent may debar a prisoner from enjoying leave if his conduct is found to be unsatisfactory or if he is punished for prison offences. So, the Superintendent is all-in-all in regard to granting leave to the prisoners, another concrete area of violation of prisoner's rights. The prisoners eagerly wait for home visit, and in order to have the privilege of this furlough almost every prisoner always want to be in the good book of the jail officials, and from here the conversion of rights of prisoners into privileges starts.

The researcher found that after prison visit, the most precious facility for a prisoner is access to furlough. None of the prisoner dares to go against the authority for the fear of losing the privilege furlough. Majority of the prisoner knows about furlough as a privilege and not as a right, through their fellow prisoners or their seniors—the

procedure, documents to be collected, whom to approach and how to approach. They eagerly wait for furlough as they can meet their family members and other people of the society. Their faces get brightened to talk about furlough, they had the craze to go back to the society to live a civilized life after the completion of the term. A right, thus, can change an individual's mind and soul and uplift to a higher level.

CLOTHING, BEDDING AND ACCOMODATION

At the time of admission to the jails, the prisoner is given the jail clothing and accommodated in one of the cells. The cells are long sized with rough pucca floor. In female yard of the Jorhat Jail, there is the provision of eight to nine beds made of pucca. As per the hierarchy, the convicted have the right to sleep on those beds. The under-trials could not think of sleeping on those beds. The prisoners, both male and female, are provided with blankets and bedsheets as per the Rules of the Jail Manual, but in case of clothing they wear casual dresses which are being received from home. The provision of clothing and bedding as per the Assam Jail Manual is given in Appendix 1.6. But the prisoners who are poor and have no visits from home or relatives had to bear the problem of clothing. They had to wear the same clothes for many days or borrow from fellow prisoners. In case of women prisoners, it is very pathetic. A women prisoner in Jorhat Central Jail said,

“Madam, as I was taken by the police suddenly and then the court sent to the judicial custody as Under-trial, I did not get time to bring clothes. There is no one in the house to bring clothes for me. Out of sympathy one of my fellow prisoners

gave me her clothes to wear. But one day for some reason we both had a fight. The fellow women snatched my cloth and I was standing naked”.

She cried while describing the incident. When the researcher asked about the sanitary cloth, which actually needed to be provided as per the Assam Jail Manual, all the women prisoners gave a blank look. They did not know about such provisions and was never provided such napkins. One of them said that they use old clothes or borrow clothes from fellow prisoners. A Senior Prisons Official said, *“It is due to the indifferent attitude of the government that prisoners in various jails in Assam still wear civil dress, which is a clear violation of the executive instruction of the Assam Jail Manual. We have not been able to meet the requirements of clothing, bedding of the jail inmates (convicts), but nobody seems to be worried”*²⁴.

DIET

Rule 381 of the Assam Jail Manual directs the jail authority to affix a copy, in vernacular, of the existing scale of diet in some conspicuous place in the jail (the front of the cook shed for preference) so that every prisoner shall be able to know the quantity of the food he is supposed to obtain. Rule 378 states that dietary should be varied as much as possible by the issue of different kinds of pulses, vegetables and anti-scorbutics. Rule 380 directs the Superintendent and the Medical Officer to exercise the utmost vigilance in the supervision of the food supplies, and especially see that the full ration of vegetables of good quality is issued and that any defect in quality is brought to the notice of the Superintendent. Rule 381 states that the

Superintendent and the Medical Officer should see whether the food is properly prepared and that the full quantity has reached the prisoners. It is to be noted that Rule 383 of the Assam Jail Manual states that if any complaint is made by a prisoner regarding the quantity, quality, or cooking of the food, it shall be at once inquired into by the Jailor, and if the complaint relates to the quantity of food received, the ration shall be at once weighed in the presence of the prisoner. The diet scale for the prisoners as per the Assam Jail Manual is given in Appendix 1.7.

60 % prisoners knew about the diet list and 40% are either unaware or least interested. As per the information received from the prisoners through an interview, in the Jorhat Central Jail, in a week prisoners are given one roti and tea in morning 6 am, at 10 am the lunch (2 days fish, 1 day egg, other days vegetarian, and meat once in a month). There is no variation in the diet schedule. The food served to the prisoners contained the same seasonal vegetables and continues the same, especially brinjal, pumpkin and watery dal. The routine diet timing is same in the Tezpur Central Jail. Even when the season ends, the same vegetables would continue. In addition to this, the vegetables are not boiled properly. A women prisoner said,

“Madam, the same vegetables are served repeatedly. I shall not be wrong if I refer the food as goru daana (food of a cow). The utensil used to provide tea in the women ward has turned black. After release, I have to bathe with holy water to purify myself”.

Discrimination exists among the prisoners. The UTPs cannot say anything about the quantity and quality of the food, whatever they get they are to take it. The women prisoners cannot lodge any complaint on diet as they are not aware of the scale of diet because the list is hanged in the male ward. Although Rule 420 of the Assam Jail Manual provides that female prisoners shall ordinarily be employed in cooking or in the preparation of articles of food. But the women prisoners in the Central Jails are not allowed to go to the kitchen situated in the male ward. To be precise, the women prisoners eat whatever food is transferred to them from the main kitchen through a small window. They have no choice. The UTPs and women prisoners stand in the extreme below of the hierarchy. Of course, these categories have some freedom of choice in such things: they can eat what is served, when it is served, or they can go hungry.

Sometimes, the male UTPs are given the task of cleaning food items like dal and rice, alternatively. The Short-Termers (a few who are in the good book of 'mate' of Kitchen 'Saali') and the Lifers are in a comfortable zone as they can make their own food separately, if they wish. They can buy from canteen or receive the amount of food items allotted in the diet list and accordingly cook separately. An under-trial said it is pathetic to see the way the convicted prisoners of the kitchen *Saali* misbehaved with an old fellow prisoner. A Short-Termer said, *"It is not the fault of jail authorities. As the prisoners are increasing day-by-day, it is not possible to pacify hunger of everyone as per the diet schedule"*. He tried to justify his point by citing the example of food item of 'atta' enlisted in the diet chart. The prisoner argued, *"As per the diet chart for the non-labouring prisoners, the amount to be given is 90 gram and for the labouring class, it is 120gram. How big a roti*

would be with this amount. Also the prisoner entrusted with the responsibility of kitchen has to distribute food to all of the prisoners with amount of food articles supplied by the jail authority. At the same they are to maintain relationship with the fellow prisoner and those at the top of the hierarchy. So, the only way is to threaten the UTPs if they ask for extra food”.

According to sources, the Assam government is yet to release funds meant for ration and medicine requirement of the prisoners lodged in all the 31 jails in the state this financial year, something that could directly affect prison management. According to sources, the Home Department has already missed a couple of deadlines set for fund release this year and the jail authorities are still not clear about the situation that could affect the functioning directly. Moreover the paucity of funds due in the month of April itself has not only left the contractors (suppliers) worried, but forced the jail management to procure poor quality stuff. According to the source, “Maintaining the quality of food items in jails has always been a challenge for us. With no fund coming, there is danger that the suppliers may compromise on the quality”²⁵.

MEDICAL SERVICE

All of the prisoners stated that the Medical Officer has examined them at the time of the admission. The researcher then tried to know about the availability of medical services inside the prison. To this a female lifer complained of not getting her eye-treatment even after informing the authority a number of times. Majority of the prisoners stated that the condition of the hospital is woeful, the doctors are

often absent, and inavailability of medicines has made their life miserable. Due to lack of vehicles and utmost dependence on police for escort, the shifting of the serious prisoner to the hospital gets delayed. A prisoner said that the doctor just do his/her duty and checks the ill prisoners with the help of a prisoner compounder. But the doctor seldom touches the prisoner and if anyone complains, the doctor threatens to make transfer. A women prisoner said that the doctor never listens to their problem and threatens to make transfer to other jail far away from family if they do not stop their '*drama*'. She said that they have stopped saying about their problems as they do not want to stay away from family.

PRISON OFFENCES AND PUNISHMENT

The punishments in the jails of Assam are classified into two categories--Major and Minor. The minor as well as major punishments are given in Appendix 1.8. The prisoners of both the jails said that if any inmate or inmates are found to commit offence, then the Warder deals the issue by giving formal warning and if the issue is serious the Jailor gets involved into it. The guilty gets slapped or beaten up. They also admitted that generally nobody dares to break jail discipline for the fear of losing their privilege they are granted by officers, which are actually their rights. The researcher while sitting in the office of the Jailor witnessed such an incident. When the Jailor was informed about a prisoner to bring *ganja* (a kind of tobacco) inside the jail premises, he immediately slapped and beat with his stick. The Jailor said, "*It is impossible to handle such a crowd by a few officers. Therefore one has to be strict, at times, to have control over the hundreds of prisoners of different categories and of different nature*".

BAIL

Bail is a generic term used to mean judicial release from custody²⁶. According to the Criminal Procedure Code (CrPC), 1973, a person released on bail is required to execute a personal bond and also to furnish the bond of surety for a certain sum of money fixed by the Court. Even in cases of bailable offences where the accused is entitled to secure bail as a matter of right, bail is not granted by the court unless the defendant is able to secure a surety. It is not possible for a poor man to furnish bail because of poverty, while a rich man otherwise, similarly situated can afford to buy freedom from arrest by furnishing bail. In other words, the accused with means can afford to buy his freedom, but the poor accused cannot pay the price. He stays in jail because he is poor and not able to purchase the heavy cost of freedom in jail. In HussainaraKhatun's case²⁷, the Supreme Court found that thousands of under trial prisoners charged of bailable and cognizable offences could not move the Court for their release because they were unaware of their rights to be released on bail, and being indigent they could not afford and engage a lawyer who could apprise them of their rights and secure their release from jail. The researcher during interaction found that the prisoners have the knowledge about the system of bail and also the jail official informs the prisoners, but due to monetary problem they could not take the benefit. While availing bail, they had to go through economic hardships. Many of them had to sell their immovable property like land, to pay the necessary fee for availing legal help. The researcher met a prisoner who had availed bail but could not go home as he could not pay the bond money as per the court directions. A Short-termer in the Jorhat Central Jail said,

“The government has always neglected the poor, especially the under-trials for which their cases remains pending for years, and the rich never stay for long. Jail is for the poor, not for the rich. It is like paisa phekotamashadekho (throw money and enjoy the game). Again, for those below poverty level, jail is a ‘heavenly abode’ as they get food in time and never wants to go out of it”.

LEGAL AID

In HussainaraKhattoon case, the court through Bhagwati said that legal aid is an essential ingredient of reasonable, fair and just procedure to a prisoner who is to seek his liberation through the courts’ process that he would have legal service available to him²⁸. The researcher found that all the prisoners knew about the facility of Legal Aid, but not as their right. Also they came to know about this facility from officers as well as from their fellow inmates or seniors. For the poor inmates the government lawyer is their only hope to go out of jail. But they said that even the government lawyer asks for money, otherwise they delays the case intentionally. A women prisoner held responsible to her lawyer for her present situation. Ou of anger she said, *“once I come out of the jail, I will not hesitate the her. I sold sold everything to pay her fees”.*

GRIEVANCE REDRESSAL MECHANISM

70% of the prisoners were not aware of the existence of the complain box, and the remaining 30% who knew about such box said to be useless as none of the prisoners would complain against the authority. To complain would mean inviting lots of problems. Even the Chief Judicial Magistrate asks the inmates to say about

their problems, nobody says against the jail authority. A prisoner in Jorhat Central Jail said,

“The Superintendent of Police (SP) and Deputy Commissioner (DC) are least bothered about our problems. Once an application was sent to the DC for a microphone set to conduct functions in prison. No reply came from the Commissioner’s Office. No doubt, we are in prison for committing some kind of offences, but are not we human? We have also emotions. We have not asked for money, but at least if the government responds to our problems, we feel happy. At last we decided to collect money from every prisoner and with the help of Jailor sir, we bought a microphone set worth Rs 45000. In fact, the prisoners once donated Rs 15,000-20,000 to the flood affected area”.

Therefore even if Chief Judicial Magistrate (CJM) visits the jail, the inmates, out of the fear of the officials, would present the half-truth or remains silent of the conditions prevailing in prison. A prisoner said that his fellow inmates said that if he complains then his jail term may be increased by the jail officers. In the landmark case of Sunil Batra (II), the Supreme Court provided that Grievance Deposit Boxes should be maintained by or under the orders of the District Magistrates and the Session Judge which should be opened as frequently as is deemed fit and suitable action taken on complaints made. Access to such boxes should be accorded to all prisoners.

OVERCROWDING

Jails were overcrowded in Assam. The Nagaon jail housed 250 inmates against its capacity for 125 candidates, while the Barpeta jail had 221 inmates against the

capacity of 134 inmates as of June, 2006²⁹. The researcher with the help of the Prison Population Record as on 31-01-2010 highlighted the problem of overcrowding in jails. Accordingly, as per the Fortnightly Report on Prison Population as on 31-07-2015 of the Jorhat Central Jail, 455 males and 20 women prisoners are kept against the total capacity of 670 (Male—646 and Female—24). Again the Report as on 14-03-2016, 426 male and 28 female prisoners are accommodated against the total registered capacity of 747 (Male—725 and Female—22 prisoners, and day by day the number is increasing. The researcher found overcrowding in the female ward in the Tezpur Jail. To this, the Assistant Jailor said that the reason behind such overcrowding is due to the detenues arrested under Deportation of Foreign Nationals (DFN) Act. However, there was no overcrowding in the Jorhat Jail.

PLIGHT OF UNDER-TRIAL PRISONERS (UTPS)

Right from the admission in jail, the under-trial prisoners had to bear the pain both from the jail authority and convicted prisoners already there in the jail for years. The authority neglects their issues in the name of rules and the convicted one expects every under-trial to accept their rule. But the rules made for them are broken by both the groups easily. For instance, as per the Rules of the Jail Manual, the under-trial prisoners should be kept separately from convicted prisoners. But in both the central jails, the under-trial prisoners are kept together with the short termers and lifers. In the prison hierarchy, these are the most vulnerable category who have no say over anything and have to abide by the orders of jail authority as well as the their senior prisoners. Only one thing common among all prisoners is

that they are deprived of their liberty. Also a few under-trial prisoners have to face the problem of homosexuality. While interviewing under-trial prisoners of the Tezpur Central Jail, the researcher found a case of homosexuality. The prisoner was sixty years old and was there in jail for three months. He cried and quietly stated that some prisoners at night disturbed him physically. He further said,

“You are like my daughter, how can I share my pain. In my cell, majority of the fellow inmates were thief and dacoits, who are well-accustomed to jail environment. These groups pollute other prisoners’ mind. They always used slang words. A few of them offered me to satisfy their sexual desire. They threatened me after my denial. I have sleepless nights for many days. At night I keep my aluminium rice plate on my body so that if they try to touch me, it makes sound and I become alert. I cannot even take bath out of fear. I always think when I would be relieved from this hell”. He strictly said, “No one can be humane in this institution. Also, I request government to segregate the under-trial prisoners, especially the aged, from the convicted and especially, the habituals”.

Based on a letter addressed to the Gauhati High Court written by three Under-trial prisoners with the complain that they were languishing in the Golaghat Jail for about four and a half years for the negligence of authority led to the formation of Khagendra Nath Narzary Ors. Vs. State of Assam (1984) Case in the Gauhati High Court. At the request of the Court an enquiry was made about their appalling conditions of the prisoners in Goalpara Jail. It was reported that “these prisoners were arrested in February 1978 lodged in Goalpara Jail and since then the police forgot completely that the prisoners were locked in jail at their instance and it was

their obligation to submit report in final form/charge-sheet for over four and half years. The right to speedy trial is an integral part of Article 21 of the Constitution and prolonged detention is anti-thesis of the mandate contained therein”. The Report submitted by Mr. S. N. Medhi, learned Advocate of the High Court of Gauhati, spoke about the “man-made injustice” caused to a large number of prisoners³⁰.

PLIGHT OF WOMEN PRISONERS

As discussed earlier, women comprised of the least of jail population and confined in a separate ward. Compared to the male ward the women ward is small. They ate whatever they are served from the kitchen in the male ward. They have to use petticoats or other cloth during their menstruation period for those who could not buy sanitary cloth of her own. However, the Jail Manual provides for such cloth, none of the women prisoners in both the jails received it and in fact they were not aware of it. After extracting information from the women prisoners, problems they faced are summarized into the following points:

- i) Mental depression
- ii) No sanitary cloth
- iii) No scope to complain
- iv) Misbehaviour from authority

OPINION ABOUT OPEN AIR JAIL

The researcher found that 60% of the prisoners in Tezpur Central Jail are not aware of the Open Air Jail (OAJ). The remaining 40%, although heard about OAJ, but

they do not want to stay as it is far away from their hometown and the relatives could not meet them. Even after informing that their relatives could stay in this open jail, they replied that as they stayed for so long, only a few years are left for their release, also they have adjusted with the environment, so no more they want to shift to another jail. But all the lifers in the Jorhat jail showed interest to qualify for the OAJ. It is found that the concept of OAJ has not found prominence as well as popularity in Assam.

PROBLEMS OF JAIL ADMINISTRATION

While interviewing the Retired Justice of the High Court of Guwahati and a former Chairperson of the Assam Human Rights Commission (AHRC) and pointed out a number of issues of prison administration:

- i) Overpopulation is the major problem of jail administration. With the increase of crime, there is an increase of criminals, but the numbers of jails are still the same for years. Just like in the society cars are increasing, but roads are still the same in a dilapidated condition.
- ii) Under-trials had to bear the pain of loss of dignity. Jails are actually the place of detention for poor, the rich perceive it as a picnic spot. Absence of a lawyer and scarcity of money to be paid as a part of the bail bond, most of the under-trials had to stay the whole bail period in jail, which is pathetic to humanity.
- iii) Jailor is like a king who possesses all the good things that come from the government.
- iv) In the name of lack of security, prisoners are locked up inside the cells at 4pm. The cells with increasing number of inmates have to bear the pain.

- v) Dinner time is too early, that is, at 4pm. The time is very unusual.
- vi) Human rights, in case of jails are bogus. The term is good to be used in meetings and conferences. But in reality human rights violation mostly occur in jails as the inmates can never raise voice against the authority for fear of losing, not rights, but the privileges the prisoners get for being good to them.
- vii) Prison visiting is the major area of human rights violation. A few officer intentionally delay the process of visiting of lady visitors, especially of the illiterates. At dusk the officer would offer to keep the lady in his house and starts black-mailing her.
- viii) Parole is like getting a “lottery ticket”, ‘*shifarish*’ is used to get parole.
- ix) Prisoner mafia have link with the administrators. Actually, the whole system is to be blamed.

A Jailor of a Central Jail of Assam, in an interview, said that though the conditions of the prisoners are improved compared to earlier, but a range of problems still exist, such as—

- i) The prison authority finds it very difficult to deal with the psychiatric patients inside jail. They should be shifted to mental asylum.
- ii) Next problem to deal with is the drug addict criminals.
- iii) Many of the activities could not be continued because of the lack of finance. The office of the Inspector General of Prisons takes a lot of time to sanction funds. Administrative delay has become one of the features of prison administration.

- iv) In jail, a prisoner becomes a thief in accompany with a thief (*jailot suror logot sur hoi*). It is a fact unless he or she wants to be good from his/her own.
- v) Corruption is rampant in jail administration. It is true that many of the posts were taken through bribery.
- vi) Hectic schedule of work makes us frustrated and at times had to shout on prisoners to deal with their problems.
- vii) Some of the NGOs come with several welfare proposals, but they took no interest to complete the task. For instance once an NGO came to teach computers to the prisoners, but they just took the photos with the prisoners, and they never came to the jail premises again, once their purpose is served.
- viii) The officer said that society seldom gives importance to those who does job in the jail department, are kept at the tail-end, compared to the officers of other departments of the government. It is because the government has kept prison at the tail-end of the Criminal Justice System (CJS)

An Assistant Jailor of a Central Jail of Assam pointed out the following problems which needs attention—

1. Dilapidated condition of the Staff quarters.
2. The infrastructure of the jails is very poor. Lack of almirahs, cupboards, etc makes it difficult to keep the record safely.

3. As per the job profile that demands 24 hours on duty, the remuneration is very low.
4. Visiting room should be kept separate from office. The visiting hour is very chaotic thereby making it difficult to continue the administrative works.
5. Since the crowd is huge behind the walls who are there for committing crime, so there is a risk of life. Therefore, the jail administration has to run in co-operation with the prisoners.

The Jailor of the Jorhat Central Jail cited an incident of a lifer prisoner. The inmate was permitted to clean the office room and the jailor went outside for some work. The officer forgot to lock the godrej where an amount of about lakh rupees was kept. When the Jailor came, the prisoner said that he was waiting for him and informed about the money he kept unlocked. The Jailor said that a few prisoners can be trusted. No doubt for some circumstances a crime was committed, but majority of them reforms in jail and promise themselves not to return again and want to live a civilized life by obeying law. It is the habitual offenders who creates problem not only in society but also inside jail premises.

The overall research clarifies that gross violation of the rights of the prisoners has become a key feature of the prison administration. Prisoners in order to avail their rights had to become slave of the authority for they very well understand that to raise voice would mean inviting more problems. However, the convict warders or 'mate' are the privileged section among all the prisoners as they maintain good

relation with the officers. Under-trials and the women prisoners who stand at the bottom of the hierarchy of the prisoners have to obey the rules of the prison administration as well as the prison community. Going against any of these rules would mean giving invitation to more problems. Lifers adjust themselves with the jail environment. The jail officials also have to keep good relations with them to run the jail smoothly. Once the jailor said that in order to avoid chaos they are compelled to keep good relations with the prisoners. Here lies the problem in implementing the rights of the prisoners by the jail administration. The jail administrators appoints their favourable inmate as convict warder and gives him privilege, which are actually rights. On the other hand the inmate with the hope of getting the privilege maintains a good contact with the authority. The message is spread to the whole inmates and every inmate right from his entrance tries to be in the good book of the jail authority. The authority is able to convert the inmates' rights into privilege due to lack of education. Therefore, the mechanisms of human rights remain unknown to the prisoners. Even if a few who knows do not dare to raise voice because the system is as such that no one will come to rescue behind the walls.

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- ¹¹ Assam Jail Administration Report 1885-86
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¹⁶ Ibid

¹⁷ Model Prison Manual, 1970, pp 138-140

¹⁸ Meherjuddin, Mir (1984). *Crime and Criminal Justice System in India*. N. Delhi: Deep and Deep Publications, pg 257

¹⁹ Lal, Basant Kumar (1973). *Contemporary Indian Philosophy*, Delhi,: MotilalBanarsidass Publishers Private Limited, pg152

²⁰ The Assam Jail Manual, pg244

²¹ Ibid, pg 22-23.

²² The Assam Jail Manual, pp 305-307

²³ AIR 1980, SC 249

²⁴ “*Food, Medicines for Jail Inmates: State Government yet to release funds*”, (June 15, 2015), The Assam Tribune.

²⁵ Ibid.

²⁶ 78th Law Commission Report on Congregation of under trial prisoners in Jails, (1979), pp. 6-11 in “Law and Society in Modern India”, K.D.Gaur, Deep and Deep Publication, N. Delhi, 1989, p117

²⁷ 1980 1 SCC 81

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CHAPTER: 5

PRISON REFORMS IN ASSAM: AN EXPERIMENT

WITH OPEN AIR JAIL

The Constitution suffers a shock, whenever a prisoner is tortured in the name of prison discipline by the prison authority. It is because the law of the land has always shown respect to the concept of human rights. Prisoners being human have the right to live in dignity with all the rights during incarceration subjected to certain restriction as per law¹. Denial of these rights raise question to the very basic right of criminal being a human and in fact would stand as obstacle to the process of transforming criminal. In the Sunil Batra (I) Case (1978) 4 SCC 494², the Supreme Court stated that, *“Prisoners, these noiseless, voiceless human heaps cry for therapeutic technology. No longer can the Constitution be curtailed off from the incarcerated community since pervasive social justice is a fighting faith with Indian humanity”*. One of such therapeutic technology is the Reformatory Theory of Punishment. This theory based on the concept of human rights believed that *“Just like the useless bits of thread, string, wood shavings, feathers, plastic, leaves and toothpaste tubes can be made into beautiful and useful objects, so can human beings who have been spoiled, wasted, or discarded be remolded into “new people” who can be productive members of society”*³. The Reformatory theory implies that the offender should during the period of incarceration, be put to education and healthy or ameliorating influences to mould the criminal into a law-abiding citizen⁴. Remolding is possible only when this vulnerable section is given opportunity to shape their character and develop a healthy outlook for life. In

China, the remolding is done by combining productive labour with education and political training as they believed that the labour would promote exploration of the individual's ideological outlook and personal faults, thereby, leading to repentance and reform⁵. The Correctional System of the People's Republic of China (PRC) is based on an unrelenting optimism about human nature. From Confucius onwards, the Chinese believed that people are basically good, albeit corruptible; that bad examples and bad company can lead individuals astray; that education is the best tool for systemic and individual reform; and that people are malleable throughout their lives. Prison officials are trained at Reform-through-Labour schools—such as the Shangahi School for Correctional Officials—or at Judicial Schools to specialize in subjects such as law, policy or management. Equally basic to the correctional philosophy of the PRC is the belief that minor deviance leads to major deviance and that it is both the right and duty of the community to intervene as soon as minor deviance appears, even if it does not contravene the Criminal Law. This explains the active role taken by family, neighbours, workmates, teachers, and local officials in controlling individual behaviour. In short, the country believed in the dictum that correctional must be *'as parents are to their children, as doctors are to patients, and as teachers are to students'*. The purpose of criminal legislation in the PRC appears to be not only punishment and primarily deterrence, but also correction in the sense of instilling in the offender a conscientious attitude toward labour, an exact observance of laws, and a respect for the rules of the socialist community. While deterrence is primary, the same time the law emphasizes that the execution of a sentence does not aim at inflicting physical suffering or degrading human dignity⁶. The trend has been towards humanizing punishment and

reducing its brutalities, giving rise ultimately to a new concept called ‘correction’. The approach of correction believes in reforming the socially unaccepted behaviour of people through re-educating and re-shaping them with non-punitive methods.

With the increasing importance of human rights and the shift from deterrent to reformatory, the treatment of the criminals has also changed. Punishment is understood as treatment which is more directed to the criminals than to the crime, and its sole objective is the moral regeneration and, not generation of the criminal. If a criminal is morally regenerated, his criminal tendencies also become extinct or at any rate dormant. In this context Oppenheimer⁷ calls punishment, “a physical measure adopted to excite in the soul of the guilty true repentance, respect for justice, sympathy for their fellow creatures and love of mankind”. The moral regeneration of the criminals can be realized only by providing them with the social, educational or vocational training at the time of incarceration.

Justice Fazal Ali⁸, rightly pointed out-

“..... the modern concept of punishment and penology has undergone a vital transformation and the criminal is not now looked as a grave menace to the society which should be got rid of but is a diseased person suffering from mental malady or psychological frustration due to sub-conscious reactions and is therefore to be cured and corrected rather than to be destroyed.....”.

Based on the conception that not all criminals are habitual, rather circumstantial prisoners who committed offences in a certain situation or under uncontrolled emotion, only punishment cannot solve the problem of crime and criminals in a

society⁹. Sir Lionel W. Fox, Chairman of the Prison Commission for England and Wales, stated that, *“Of all the methods by which a prison regime may hope to inculcate self-respect and self-responsibility and in other way prepare the prisoners for a national life in society, the institution of open prison appears to be itself the most effective”*¹⁰.

5.1 PRISON REFORMS IN INDIA: A NOVEL CONCEPT OF THE OPEN AIR JAIL (OAJ)

The open prison system has emerged as a modern and effective technique in prison philosophy with the objective to reform and rehabilitate the prisoners back to the society. Open Air Jail provides a breathing space to the prisoners and prepares them to face the world after completion of imprisonment with confidence, in fact a more humane alternative than the high security jails. The establishment of open prisons on a large scale as a substitute for the closed prisons, the latter being reserved for hardcore criminals is considered as one of the greatest prison reforms in the penal system. The open prison or ‘prison without bars’ or minimum security prison, or open camps as they are called was a very late development within prison system¹¹. A semi-open prison institution called as Witzill established in Switzerland in the closing years of the 19th century can be regarded as the first of its kind¹². The movement of Open Penal Institutions, however, got momentum with the 12th International Penal and Penitentiary Conference held at Hague in 1950. The agenda of the conference was to inquire about the functioning of the open prisons instead of traditional prison and to draw out the principles which should govern the establishment of open correctional institutions. On the basis of the

proceedings, an inquiry was conducted among 14 European nations on the nature, features and the public reaction towards such open prisons. The findings were discussed in various meetings conducted under the auspices of the United Nations¹³. Open prisons in true sense were established from 1930s in U.K., especially with the contributions of Sir Alexander Palerson, the Member- Secretary of the Prison Commission of U.K., and in the United States of America around 1940s¹⁴. Inspired by the success of the Anglo-American experiment of Open Prisons and induced by the objective to solve the problem of over-crowding and to reform the inmates to place in the society again, India adopted the concept of Open Air Jail. The development of Open Prisons in India can be traced back from the middle of the 19th century with the establishment of the first All India Jail Committee in 1836 to review the overall prison administration of the country¹⁵. However, this Committee appointed at the initiative of Lord Macaulay although focused mainly on to improve prison discipline, actually ushered an era of prison reform in India¹⁶.

John M'Cosh in his book "Topography of Assam (1837) (printed by Order of the Government) wrote that the prisoners in Assam after their morning meal, between seven and eight were entrusted with some public work, most commonly building of roads or bunds, where they continue to labour till four or five in the evening. They then return to the jail, cook their evening meal, and before dark are shut up for the night. Each is allowed to provide his own provisions. Three pice was allowed to each for subsistence; this they expend in rice and other condiments as suits their taste, from petty merchants in the jail bazaar. It is strange to read in the book that

the prisoners took as much pains to burnish their irons as they were a bracelet, and would not choose to escape though they had an opportunity¹⁷.

The Second Jail Committee appointed in 1864 also reviewed the jail administration. It was the Third Jail Committee of 1877 that discussed the issue of employing prisoners on major public work sites such as digging of canals or dams, etc. This issue was placed in the Prison Conference of the same year to which it strongly supported. The Conference clearly recommended that *“employment of prisoners as labourers on large public works was not only valuable but also a necessary adjunct to jail administration”*. This recommendation was subsequently accepted and followed in practice¹⁸. As per the Assam Jail Administration Report 1885-86, besides the jails and lock-ups, there were also for various periods 4 Public Works Jails at Disangmukh, Telikhal, Majuli and Amrigog. The Disangmukh jail was closed on 11th June, 1887, and the Majuli jail was started in its place on the 12th November. The Amrigog jail in Kamrup was opened on the 26th June, and closed on the 19th July. The Telikhal jail in Sylhet, which existed at the end of 1886, was closed on the 29th May, 1887, and re-opened on the 5th November¹⁹. The All India Jail Committee of 1919-20, the last Committee on prison reform before independence, re-asserted the need for humane treatment for prisoners. For the first time, in the history of prison administration, reformation and rehabilitation of offenders were identified as one of the objectives of prison administration. It contained more than 500 pages which reported on prison conditions, principles and practice of prison policy, administration and made recommendations for the reformation of both prisons and prisoners²⁰. The Chairman of the Committee, Sir Alexander Cardew stated that *“the most critical moment in a convict’s life is not*

when he goes into the prison but when he comes out of it. Having lost his character and social standing, he finds it difficult to adjust to the normal life of a free society". Therefore, the Committee was in favour of open air life and employment of prisoners in agriculture. But this idea has to be dropped because such employment involved distribution of labour over a wide area which made guarding and supervision difficult²¹.

The first scientific effort to modernize prison in India was made by Sir Walter Reckless, the U.N. Technical Expert who visited India in 1952 when he submitted an excellent report on jail administration in India. As a result of this the All India Jail Committee was appointed in 1956-57 which worked for three years and made useful recommendations for prison reforms. One of the recommendations of the Jail Committee was to set up state after care organization in the form of Open Jails for the rehabilitation of prisoners in every State. Uttar Pradesh was the first state to initiate steps to set up open prisons in the name of Late Sampurnanand who was the then Home Minister of the State. Later other States including Assam had established Open Air Prisons for the rehabilitation of the offenders²². In Assam the first Jail Reforms Committee, after independence was set up in 1956 under Rev. J.M. Nichols Roy, followed by a number of legislations. The Assam Superintendence and Management of Jails (Supplementary Provisions) Rules, 1968 (Open Prison Rules) was a significant step towards the establishment of Open Air Jail as a part of prison reform measure in Assam²³. Generally, lifers who have spent time in closed jails are put in open prisons before their release. In India, there are 53 such jails. Prisoners with good behaviour satisfying certain norms prescribed in the prison rule book are admitted in open jails. There were 3,027 total inmates kept

in open prisons as per the figures till 2013 end²⁴. Recently in Pune India's first Open Jail for women was inaugurated at the Yerawada Central Prison by Maharashtra Home Minister R.R. Patil²⁵—

	State	No. of Open Prisons	Population
1.	Rajasthan	23	658
2.	Maharashtra	10	975
3.	Kerala	03	390
4.	Andhra Pradesh	02	281
5.	Uttarakhand	01	151
6.	Odisha	01	95
7.	Bihar	01	92
8.	West Bengal	01	91
9.	Punjab	01	62
10.	Gujarat	02	56
11.	Himachal Pradesh	01	52
12.	Tamil Nadu	03	37
13.	Assam	01	27
14.	Madhya Pradesh	01	25
15.	Jharkhand	01	23
16.	Karnataka	01	12
		53	3,027

5.2 FEATURES OF THE OAJ

The UN Congress on the Prevention of Crime and the Treatment of Offenders held in Geneva in 1955 defined Open Prison as “*An open prison is characterized by the absence of material or physical precautions against escape (walls, locks, bars, armed or speared security guards) and by a system based on self-discipline and the inmates sense of responsibility towards the group in which he lives*”²⁶. The philosophy underlying the concept of OAJ is based on the following basic assumptions²⁷—

1. A person is sent to prison as a punishment and not for punishment.
2. A person cannot be trained for freedom unless conditions of his captivity and restraints are considerably relaxed.
3. The gap between institutional life and free life outside the prison should be minimized so as to ensure the return of inmate as a law abiding member of society.
4. The dictum ‘trust begets trust’ holds good in case of prisoners as well. Therefore, if the prisoners are allowed certain degree of freedom and liberty, they would respond favourably and would not betray the confidence reposed in him.

The main features of the OAJ are cited below²⁸—

1. Informal and institutional living in small groups with minimum measure of custody.
2. Efforts to promote consciousness among inmates about their social responsibilities.

3. Adequate facilities for training inmates in agriculture and other related occupations.
4. Greater opportunities for inmates to meet their relatives and friends so that they can solve their domestic problems by mutual discussion.
5. Liberal remissions to the extent of 15 days in a month.
6. Proper attention towards the health and recreational facilities for inmates.
7. Management of open jail institutions by especially qualified and well-trained personnel.
8. Improved diet with arrangement for special diet for weak and sick inmates.
9. Payment of wages in part to the inmates and sending part of it to his family.
10. Financial assistance to inmates through liberal bank loans.
11. Free and intimate contact between staff and the inmates and among the inmates themselves.
12. Regular and paid work for inmates under expert supervision as a method of reformation.
13. Avoidance of unduly long detention.

5.3 DIFFERENCE BETWEEN THE OPEN AIR JAIL AND CLOSED JAIL

The difference between the Open Air Jail and a Closed Jail can be seen on the following areas:

1. **Boundary:** In a closed jail, boundary is covered with high walls and the inmates had live within the premises isolated from the society. But in case of

open air jail, there is no boundary and walls, and the inmates live within the boundary.

2. **Lock-ups:** Lock-up is an important factor in closed jail. At 4:00 pm the inmates are locked up and at 6:00 am the lock-ups are opened. But there is no system of lock-ups. Everyone live freely. The system is working on the basis of trust, faith and co-operation.
3. **Selection:** Closed prisons receive all type of prisoners and there is no kind of selection. Once find guilty, the person is confined in jail as per the rules. However, there is a selection procedure for the admission of inmates in the Open Air Jail. Not all prisoners are eligible to find a place in open jail.
4. **Category:** As stated, there is no selection procedure in the admission of prisoners in closed jails. Accordingly all the categories of prisoners—lifers, short-termers, under-trials, and women prisoners are to be found in the closed jails. But the open air jail generally allows only the lifers who have served a part of their sentence, to stay in the open air jail.
5. **Visit of family members or relatives:** One of the most distinguishing differences between the closed jail and open air jail is in regard to the visit of family members or relatives. In both the jails, the inmate gets the chance to meet their dear ones, but it is only in the open air jail that the family members are allowed to stay in the guest house of the jail premises for three days which is not possible in closed jail.

5.4 ADVANTAGES OF OAJ

Although there is a risk of escape in the open air jails, but there are several advantages than the closed jails or other types of detention, such as—

- i) Helps in the process of re-socialisation before release.
- ii) Liberalization of rules and regulations ease their life and they become automatically disciplined.
- iii) Family contacts inspire the inmate to live a normal life in future as a law-abiding citizen.
- iv) The open air jail system is less costly.
- v) If an inmate violates the rules, then he would be sent to closed jail. And none of the prisoner wants to go back to stay behind the walls. This fear avoids them from any type of mischievous acts like jail escape.

Thus, the three main considerations behind establishing jails can be summarized as²⁹--

- i) Economical and Cost-effective;
- ii) A measure against an overtly strict and formal prison regime;
- iii) A measure for effecting reform and rehabilitation and preparing the inmate to return back to the society again as a law abiding citizen.

5.5 OPEN PRISON RULES IN THE STATE OF ASSAM

As per the powers conferred by Section 59 of the Prisons Act, 1894, the Governor of Assam is pleased to make rules on Open Jail of Assam. Accordingly, the Assam Superintendence and Management of Jails (Supplementary Provisions) Rules, 1968 was framed in regard to the open jails of Assam. In the Act the open air jail is defined as ‘colony’ which means an Open Air Agricultural-cum-Industrial Reformatory jail, which may be an independent or an annexe to a Central or District Jail. Rule 3 of the Act provided for the constitution of the Board of Visitors consisting of six members to be appointed by the State Government—

1. District or Sub-Divisional Magistrate or in their absence the Additional District Magistrate or the Senior Extra Assistant Commissioner as Chairman;
2. The Superintendent of the Jail
3. The Joint Director of Agriculture if he is stationed in locality or the District or Sub-Divisional Agricultural Officer;
4. An Officer of the Industries Department;
5. Two non-official members

Rule 4 of the Act provided limited accommodation for the stay of the prisoners’ family. The members of the family shall be allowed free lodging for three days, but shall have to provide themselves with food at their own expense. However, such accommodation will be entirely at the discretion of the Superintendent.

Eligibility of Prisoners to Colonies under the 1968 Act

Convicted prisoners of the following categories shall be eligible for admission to colony—

- i. Non-habitual convicted prisoners whose term of imprisonment is five years or more, who have served at least one-third of the period of sentence with remission, and have at least one year of unexpired portion of sentence on the date of admission to the colony. Inspector-General of Prisons, however, in exceptional cases, may consider even cases of non-habitual convicted prisoners whose term of imprisonment is three years.
- ii. He must not be less than 60 years or less than 21 years of age on the date of admission to colony.
- iii. He must be of good health and fit for hard work.
- iv. He must be of good conduct possessing a good record in Jail.
- v. The prisoner must be willing to work.

Non-eligibility for admission to colony

- i. Prisoners convicted under Sections 109 and 110 of the Criminal Procedure Code and also those convicted of Dacoity, Poisoning, Escape, Counterfeiting Coins and Stamps, unnatural offences.
- ii. A and B Division convicts, female convicts and convicts sentenced to simple imprisonment.

Rule 6 of the Act provided for the selection process of the prisoners to the colony. Accordingly, the Inspector General of Prisons in the month of January every year or at such other time as may be deemed necessary by him direct the Superintendent of Jails to submit to him descriptive rolls of prisoners eligible for admission under the rules. The IGP shall select and order transfer of prisoners to a colony specified by him where they shall be kept in a segregated ward to be designated "Reception Ward". Subject to the orders of the IGP the convicts shall be thoroughly screened and finally selected for transfer to colony. A separate admission register shall be maintained for the inmates of the colonies.

Under Rule 7, the Superintendent shall determine and arrange according to local conditions all recreational and cultural activities of the inmates of the colonies. Sports and competitions with outside teams may also be arranged.

Rule 8 provides for a Library cum School room with sufficient books, slates, pencils, etc. approved newspapers, information leaflets and posters from the Agricultural and Publicity Department shall be obtained and displayed in the library. Reading facilities is provided to all the inmates and library to be open from 6:30 pm to 9:00 pm on all days except on Sundays and Holidays. On Sundays and Holidays it shall be kept open from 1 pm to 5 pm. During library hours one warder shall be on duty every day. He shall report all irregularities and indiscipline in the library to the Superintendent of Jails. A part of the library room shall be used as night school. Till the appointment of part time teacher the school shall function under the supervision of a literate warder. He will be assisted by two literate inmates. The inmates, shall as far as practicable, be taught upto Primary Standard.

The Act also provided for the annual rewards to inmate by the Superintendent with the approval of the IGP for discipline, good conduct, performance of excellent work, etc. For this purpose a sum of Rs 200 shall be set apart from the sale proceeds of the colony.

Prisoners in a colony may be employed outside the colony on works relating to the colony. A paid warder shall escort the prisoners to and from the place of work outside the colony.

In regard to the wages and expenditure of the prisoners in the colony, the Act provided the following—

- i. The sale proceeds of the colony shall be deposited into the Treasury. It shall be withdrawn at the end of every financial year and one-third of the total proceeds shall be divided between all the inmates of the colony proportionate to the period he has served. From the remaining two-third, rupees two hundred shall be spent for rewards to the prisoners and the balance shall be credited to the consolidated fund of the state after meeting expenditure towards the cost of animals, implements, seeds, manures, raw materials, books, maps, etc., in respect of the colony.
- ii. Individual accounts shall be opened in the name of each of the inmates and the amount allotted to each of the inmates shall be allowed to an inmate to meet the urgent needs of his family, if any, and in no case the other half shall be allowed to be withdrawn. The inmate shall finally withdraw the amount of his passbook only before the date of his release

or on transfer from the colony. In case of death of the inmate the amount deposited in the Saving Bank shall be withdrawn by his legal successor.

- iii. To supplement the diet and clothing of the inmates, they shall be allowed to spend a part of their earnings.
- iv. They shall be allowed to spend economically a part of their earnings to meet the needs of their toilets, hair oil, looking glass, comb, tobacco, betel nuts, etc.
- v. No intoxicants shall be allowed to be purchased and used by the inmates.
- vi. The costs incurred in the purchase of implements, bullocks and fodder for the colony shall be gradually recovered from the sale proceeds taking into consideration the life value period of such animals and implements.
- vii. Each inmate shall be allowed to keep an account of his own deposit and expenditure so that he shall have full information of his deposit at hand.

5.6 MOHENDRA NAGAR OPEN AIR JAIL OF ASSAM: AN ANALYSIS

In Assam, there is only one Open Air Jail in the Jorhat district, known as the Mohendra Nagar Open Air Jail. It was established on October 2nd, 1964. Open air jails are also described as “agricultural cum industrial reformatory jail”. There is a gate (*turon*) in the entrance. After going half kilometer, there is a small board citing the name of the open jail and an iron gate. Near the board one can witness the memoirs of KushalKonwar and Miri, the patriots who were hanged in the freedom struggle of India. Thus, the open air jail is situated in the backside of the Jorhat Central Jail. There are 162 bighas of land consisting of paddy fields, *nimboo*, banana trees, betel nuts and other vegetables that are essential for serving the purpose of food items for all the prisoners. The building is an old assam type. One room is for the Superintendent and the other for the other officers and clerical works. As informed, these buildings are actually the guest house for staying of the relatives of the prisoners which is converted as office. They welcomed us by saying that we are in the ‘poor’ jail of all in Assam.

There is a ‘Brahmakumari’ building near the jail. Their occasional visitation to the jail has influenced the life of the prisoners to a greater extent. The organization played an important role in stabilizing the life of the prisoners through meditation and sacred messages. Majority of the prisoners told that they get internal satisfaction and peace while doing meditation. There is a row of rooms in the Assam type building behind the administrative building which is also not well-

equipped. Thus, the open air jail of Assam needs attention towards the infrastructure.

In the administrative set-up, there exists one Superintendent, one Jailor, one Assistant Jailor, Clerical Staff, Warders. Purnima Das is at present the Superintendent, Gopal Chandra Bora is the Jailor, and Prabir Nath Hojai is the Assistant Jailor of the Open Air jail. It is to be noted that Purnima Das is the first lady superintendent in the history of the open air jail of Assam. There are seven warders for 27 prisoners. As stated by the Jailor, the administrative set up can be divided into two sectors—

- i. Agriculture: Around 50 bighas are occupied with paddy fields, and remaining for cultivation of vegetables. In this sector it consists of a driver of a Tractor, and a demonstrator who supervises the whole agricultural work. Only the ration items like rice, dal and other grocery items are being procured by the suppliers. For vegetables, they are to eat that are being produced in the jail yard. The rice grains are deposited to the Agricultural department and the cash procured by selling vegetables is deposited in the Treasury.
- ii. Industry: The administrative set up consists of an Account Assistant, a store-keeper and an instructor who guides in making the product. The jail has only the cane and bamboo industry, which is closed due to the scarcity of raw materials, paucity of funds and negligence of government.

A field survey was conducted in the OAJ in Jorhat in which there were total 27 convicts and all of these are lifers from various jails of Assam, serving two-third of their term in closed jail. The researcher interviewed all the convicts through an Interview Schedule comprised of a set of questions. The schedule has been kept flexible to extract enough information. The Interview Schedule is already given in Appendix 1.3. On the basis of the information received the researcher has analysed the functioning of OAJ.

COMMUNITY

The researcher found that all of the 27 prisoners belonged to Hindu religion, although from various communities. The percentage of prisoners belonging to various communities is presented below:

Figure 1.6: showing the percentage of different communities of prisoners in Open Air Jail of Assam

Communities	Number of prisoners	Percentage
Adivasi	16	59.2%
Assamese	07	26%
Nepali	02	7.4%
Mishing	02	7.4%

The above table shows that 59.2% are from Adivasi Community, 26% belongs to Assamese, 7.4% are Nepali and 7.4% are from Mishing Community.

AGE GROUP OF PRISONERS

The age of the prisoners in the Open Air Jail reveals that they can start a new life again in the society again. Therefore, the training of getting back to the society again in the open jail would be immensely useful for the inmates. the findings shows that 33.3% belongs to the age group from 30-40 years, 44.4% belongs to 41-50 years, 14.8% from 51-60 and 7.4% belongs to the age group of 61-70.

Figure 1.7: Showing the percentage of Age Group of prisoners in in Open Air Jail of Assam

Age-group	Number of prisoners	Percentage
30—40	09	33.3
41—50	12	44.4
51—60	04	14.8
61—70	02	7.4

DIFFERENCES FOUND BY THE INMATES BETWEEN THE OPEN JAIL AND CLOSED JAIL

The inmates were asked about the differences they experienced between the Open Jail and Closed Jail. The inmates stated that while staying in the open jails, after

-serving a term in the closed jail, the inmates found mainly the following differences:

- i) In open air jail they can live an independent and free life within the boundaries, but in closed jails life is confined to routine life under strict supervision behind the walls.
- ii) Only the open jail can permit the relatives of the prisoners not only to meet their relatives, but stay for three days and three nights after every two to three months. In closed jails a prisoner can meet relatives, but they are not allowed to stay together with the jail premises.
- iii) The treatment towards the prisoners by the jail authorities in the open jail is much liberal than the closed jail.

The inmates were happy to stay in the open air jail than the closed jail mainly because of these three aspects. Also it gave mental peace. And this is very important for the re-socialisation process. Both the authority and the prisoners lived like a family. Other than this, everything is like the closed jail including diet, recreation, and wage of prison labour. Just like the closed jails, the time schedule for diet is:

Roti and tea-----06:00 a.m.
Lunch-----10:00 a.m.
Dinner-----04:00 p.m.

The work schedule is also similar with the closed jail, only difference is that everyone is allotted work in the jail premises:

Work-----06:00 a.m.—10:00a.m.

Rest-----10:00 a.m.—01:00 p.m.

Work-----01:00 p.m.—04:00 p.m.

Recreation-----04:00 p.m.—till they sleep.

When asked whether they are allowed to go out to work in public place. The response is that they are not allowed to go out in public place. The superintendent said that they are to work only inside the campus, and also it would be difficult to check their activities in public place. Thus, considering the aspect of security, they are not allowed to go outside. Only a particular prisoner is assigned the task of selling vegetables produced in the jail yard in the presence of a security guard.

The prisoners are being paid for their prison labour. The amount resembles with that of the closed jail, that is, Rs 55/ per day. A Post Office account is being opened for each of the prisoner by the jail authority where the wage is deposited to their particular account. It is a personal amount from which the prisoner can take out whenever it is required. This account is very important as the saved amount is spent to solve family problems and to live a life in the society of its own after release.

There is no post of teacher in the open jail. The literate prisoner teaches the illiterate prisoners. The jail officers help in this effort. Some of the prisoners wrote poems and got published in local magazines.

There is a temple in the open jail yard. After work, almost all the prisoners like to spend time in the temple chanting prayers. The prisoners can visit the temple

according to their own wish. There are arrangements for indoor and outdoor games for the prisoners. Indoor games include carom, ludo, etc. majority of them like to watch television news as they can get connected with the outer world. The jail authority said that television has made them conscious about their rights. Also it requires a very careful attitude to deal with the prisoners.

5.7 PROBLEM AREAS IN THE OPEN AIR JAIL OF ASSAM

To gather information on the administration of the OAJ, the researcher interviewed the Superintendent, Jailor and Assistant Jailor. According the researcher found the following aspects—

- i) **Poor infrastructure:** There is no concrete building for the administrative block for which it becomes very risky to keep the dossiers of jail inmates safely. The guest house is being converted to the office of the Superintendent. It is an Assam Type building and lacks the fundamental requirements of a office. Thus, the infrastructure of the open air jail is not satisfactory.
- ii) **Scarcity of raw materials:** The main objective behind the open air jail is to impart training to prisoners before the release so that they can earn their living from the knowledge they have acquired in the jail. But this is not so in the open air jail of Assam. Except the agricultural sector, the industry is closed for years due to lack of raw materials.
- iii) **Paucity of funds:** The administration found it difficult to run the jail because of the lack and delay of funds from the government. It is also responsible for

the closure of the industrial section of the open jail as they could not procure raw materials.

- iv) **Negligence of government:** Although reports are being sent to the Inspector General of Prison's (IGP's) Office for the funds and other problem related areas like absence of tractor for working in the paddy fields, the response is too slow.
- v) **No skill development:** Closure of industries brings halt to the skill development of the inmates as they could not take the opportunity to develop their talents.
- vi) **Security:** Absence of boundary is also dangerous at times. The authority stated that problem may arise not from inmates, but from outsiders. As the boundary is large enough, even of outsiders throw a body inside the campus, it would be hardly possible to have knowledge about the incident. And the inmates of the jail would be held responsible and in the administrative section there would be suspension and transfer. Therefore, at least a boundary wall of certain height, not like the high walls of closed is of utmost necessity.

Even today one could find a significant number of persons working in a Criminal Justice System, or in the open society, who hold the view that the image of a prison must inspire awe and fear in the minds of offenders. They try to convince that life in prisons should be demonstrably torturous to deter a prospective criminal. Reformation of a criminal, they say, is impossible and that rehabilitation is a hollow imagination of some non-practical persons. To those who do not believe in

improving prison conditions or in the conservation of basic human rights in custody, Pt. Jawaharlal Nehru wrote in “India and the World – Prison Land”³⁰—

*“Another error which people indulge in is the fear that if gaol(jail) conditions are improved people will flock in! This shows a singular ignorance of human nature. No one wants to go to prison however good the prison might be. To be deprived of liberty and family life and friends and home surroundings is a terrible thing. It is well known that the Indian peasant will prefer to stick to his ancestral soil and starve rather than go elsewhere to better his condition. **To improve prison condition does not mean that prison life should be made soft; it means that it should be made human and sensible**”.*

5.8 COMMUNITY SERVICE: AN ALTERNATIVE TO PRISON

Besides the OAJ, the researcher found the alternative method of “Community Service”, as discussed by Vivien Stern, to be useful and therefore, discussed the system in details. It is an alternative to the prison, to tackle the problem of overpopulation, especially for those convicted for petty crimes and for a very short period, is to provide “Community Service”. Accordingly, the experiment of community service scheme was undertaken in Zimbabwe in 1992 in response to a rapidly rising prison population. It was found that sixty percent of the prisoners were minor offenders serving sentences of three months or less causing heavy financial burden. In 1980, the total budget in Zimbabwe spent on minor offenders was \$ 1.2 million that exceeded to \$10.8 million in 1994. The first step of the Community Service Scheme is to frame a law to form a National Committee on

Community Service, chaired by a High Court judge. The members of the Committee would contact with Penal Reform International (PRI) and PRI associate itself to obtain funds from the European Union for a pilot scheme. Instead of prison sentence, offenders are given an opportunity to do community service work in a social welfare organization, doing practical benefit to the community. The cost per month of community service is between \$10 and \$20. High levels of satisfaction about the scheme were shown amongst magistrates, supervising agencies and participants. In addition to this, the scheme has no faced criticism from public. The European Union is now funding a programme of replication of the scheme for more four African States—Uganda, Kenya, Malawi and Zambia.

FEATURES OF THE MODEL

1. A significant feature of this model is the National Steering Committee. The Committee was established by the government with the remit of developing community service, but it operates independently. The Committee is comprised of the following members:

- i) A High Court judge who was formerly the Chief Magistrate and Permanent Secretary at the Ministry of Justice (Chairman)
- ii) Other members include another high court judge,
- iii) the Deputy Chairman of the Law Development Commission,
- iv) the Africa representative of the Christian group, Prison Fellowship, and other representating social welfare agencies.

2. The National Steering Committee is that it is a working committee. Before the scheme started, the members toured the country between March and June 1994,

speaking at eighth regional seminars for magistrates and all other local interests, such as placement providers. They also produce guidance and other literature for all those involved and give their phone numbers if anyone has difficulties. This means that, for example, a member of staff in a special school responsible for supervising defenders on community service could ring up a high court judge to get advice on what to do if there was a problem. The placement providers therefore feel that they are involved in an important national initiative. The members of the Committee also dealt with the worries of placement providers by getting the government to bring in a regulation that indemnified providers against any damage done by offenders on community service. The local system of giving the responsibility for administering community service to District Committees chaired by the local Provincial Magistrate and involves all interested parties, including those providing work opportunities for the offenders.

MERITS OF THE MODEL

1. The membership in the National Committee is such that the problem of persuading judges and magistrates to use community service is not a problem since the whole project is judicially-driven at a high level. Having the social welfare, NGOs and other representatives whose support is needed as members also ensures that the practicalities can be sorted out at the right level.

2. The Zimbabwean model is perhaps particularly successful and relevant to developing countries because it is low cost. It does not attempt to emulate the structure of rich countries, where alternatives to prison are supervised and administered by a separate publicly-funded service.
3. It establishes a penal model based on productive work and fruitful relationships between offenders and community, rather than unproductive time and ruptured relationships.

Amos Wako, Attorney- General of Kenya, said at a Conference in December 1995:

“In traditional Africa, a criminal who is taken to prison, or who is excommunicated from the society, is one who is actually beyond repair through societal means, or who has committed a major crime. What is recorded in our legal books as petty crimes by African standards were completely dealt with by the society itself. For example, if one stole a goat, the elders made sure another goat was paid and that was the end of the matter. The person who stole was so ashamed that he would not do it again”.

In the contemporary world, most of the countries, especially the developing countries are adopting this scheme as an alternative to imprisonment as the offender compensate to the whole community rather than to individual victims. Offenders must begin community service immediately on being sentenced, or they may undertake community service as an alternative to the last part of a prison sentence. The work which offenders are required to undertake is usually based with

public authorities or institutions. The penalty work of offenders include environmental improvements, child care, care of old or disabled people, construction and renovation of buildings belonging to religious groups or other non-governmental organizations, and hospital work among other tasks. However, in some countries, the government has inserted a minimum proportion of hard manual work to increase the ‘punishment’ aspect of the penalty³¹.

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- ¹Choudhuri, Nitai Roy (2002)*Indian Prison Laws and Correction of Prisoners*.N. Delhi: Deep & Deep Publications Pvt. Ltd., pg 78.
- ² The Assam Jail Manual, pg4
- ³Bracey, Dorothy H. (1989). “*Corrections in the People’s Republic of China*”, cited in“Troyer, Ronald J., Clark, John P., and Rojek, Dean G. (edited), “*Social Control in the People’s Republic of China*”, New York: Praeger, pg 159-160.
- ⁴ Ewing, A. C., (1929)*The Morality of Punishment*. London: Kegan Paul, pg 73.
- ⁵Cited inTroyer, Ronald J., Clark, John P., and Rojek, Dean G. (ed.), op. cit., pg 159-160.
- ⁶ Ibid, pg 146-160
- ⁷ Oppenheimer, H. (1913)*The Rationale of Punishment*.London: University of London Press, pg130-132
- ⁸ Santa Singh v State of Punjab AIR 1976 SC 2386
- ⁹ Vivien Stern (2000). *Alternatives to Prison: Reflections and Experiences*, cited in Shankardass, Rani Dhavan (ed.). *Punishment and Prison: Indian and International Perspective*. N. Delhi: Sage Publicationspg 422.
- ¹⁰Paranjape, op. cit., pg417
- ¹¹Choudhuri, N. R., op. cit., pg 236
- ¹²Paranjape, pg417
- ¹³Ghosh, Dr. Shubra (1992). *Open Prison and the Inmates: A Socio-Psychological Study*. N. Delhi, Mittal Publications,pg 9.
- ¹⁴Paranjape, op. cit., pg417
- ¹⁵ Ibid, pg423-424

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- ¹⁶ *Draft National Policy on Prison Reform and Correctional Administration—Part I*, Retrieved from www.bprd.nic.in/writeraddata/linkimages/0534473971-National%20Policy%20on%20Prison%20Reform%20and%20Correctional%20Administration%20Part%201.Pdf (15/03/2015).
- ¹⁷ M’Cosh, John (1837). *Topography of Assam*. Calcutta: Bengal Military Orphan Press, pg96-97.
- ¹⁸ Choudhuri, N. R., op. cit., pg 36-37
- ¹⁹ Assam Jail Administration Report 1885-86
- ²⁰ Choudhuri, N. R., op. cit., pg 36-37.
- ²¹ Paranjape, op. cit., pg424
- ²² Paranjape, op. cit., pg426-428
- ²³ Assam Jail Manual, Foreword, p vi-xiv
- ²⁴ “*Half-Way Houses*”, May 9, 2015. The Times of India
- ²⁵ PratiyogitaDarpan (March 2010) Issue 45. Agra: UpkarPrakashan
- ²⁶ Choudhuri, N. R., op. cit., pg236.
- ²⁷ Paranjape, op. cit., pg417-418
- ²⁸ Reformation and Rehabilitation (Chapter III). Retrieved from www.shodhganga.inflibnet.ac.in/bitstream/10603/9372/13/13_chapter%203.pdf (27/08/2015)
- ²⁹ Dirk Van Zyl Smith and FriederDunkel, “Imprisonment Today and Tomorrow: International Perspectives on Prisoners’ Rights and Prison Conditions”, Martinus Nijhoff Publishers, 2001, pg 391-392:

³⁰ Nehru, Jawaharlal (1933). *India and the World – Prison Land*. Allahabad, pg 108-129.

³¹ Shankardass, Rani Dhavan (ed.), op. cit., pg 422-440.

CHAPTER 6

CONCLUSION

Mahatma Gandhi firmly believed that there is an element of essential goodness essentially present in every man and to bring out this element the State should adopt fair and non-violent means. He further said that since the State derives its existence and strength from individuals, therefore it is the duty of the State to see that sufficient scope is created for security, peace and all-round development of all the individuals¹. Gandhiji said that one should hate the sin and not the sinner² for he believed that “an eye for an eye makes the whole world blind”³. While inaugurating the North-East’s biggest and most modern jail, the 139 year old Agartala Central Jail, the chief minister Manik Sarkar said, “*No one is a born criminal. Criminals should be given a chance to correct themselves. We want to convert this jail into a correctional centre in the true spirit*”⁴. In this context human rights come to rescue these individuals who are behind bars. It recognizes the worth of an individual human being and at the same gives chance to correct themselves even when the majority demands a simple sacrifice for the greatest good. The technique of human rights also demand that interferences with individual liberty only be undertaken in accordance with properly constituted legal proceedings⁵. Mr. Justice Chandrachud while explaining the rights of prisoners stated that convicts are not, by mere reason of the conviction denuded of all the fundamental rights which they otherwise possess. The court further laid down that all fundamental rights apply with full force to prisoners and under trials in custody

whether in police lock-ups or in any other custodial circumstances subject to the conditions of incarceration⁶.

The concept of a 'human rights culture' means different things to different people. To some it means ensuring that everyone is treated with respect for their inherent dignity and human worth. To others it means that judges, the police, and the immigration officials are required to protect the interest of terrorists, criminals and other undesirable elements at the expense of the security of the population. This tension came to debate started with the headline in the popular newspaper of the United Kingdom, *The Sunday Telegraph*, 14th May, 2006—“*Branding the Human Rights Act ‘the refuge of terrorists and scoundrels’*”. To this the human rights activist answered that at times, human rights seeks to protect people from absolute torture, other than that human rights law always consider the security needs⁷. Prison conditions must therefore adhere to certain basic norms in which an inmate could be prevented from being dehumanized. It is for restoring the prisons and the prisoners to these basic minimum norms that appropriate steps of prison reform should be taken there by granting human rights to the prisoners as per law. Foucault stated that prison is no more a marginal building on the edge of the city, rather it is an integral part of the society. The combination of a place of punishment as well a place of reformation has converted the institution of prison to a correctional or reformatory centre, and at the same time a complicated institution. There are difficulties of man-power, funds, training and right kind of attitude to deal with socially handicapped inmates, but one can visualize here that a purposeful and constructive co-operation of officials of prison, police, the judiciary and the civil society can go a long way in ameliorating the sufferings of prison

inmates⁸. therefore, one of the most crucial areas in need of attention and assessment is that of the role and influence of staff within a prison system. The role of jail administrators is crucial to make the reformative process successful. There may be many schemes of reformation of prisoners, but negligence of the administrators would collapse even the best scheme. A famous Prison Director in the United States of America (USA) once said, *“If you give me the choice between a completely new prison with all the latest technology but a bad staff and a prison made of tents with a good staff, I will always choose the one with good staff”*. Lord Justice Woolf in his report on the riots in Strangeways Prisons in Manchester, United Kingdom (UK) in April 1990 stated that a stable prison needs to be built on the following three pillars⁹—

1. Security: It means the obligation which a prison system has to protect the public by making sure that the prisoners in its charge do not escape.
2. Control: Those who live or work in a prison are entitled to expect that prison will be safe place. That means that prison system must ensure that sufficient control is exercised over prisoners who are likely to be disruptive.
3. Justice: Prisoners must be treated with humanity and fairness, and be helped to prepare for their return to their community.

India being a member of the United Nation has to adhere to the Universal Norms and Guidelines and International Covenants or Treaties. These include the UDHR, ICCPR, and the Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The norms specifically framed for prisoners included the United Nations Standard and

Minimum Rules for the Treatment of Prisoners and the Basic Principles for the Protection of all Persons under Any Form of Detention or Imprisonment¹⁰. In India, the rights of the prisoners received impetus from the creative interpretation of the Supreme Court. Discarding its erstwhile ‘hands off’ doctrine towards prisoners, “the Supreme Court of India came strongly in favour of judicial scrutiny and intervention whenever the rights of the prisoners in detention or custody were found to have been infringed upon. In *Sunil Batra vs Delhi Administration* (1979), the Court asked and also affirmed, “*Are prisoner’s persons? Yes, of course. To answer in the negative is to convict the nation and the Constitution of dehumanisation and to repudiate the world legal order, which now recognises rights of prisoners in the International Covenant on Prisoners’ Rights to which our country has signed assent*”¹¹. Prisoners’ rights, thus, derive its basis from the following two principles¹²:

- i. Prisoners are human and therefore he/she is entitled to all the basic rights subjected to restrictions as per law. This includes rights that are related to the protection of basic human dignity as well as those for the development of the prisoner into a better human being.
- ii. As the prisoners are solely dependent on the prison authorities, and the State has control over the life and liberty of the inmates, the mechanism of human rights is of utmost necessity to prevent the authorities from abusing their power.

6.1 SUMMARY OF THE CHAPTERS

First chapter is an introduction to the problem area of the research. It has discussed about prison that stands last in the criminal justice system, the most neglected part of the government for which the prisoners have to live a painful life. Again, the rough attitude, misuse of power and authority, and the torture in the name of rules and reformation have made their life miserable. This Chapter defines the objectives, hypothesis, area of study and the significance of the study.

Chapter 2 analyses prison as a critical site to acquire knowledge of the colonial rulers and the manner they exercised or negotiated their colonial power through it over the subjected Indians. The discussion reflects how the jails formed an integral part of the freedom struggle movement. Many freedom fighters had to fight the freedom struggle by staying behind bars. As they were caught as political prisoners, they had to bear the atrocities for going against the colonial authority. But it is to be mentioned that before the coming of the British, there was no CJS in the concrete form. The existing system of jail administration in India is actually the legacy of the British colonial system. Changes occurred after independence in many areas, but penal reform remained only documents, reports and committees. The discussion also highlights the differences in the working of the jail administration in both the periods—colonial and post-colonial.

In chapter 3, the researcher discusses about the concept of human rights from theoretical point of view. Emphasis is given on the Universal Theory of Human Rights which states that everyone irrespective of caste, creed, religion, social

status, etc enjoys these for the fact of being born as 'human'. Since prisoners are human, the researcher justified that they are also entitled to certain basic rights as per the law. Accordingly, the Chapter discusses the rights of prisoners conferred to the people behind the walls by various sources—National and International.

Chapter 4 is of utmost importance as it analyses the data collected based on Primary and Secondary sources in relation to the Jail Administration and the role it played in the implementation of the rights of the prisoners. The researcher had collected data, facts and figures through questionnaire and interview schedule from the prisoners of the selected two Central Jails of Assam—Jorhat and Tezpur. The researcher also involved herself in an informal discussion with some of the officials to know more about jail administration.

Chapter 5 study and analyze specifically about the only Open Air of Assam as part of the Reform Measure. Open Air Jail system is the product of the penal reforms. It has emerged as an alternative to the closed prison with the objective to solve the problem of overcrowding. Also it provides an opportunity to the prisoners to prepare him to adjust with the society after their release. To be precise, it serves as a training ground for the prisoners before going back to society as a reformed human being.

Chapter 6 is the last chapter that gives summary of the findings of the research work along with some suggestions. The researcher provides an overview of the study and accordingly analysed the hypotheses in the light of the collected data.

6.2 Hypotheses Testing and Emerging Conclusions

The hypotheses after being tested have led to the following conclusions:

1. Conversion of rights into privileges leads to gross violation of the rights of prisoners:

The fact of prison life is that once entered into the prison, an individual has to live the life of a prisoner with no rights. Whatever they get from the authority is conferred to them as privilege. But in reality these are the rights given to the prisoners to live a life of dignity for the fact of being human. The researcher found that every prisoner wants to be in the good book of the officers for the fear of losing the privilege, especially family visit and furlough. No one dares to complain against the authority as this would lead to severe consequences. The main fear is one of losing the chance to meet family members and the other is the sanction of leave, which they await eagerly. On this account the prisoners are turned into a slave where they obey any orders of the authority to get the privilege. It is because the Jail Manual has given immense power to the authority. The rights of the prisoners depend on the report written by the authority.

2. Women prisoners face double discrimination than those of male prisoners:

Women prisoners are most vulnerable compared to the male prisoners. The researcher found that in many areas, women rights are violated rigorously. Instances can be given to that of diet, clothing, and health. The food for women

prisoners is cooked in the male premises and therefore not aware of the diet schedule. They eat whatever they get from the male kitchen ward. In the time of monthly periods sanitary cloth are not provided for which they have to face serious problems.

3. Non-implementation of human rights instruments is responsible for violation of the rights of the jail inmates:

In modern times the state has undertaken the task of affording adequate protection of the individual and providing reasonable opportunities to everyone for full development of individual's personality. It is on this universal recognition of the dignity of individual's freedom that the concept of 'Human Rights' has been evolved. In the absence of these rights men would be enslaved and subjected to torture at the hands of the state. Prisoners' rights get violated due to the negligent attitude of the authority to implement the instruments of human rights meant for prisoners. The Jail Manual has not been updated. Even the jail administration runs on the basis of the Act of 1894 which is very much colonial in nature and spirit. The Assam Manual is also outdated as it was last published in 1985. There are many provisions where rights are given but at the same time overpower the authority to curtail it if they think so. For this, the rights of the prisoners are very often converted into privilege. Rich prisoners buy it and the poor get it by serving as slave to the authority.

4. Lack of education among the prison inmates results in deprivation of their rights:

Illiteracy is the main reason behind the gross violation of human rights. Majority of the prisoners are illiterate for which the authority can very easily convert their rights into privilege. To say about their rights would mean saying in vacuum. Forget about rights, they are not at all interested in enrolling themselves inside the jail. They are more than satisfied somehow they are able to write his/her name. Whenever the researcher asked them to enroll themselves in the primary level, they say that they can write their name in any of the form given and that is enough for a prisoner.

6.3 FINDINGS OF THE STUDY

The extensive research on the rights of the prisoners and the role of jail administration in the implementation of prisoners' rights in Assam has come with the following findings—

- i) Rights are converted into privileges by the prison authority.
- ii) Illiteracy and Ignorance of the prisoners has led to the massive violation of rights.
- iii) Prison personnel are not at all interested in making the prisoners aware of their rights.
- iv) The condition of prisoners is satisfactory compared to the colonial regime, but violation of their rights is still continuing.
- v) Women prisoners are the most vulnerable compared to the male prisoners.

- vi) Implementation of Reformative process on the part of the jail administration is not satisfactory.
- vii) The concept of Open Air Jail in Assam, as a part of penal reform is in its infant stage with its poor infrastructure.

6.4 RECOMMENDED SUGGESTIONS

The First International Congress for Prison Reform held in Frankfurt was followed by others and resulted in the affirmation of the Declaration of Principles which laid down the essential principles of criminology¹³:

“The treatment of criminals by society should be directed more to the criminal than to the crime, and its great object is the moral regeneration, not generation of the criminal. Such treatment of criminals protects society and restores criminals”.

Based on the principles the followings measures are suggested—

- i. Rewards, more than punishment, are needed for the efficiency of a prison system
- ii. The prison or reformatory officers must be persons who are worthy of handling criminals in a proper and humanitarian manner. They must be well versed in social service, and must have good qualities of head and heart.
- iii. Emphasis is given on education as a vital force in the reformation of person who have gone astray. It develops the intellect, moulds and enriches the sentiments and raises the moral attitude of the offender.

- iv. Instead of coercion, there should be organized persuasion, the object being to train the prisoners to be honest and independent free men rather than to make them remain and behave as orderly and obedient prisoners doing everything only under the repressive force of an artificially stubborn or meaningless prison discipline. Moral training and persuasion took should take the place of all coercive punishment.
- v. Practical measures, even meditational techniques, are relevant in prison treatment because it respects the human being and revives his intimate goodness.

The Assam Human Rights Commission (AHRC), after initiating an enquiry made a number of recommendations to the Government of Assam for the overall welfare of the population in the jail as also for its better administration¹⁴—

- i. A doctor with at least one Nurse and one ward boy should be immediately appointed in the jail on permanent basis.
- ii. An ambulance should be provided for the conveyance and convenience in the jail.
- iii. Provision may be made for cooking by LPGs or such other alternative means of cooking food in the kitchen for the inmates avoiding burning of firewoods.

The researcher in the light of the findings of the present study on the condition of prisoner and role of jail administration in the implementation of the rights of prisoners of Assam, recommended the following suggestions—

1. Enrolment in educational courses is although satisfactory, but gradually only a few actually appears in the exams. Counselling is important to make them understand about the importance of education in their life.
2. Educational Courses should be diverse and should have utility value. Along with formal education, diverse vocational courses can only attract the inmates in enrolling themselves as per their interest. .
3. The prison personnel should be given proper training on the correctional techniques based on human rights. Workshops and Seminars should be conducted from time to time to time to make them updated.
4. CCTVs should be installed in the required places, especially in the Main Entrance of Jail and wherever necessary to stop corruption.
5. Visiting Place should be separate from the office room with properly designed tables and benches where the prisoners can meet their family with ease as this would instill positive feeling of living a law-abiding life.
6. Rules regarding the prison visiting and furlough should be should be liberal and simple.
7. The bail system should be modified as such that the poor can also avail it.
8. Since the UTPs do not get wage they remain depressed. Therefore, like the convicts UTPs should also get a chance to work with remuneration, that will sublimate the inmates' energy in the positive direction.
9. Since prisoners seldom complain against the jail authority, the inspection body can place a Grievance Redressal Box in the prison yard, open it from time to time, with the assurance that the names will not be mentioned. No

prison personnel should be involved in the process. Also the Inspection should be done personally without taking the prison officials so that the prisoners can speak out their problems without any hesitation.

10. Yoga and Meditation programme like “Art of Living” and “Vipasanna” should be organized, as a part of reformative measure to purify the individual’s mind and soul.
11. The Prison Manual of Assam revision is of utmost necessity to cope up with the trend of correctional philosophy and penology based on the concept of human rights.
12. Senior inmates have different needs and therefore should to be kept in different cell, especially from the habituals.
13. As children stay with the mother, a kitchen is required to be attached in the female ward.
14. A system of cloth bank can be established to enable the society members to contribute clothes for the prisoners, especially the women prisoners.
15. Sanitary napkins to be provided from time to time to women prisoners to protect them from being unhygienic.
16. The concept of Open Air Jail has to be encouraged. More such jails are required in Assam.
17. Last but not the least, the solution to the problems relating to the poor infrastructure, raw materials, limited vocational trades of the OAJ is of utmost necessity.

The study has made a modest attempt to deal with the problem area and can be assumed that it has been successful to fulfill the objectives taken at the beginning of the research. It is rather, an attempt to find out how the “human” in the criminal can be carved out by providing human rights as per the law; and the “criminal” in the human be reformed or corrected through it, thereby giving true meaning to the operation of criminal justice administration as a whole. The recommendations suggested are to make the prison as well as the prisoners updated with the correctional philosophy based on the concept of human rights so that the prisoners can live a life of dignity. It has to be admitted that there are much scope to pursue further research and contribute towards making the institution of jail, an institution of correction in true sense of the term.

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- ¹Lal, Basant Kumar (1973). *Contemporary Indian Philosophy*. Delhi: Motilal Banarsidass Publishers Private Limited, pg148-153
- ²Sinha, Jadunath (2001). *A Manual of Ethics*. Calcutta: New Central Book Agency (P) Limited, pg191
- ³“Why the death penalty must end”, *The Hindu*, June 5, 2013.
- ⁴*Modern jail inaugurated in Tripura*. (November 3, 2013). *The Assam Tribune*.
- ⁵Clapham, Andrew (2007). *Human Rights: A Very Short Introduction*. N. Delhi: Oxford University Press, pg 104-105.
- ⁶Bhuvan Mohan Patnaik v. State of A.P.(A.I.R.) 1974 S.C. 2092
- ⁷Clapham, op. cit., pg2
- ⁸Foucault, Michel. *Discipline and Punish*. Retrieved from www.soc.iastate.edu/soc506Foucault.pdf (14/12/2016).
- ⁹Coyle, Andrew (2000). *Prisons In Modern Society*. cited in Shankardass, Rani Dhavan (ed.) *“Punishment and Prison: Indian and International Perspective”*. N. Delhi: Sage Publication, pg74-78
- ¹⁰Ibid, pg76.
- ¹¹Liu, Jianhong, Heberton, Bill & Jou, Susyan (ed.) (2013). *Handbook of Asian Criminology*, New York, Springer Science & Business Media, pg210.
- ¹²Dr. Ashutosh (2009). *Rights of Accused*. India: Universal Law Publishing, pg 92.
- ¹³Shankardass, Rani Dhavan (ed.), op. cit., pg 59-61
- ¹⁴*Assam Human Rights Commission: News Letter* (January-March, 2015). Vol. 4. No1, AHRC, 2015.

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4. Sunil Batra vs. Delhi Administration, AIR 1978 SC 1675
5. Sunil Batra vs. Delhi Administration (1980) 3 SCC 488
6. M. H. Hoskot v. State of Maharashtra (1978) 3SCC 544, 553.
7. Dilbag Singh vs. State of Punjab, AIR 1979 SC 680.
8. Hussainara Khattoon v. State of Bihar, (1980) 1 SCC 81.
9. Maneka Gandhi's case AIR 1978 SC 579
10. Lingala Vijay Kumar v Public Prosecutor, Andhra Pradesh, (1978) 4 SCC
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11. Francis Coralie Mullin v Union Territory of Delhi (AIR 1981 SC 746)
12. Khagendra Nath Narzary Ors. Vs. State of Assam (1984)

APPENDIX 1.1

Statutes on Regulation and Management of Prisons in India

1. The Indian Penal Code, 1860
2. The Prisons Act, 1894
3. The Prisoners Act, 1900
4. The Identification of Prisoners Act, 1920
5. The Constitution of India, 1950
6. The Transfer of Prisoners Act, 1950
7. The Representation of People's Act, 1951
8. The Prisoners (Attendance in Courts) Act, 1955
9. The Probation of Offenders Act, 1958
10. The Code of Criminal Procedure, 1973
11. The Mental Health Act, 1987
12. The Juvenile Justice (Care and Protection) Act, 2000
13. The Repatriation of Prisoners Act, 2003
14. Modern Prison Manual, 2003
15. Model Prison Manual, 2016.

APPENDIX 1.2

INTERVIEW SCHEDULE FOR THE PRISONERS OF THE JORHAT AND TEZPUR CENTRAL JAIL

BIO-DATA

1. Name:

2. Area:

Rural

Urban

3. Sex:

Male

Female

4. Age:

5. Religion:

6. Nature of Offence:

7. Education:

Nil

Under-Matric

- Matric
- Graduate
- Post-Graduate

8. Occupation:

9. Category:

- Lifer
- Short-Termer
- Under-trial

OPINION ON PRISON AND PRISONERS' RIGHTS

10. How do you visualize the institution of prison?

- Penal
- Correctional

11. Are you aware of the prisoners' rights?

- Yes
- No

12. Are you being furnished with the Prisoner's Handbook / Jail Manual?

Yes

No

13. Is there any grievance redressal box in the prison yard for the inmates?

Yes

No

If Yes, have you ever dropped a complaint letter in the box?

If No, to whom you address your grievances for redressal in prison?

14. If Under-trial, are you kept separately?

i) Yes

ii) No

15. Are you aware of the Open Air Jail?

Yes

No

16. If Lifer, are you interested to qualify for the Open Air Jail?

Yes

No

If Yes, what are the reasons?

If No, what are the reasons?

17. Is there the system of appointing convict officers in jails?

Yes

No

18. Is there any privilege granted to convict officers other than the ordinary inmates?

Yes

No

If Yes, what are the privileges?

DIET

19. Do you know the scale of your diet?

Yes

No

20. Is the diet chart being hanged in front of the kitchen or any place in the prison yard?

Yes

No

21. Tell us about the time schedule of your diet

Breakfast

Lunch

Dinner

22. Are you permitted to go to kitchen?

Yes

No

23. Is there any variation in diet?

Yes

No

CLOTHING AND BEDDING

24. Are you being provided with the jail dress from the jail office?

Yes

No

25. Is there any shortage of clothes?

Yes

No

26.

27. If women, are you getting the sanitary cloth as per the rule?

Yes

No

28. Are you provided with sufficient clothing and bedding, especially during winter?

Yes

No

PRISON LABOUR / JAIL INDUSTRIES

29. Is there any industry or vocational trade in the prison?

Yes

No

If Yes, name them.

30. In which trade you are associated with?

31. Is it compulsory to work in jail industries?

32. Are you being paid for your labour?

Yes

No

If yes, what is the wage amount?

If No, are you still interested in doing labour?

33. Are you being engaged by the jail officials in domestic work?

Yes

No

VISITATIONS/ COMMUNICATIONS

34. Does your family come to meet you?

Yes

No

If Yes, how often they visit?

Weekly

Monthly

Yearly

Never

If No, what is the reason?

35. Are you aware of the rules of leave?

Yes

No

36. Are you available to avail furlough as a matter of right?

Yes

No

37. Is it necessary to be in the good book of the officers to get the privilege of visiting or meeting family and friends?

i) Yes

ii) No

If Yes, how do you manage?

If No, what is the process of applying?

MEDICAL SERVICE

38. Is there any hospital in the prison yard?

Yes

No

If Yes, are the doctors available?

If No, in what way you are being treated?

39. Are you getting regular health check-up in prison?

Yes

No

PRISON OFFENCES / PUNISHMENT

40. Are you aware of the punishment meant for committing prison offence?

Yes

No

41. Have you ever been punished in jail?

Yes

No

If Yes, whether,

Major

Minor

42. What are the punishments are used generally by the jail officers for committing prison offences?

BAIL

43. If, Under-Trial, for how many years you are in jail?

44. Are you being informed about the legal aid by the jail officer?

i) Yes

ii) No

If Yes, have you availed it?

If No, how did you manage to get a lawyer?

EDUCATION

45. Is there any educational facility in the jail?

Yes

No

46. What are the courses provided?

47. Are you enrolled in any of the educational course? (Yes / No)

If Yes, are you satisfied to pursue the course?

If No, what is the reason?

RECREATION

48. Is there any recreational facility in the prison?

Yes

No

If Yes, what are the different recreational facilities?

If No, how do you pass your time?

49. Do the prison officers ever encourage the inmates in doing creative work

such as writing poems, novels, etc?

Yes

No

50. Does the officer celebrate occasions like Bihu, Independence Day, etc?

Yes

No

51. Do you get involved in such celebrations?

Yes

No

OTHER RELATED QUESTIONS

52. If women, have you faced any problem in the jail administration?

Yes

No

If Yes, what are these problems?

53. Are you free to make complaints in front of the monitoring agencies like

Assam Human Rights Commission (AHRC) or government visitors such as the

Chief Judicial Magistrate (CJM), Deputy Commissioner (DC) and so on?

Yes

No

54. Do the inspecting body responds to your problem?

Yes

No

55. Do the prisoners protest against the jail authority if their rights get violated?

Yes

No

If Yes, narrate such instances.

If No, why the officers cannot be approached?

APPENDIX 1.3

INTERVIEW SCHEDULE FOR THE PRISONERS OF THE OPEN AIR JAIL OF ASSAM

BIO-DATA

1. Name:
2. Age:
3. Sex:

Male

Female
4. Religion:

Hindu

Muslim

Christian

Others
5. Community:

Assamese

Nepali

Mishing

Adivasi

Others

JAIL LIFE AND JAIL TRAINING

6. Are you being permitted to go outside?

Yes

No

If Yes, on what purpose and are you being escorted?

7. What kind of vocational trades are there in the jail?

Agriculture

Carpentry

Bamboo and Cane

Weaving

Others

8. Is there any provision for the educational course for the inmates?

Yes

No

If Yes, have you enrolled yourself in any of the courses?

9. Can your family and friends come to meet you?

Yes

No

If Yes, is the procedure of meeting relatives resembles with that of the closed jail?

10. Is there any recreational facility in the prison?

Yes

No

If Yes, what are the different recreational facilities?

If No, how do you pass your time?

11. Do the prison officers ever encourage the inmates in doing creative work such as writing poems, novels, etc?

Yes

No

12. Do you get remuneration for the labour?

Yes

No

13. Have you found any differences between the OAJ and the Closed Jail?

If Yes, what are they?

APPENDIX 1.4

Schedule of Tasks

Manufacture or Service	Description or work	Classification and Task			Remarks
		Hard labour	Medium labour	Light labour	
1	2	3	4	5	6
Aloe	Pounding leaves to extract fibre	1 seer dry fibre	½ seer of cleansed dry fibre.	4 chittaks of cleaned dry fibre	Per man, per diem
	Spinning fibre into yarn		1 seer	½ seer	
	String matting.....		3' x 1 ½'		
	String matting		3' x 1 ½'		Pre man, per diem
Bamboo and cane work	Splitting and dressing cane			Task according to thickness	

				and length	
	Floor matting (bamboo)			6 x 3	Per man, per diem
	Privy baskets ditto		8	4	Ditto
	Soops ditto		3	1 ½	Ditto
	Tokas ditto		2	1	Ditto
	Umbrellas ditto		1	½	Ditto
	Cane baskets (coolly's)		2	1	Ditto
	Cane chairs		½ to 1/6		Ditto
Blacks smith's work	Various, hard or medium	Task according to work	Task according to work		
Brick-making	Brick-moulding (table)	750 to 1,000	500 to 600		Per man per diem with clod maker.
	Ditto (ground)	600 to	400 to 500		Ditto

		700			without clod maker.
	Carrying clay to moulders and preparing clods for table making.	Per moulder, one man			
	Cleansing and leveling hacks			Per six moulders, one man	
	Digging, preparing and carrying clay	Per moulder, one man			
Carpentry	Various, hard and medium	Task according to work	Task according to work		
Carrying and hauling goods	Earth, water, stones, etc. hard	Ditto			

Chopping firewood	From cut logs	According to quality of wood			
Cleaning and trimming lamps				100 lamps	Per man
Coir	Pounding cocoanut with mallet	1 ¼ seer dry fibre	12 chittaks		
	Picking, rubbing and teasing fibre	5 seers	2 ½ seers		
	Spinning and twisting fibre (fine)		10 hanks or 120 feet long		
	Spinning and twisting fibre (coarse)		15 hanks		
	Plaiting sinnet		30 yard		

	Ditto double		10 yard		
	Weaving brush- mat (fine)		2 sq. feet		
	Ditto (coarse)		6 sq. feet		
	Weaving, matting, 3 feet wide	15feet in length			
Cooking	Hard or medium labour	1 cook to 30 prisoners	1 cook to 20 prisoners		
Convict Overseer, clearical work, compounder's assistant.	Light work			Cannot be tasked	
Cotton	Browing cotton with dhanuk	4 seers, fine	2 seers, fine		Per man
	Spinning by		3 chittaks	1 ½	Ditto

	hand (coarse)			chittaks	
	Twisting cotton yarn			1 ¼ seers	
	Twisting cotton yarn, No. 6, for cotton rope and threads.			5 seers	
	Weaving prison clothing, 26" width with native hand loom.	12 yards.	6 yards.		Per man.
	Ditto Durries		2' x 2'	1' x 2'	Ditto.
	Ditto Newar, 2"		45'		
Gardening	Digging with kolali, 1 foot deep, dry hard soil	250 c.ft.	125 c.ft		Ditto
	Ditto moist soil	400 c.ft	200 c.ft.		Ditto

	Ploughing	680 sq.yds			Ditto
	Weedong			36' x 9'	Ditto
	Reaping paddy	200 sq.yds			Ditto
	Water, drawing by hand or pump hand.	Task according to lift.			
Grain, handling and husking for jail use	Storing and weighing grain, hard	Task according to work to be done			
	Cleaning grain before grinding.		8 maunds	4 maunds	Per man
	Ditto bazaar rice in ukli		2 maunds	1 maunds	
	Dhan, husking with dhenki	1 maund	25 seers		Ditto
	Grinding wheat,	20 seers	10 seers		Ditto

	fine, sifted with gauze sifter, 30 to 40 per inch.	grain	grain		
	Ditto for atta, coarse, with perforated zinc sifter, 12 holes to the inch.	20 ditto	10 ditto		Ditto
	Grinding makai (coarse) with perforated zinc sifter, 2 holes to the inch.	15 ditto	8 ditto		Ditto
	Grinding dal for husking and winnowing		1 maund		Ditto
	Winnowing and cleaning dal			5 maund	Ditto
	Sifting wheat		3 maund	1 ½	Ditto

	flour, fine			maund	
	Ditto coarse		6 maund	3 maund	Ditto
	Ditto suji		20 seers	10 seers	Ditto
Hair-cutting	Light labour			To cut hair of 50 prisoners a day	Ditto
Hospital attendants	Light labour			1 attendant to 10 patients	Per man
Jute and gunny	Combing by hand		1 ½ maund		Ditto
	Bobbin winding for warping		8 looms	4 looms	Ditto
	Warping		3 warps		Ditto
	Beaming		6 warps		Ditto
	Weaving by hand	18 yards	14 yards	8 yard	Ditto

	Bag, sewing	40 bags, 28" x 40"	25 bags, 28" x 40"	15 bags, 28" x 40"	Ditto
	Breaking hard stone for road metal.	6 c.ft.	3 c.ft.		Ditto
Khoa or stone breaking	Breaking hard jhama bricks	12 c.ft.	6 c.ft.		Ditto
	Ditto soft	15 c.ft.	8 c.ft.		Ditto
	Mason's work up to 3 feet	25 c.ft.	15 c.ft.		Ditto
Masonry and building works.	Ditto above 3 feet	15 to 20 c.ft.	10 to 15 c.ft.		Ditto
	Attendants.		1 to each mason		Ditto

	2	3	4	5	6
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	Digging and excavating foundation	100 c.ft	50 c.ft		Ditto
Money-bag	For Rs. 1,000			1 bag	Ditto
	For small change			½ bag	Ditto
Oakum-picking	By hand	2 lb picked	1 lb picked	½ lb	Ditto
Oil pressing	Cleaning mustard seed		8 maunds	4 maunds	Ditto
	Pressing mustard seed (native ghany)	20 seers per 2 men, whole day.			See footnote
	Pressing mustard seed, Donaldson's mill	5 seers 1 man ½ day			
Punkha pulling	Light work			Cannot be	

				tasked	
Repairing jail roads	Breaking up, separating metal, replaying and ramming.		50 sq.ft		Per man
Scavenging	Removing night-soil, cleaning latrines	1 methar for 50 prisoners	1 mehter for 30 prisoners.		
Soorkey pounding	Pounding hard bricks (dhenki)	12 c.ft per dhenki per 3 men	6 c.ft. per dhenki per 3 men		
	Ditto soft (dhenki)	15 c.ft ditto	8 c.ft. Ditto		
Sweeping and weeding	Light labour			May be done by "Special	

roads				gang''	
Tailoring	Special tasks in District Jails, may be either medium or light.				
Washerman for hospital or warders.	Medium labour		Cannot be tasked		
Stone- digging		16 maunds			Per man
Timber- sawing		60 superficial feet			Per two sawyers
Wood- splitting		5 maunds			Per man
Firewood carrying		6 maunds or more according to distance			Ditto
Loading		6 maunds or more			Ditto

klin		according to distance.			
Earth- digging		500-1,000 brick according to distance			Ditto
Tea-leaf rolling		80-150 cubic feet according to distance and nature of soil.			Ditto
Hoeing		15 seers , 1 x 20 nals, 1 nal = 12 feet.			Ditto

N.B.: The task for oil pressing (native ghany) must be restricted to half day task in 1st, 2nd and 3rd class jails as described in Rule 2 *i.e.*, 10 seers per 2 men half day. It is, however, left open to the Superintendent to impose a full day's task for disciplinary purposes.

APPENDIX 1.5

Rules of Leave

Sentence	When due for first release on leave	When due for second release	When due for subsequent release
Exceeding one year but not exceeding five years.	On completion of one year of actual imprisonment to be counted from the date of admission to prison.	After completion of one year of actual imprisonment to be counted from the date of his last return from leave.	After completion of one year of actual imprisonment to be counted from date of his last return from leave.
Exceeding five years but not exceeding fourteen years.	On completion of two years of actual imprisonment to be counted from the date of admission to prison.	After completion of two years of actual imprisonment to be counted from the date of his last return from	After completion of one year of actual imprisonment to be counted from date of his last return from leave.

		leave.	
Prisoners sentenced to life imprisonment and to periods of imprisonment exceeding four-fourteen years.	On completion of three years of actual imprisonment to be counted from the date of admission to prison.	After completion of two years of actual imprisonment to be counted from the date of his last return from leave.	After completion of one year of actual imprisonment to be counted from date of his last return from leave.

APPENDIX 1.6

Clothing and Bedding for Convicts.

Clothing:

For Male Convicts	For Female Convicts
i) 3 kurtas	i) 3 Blouses
ii) 3 Jungias	ii) 3 pairs of MekhelaChadar or 3 Saris
iii) 3 Pyjamas	iii) 2 Petticoats
iv) 2 Underwear	iv) 1 Gamocha
v) 1 Gamocha	v) 1 Towel
vi) 1 Towel	vi) 2 pieces of fine sanitary cloth (which shall be replaced when they become unusable)
vii) 1 khadichadar (during winter only)	vii) 1 KhadiChadar (during winter only)

Bedding (for all convicts)
(i) 1 Blanket
(ii) 1 Bedsheet
(iii) 1 Pillow
(iv) 1 Mosquito Net
(v) 2 additional Blankets (during winter only)

APPENDIX 1.7

Diet Scales for convicts and under –trials

The following shall be the Scales of diet for Convicts and under-trials :

Sl. No.	Items	Labouring	Non-Labouring
1.	Atta	120gm	90gm
2.	Gur	30gm	30gm
3.	Tea leaf	3gm	3gm
4.	Milk	20ml	20ml
5.	Sugar	10gm	10gm
For Midday and Evening Meals (combined)			
6.	Rice	600gm	540gm
7.	Dal	120gm	120gm
8.	Vegetables (including potato)	300gm	300gm
9.	Mustard Oil	20ml.	20ml.
10.	Salt	20gm.	20gm.

11.	Onion	10gm	10gm
12.	Turmeric	2gm	2gm
13.	Corriander	1gm	1gm
14.	Chillies (Dry)	1gm	1gm
15.	Lemon Or Tamarind (When lemon is not available)	½ No.	½ No.
As additional Item (in two meals a week)			
16.	Non-Vegetarian		
	a) Fish / Meat or Egg	100gm 2 Nos.	100gm 2 Nos.
	b) Potato	30gm	30gm
	c) Mustard Oil	5ml	5ml
	d) Salt	5gm	5gm

	e) Onion	5gm	5gm
	f) Turmeric	1gm	1gm
	g) Corriander	1gm	1gm
	h) Chillies (Dry)	½ gm	½ gm
Vegetarian (for those unaccustomed to non-vegetarian diet or when Fish/Meat/Egg is not available.			
	a) Milk or Curd	250ml 200gm.	250ml 200gm
	b) Sugar	20gm	20gm

APPENDIX 1.8

MINOR PUNISHMENTS

(AS PROVIDED IN THE ASSAM JAIL MANUAL)

1. Formal warning;
2. Change of labour for a stated period to some irksome or severe form;
3. Forfeiture of remission earned, not exceeding 4 days
4. Forfeiture of class, grade, or prison privileges for a period not exceeding three months
5. Temporary reduction from a higher to a lower class or grade
6. Separate confinement for not more than 14 days
7. Imposition of handcuffs otherwise than by handcuffing a prisoner behind or to staple;
8. Imposition of link fetters for not more than 30 days.

MAJOR PUNISHMENTS

1. Hard labour in the case of prisoners not sentenced to rigorous imprisonment;
2. (a) Forfeiture of remission earned, exceeding 4 but not exceeding 12 days;

(b) Forfeiture of remission earned, in excess of 12 days;

(c) Forfeiture of class, grade, or prison privileges for a period exceeding 3 months;

(d) Exclusion from the remission system for a period not exceeding 3 months;

(e) Exclusion from the remission system for a period exceeding 3 months;

(f) Permanent reduction from a higher to a lower class or grade.

3. Cellular confinement for a period exceeding 7 days;

4. Link-fetters, if imposed for more than 30 days;

5. Bar-fetters;

6. Cross-bar fetters;

7. Handcuffing behind or to a staple;

8. Any combination of minor punishments admissible under Section 47 of the Act.