

Every prison that men build  
Is built with bricks of shame  
And bound with bars lest Christ  
should see  
How men their brothers main.

OSCAR WILDE

The history of civilization is the  
obituary of Error. We are continually  
burying defunct fallacies, and  
making Suttees of huge practical  
mistakes. I am not an old man.  
I have seen little more than half  
the years allotted to humanity,  
and yet I have lived in times  
which, compared with the present,  
were years of barbarism and darkness.  
I have witnessed the cremation of  
social and political evils, the  
existence of which, in such recent  
times, my children will scarcely  
credit.

JOHN WILLIAM KAYE

CHAPTER - 5

1790 - 1833

FACTORY OWNS RESPONSIBILITY FOR GAOLS

## CHAPTER - 5

1790 - 1833

### FACTORY OWNS RESPONSIBILITY FOR GAOLS

#### 5.1 THE FIRST STEP :

3rd. December, 1790, could be marked as the trying birth-date of the modern Prison-System in India, after a prolonged, slow and grossly neglected gestating period of more than a hundred years. The quickening movements and kicks of the unborn issue, which were getting stronger and more and more painful, were carelessly ignored by both the de jure and the de facto care-takers, the senolent Nawab of Bengal and the derelict usurper Company. Warren Hastings took full cognizance of the case, but, he coldly and boldly, refused to touch it even with a pair of tongs. Whenever his attention was forced to the issue, he vehemently threw it in the laps of the Nawab, whom he had painstakingly maintained as the titular head of Nizam Administration. Civilised societies everywhere have bestowed care and additional facilities for the welfare of the child to come, but Warren Hastings had no patience to wait for that child to grow and yield peace and tranquility in the society. Bent upon collecting the golden egg immediately, he cut to half the annual grant of 56 lacs, given to the Nawab for his personal needs and to meet the expenditure on providing criminal justice. Denied the usual and even basic succor and attention, public peace and prosperity went into ruins. The early glow of increased flow of revenue, manipulated by Warren Hastings, soon started losing its shine and sedation. The Company Directors were forced to replace Warren Hastings with Cornwallis 'to bolster the confidence of English.

shareholders in India's solvency'. It took three years for Cornwallis to put his fingers on the trouble-spot. It was on 3rd December, 1790, that as a skilled surgeon, he finally pulled the baby out of Newab's lap, and put it under his full charge and care. The growth of that baby is the history of development of Correctional Administration in India.

John William Kaye (1) writes, "It is little more than sixty years since we began to govern India at all. Lord Cornwallis is the first Indian ruler who can be properly regarded as an administrator. Upto the time of his arrival, the English in India had been engaged in a great struggle for existence. Clive conquered the richest province of Hindostan. Hastings reduced it to something like order. But it was not until Cornwallis carried to India the large-minded liberality of a benevolent English statesman, that our administrative efforts took shape and consistency, and the entire internal management of the country under our rule was regulated by a code of written laws, intended to confer upon the natives of India the benefits of as much European wisdom and benevolence as was compatible with a due regard for the character of native institutions."

## 5.2 PICTURE OF THE FIELD IN 1790

Early in 1790, Cornwallis addressed a questionnaire to the Magistrates in the districts to collect factual information on the prevailing state of criminal justice administration, including the jails. The Magistrates reported that the Judges were in the habit of confining accused persons for long periods before bringing them to trial; their subordinates, the thanedars, frequently imprisoned people without any show of legality. According

Magistrates, the jail authorities treated their prisoners with great severity; in one case it was stated that the men were deprived of part of their food rations and were denied the ordinary comforts of washing and shaving. In 1786, more men had died of diseases in one single jail than were capitally punished in the whole Province.

### 5.3 GACLS OVERCROWDED

The Burdwan jail was terribly overcrowded, and the prisoners were actually in want of the necessaries of life, their subsistence allowances not having been received from Moorshedabad for several months. At Gaya, the prisoners, besides being overcrowded, had no proper medical attention, since jail administration was not in the Company's hands the Company's surgeon was not required to attend them. (2)

Aspinall (3) records, " 'There are a few civilized countries' wrote Cornwallis in 1790, 'In which the Criminal Law and the administration of it, are in so defective a state as in these Provinces.'" On December 3, 1790, Cornwallis recorded a long Minute, which fills 105 pages of the copy of the Consultations kept in the India Office Library, on the subject of criminal judicature. He pointed out, that numbers of subjects were daily condemned to suffer death, the most cruel mutilations or perpetual imprisonment, while the most notorious offenders often escaped without punishment; that the numerous murders, robberies and burglaries were daily committed and that there was general insecurity of person and property in the country;"

5.4 1790 - ENGLISH TAKE OVER CRIMINAL JUSTICE

By virtue of the Regulation of 27 June, 1787, the Company's magistrates were enabled to take cognizance of petty offences, the major and more serious offences being left as the exclusive jurisdiction of the criminal courts of the country working under the Naib-Nazim. The appointment, control and removal of the judges and the officers of the criminal courts continued to be the privilege of the Naib-Nazim. The sentences of the Nizamet Adawlut at Murshedsabad continued to be final and were executed under the superintendence of the Naib-Nazim to be reported to the Council at Fort William only after the execution.

Cornwallis proposed first to reform the Mahomedan Criminal Law after the lines suggested by Warren Hastings in 1772 and 1773, as well as to change the constitution of the criminal courts. Accordingly, the intention of the criminal in a case of murder was accepted as the determining factor in awarding punishment and not the manner or instrument of perpetration. In this piece of reform authority was ascribed to Yusuf and Mahommed instead of Abou Haneefa who emphasised the importance of weapon or the manner of murder irrespective of the intention on the part of the criminal. (4) Secondly, the relatives of the victim were debarred from pardoning the offender. (5)

Cornwallis formulated a new scheme which was duly promulgated by the Governor General in Council on December 3, 1790, the most important feature of which was the abolition of the last vestiges of the normal and shadowy authority of the Nawab over criminal justice.

A three tier structure of courts was provided to administer criminal justice. The Sadar Nizamst Adawlut was at the top and this was moved from Murshedsabad to Calcutta. The Governor General and members of the Council, were to sit there as judges, assisted by the Muslim law officers (Kazi and Mufti). The operative law, was to be the Muslim criminal law as amended from time to time by the Regulations promulgated by the Governor-General-in-Council.

The next tier consisted of a Court of Circuit, consisting of two covenanted servants of the Company, in each division, to try all criminal cases. The court was to move from district to district, within the division, trying persons accused of criminal offences. There were to be two jail deliveries annually, and the Court of Circuit was expected to visit each district twice a year.

The third tier stood at the district level. The Collector was given additional powers to function as a magistrate as well, whereby he was vested with the authority to arrest persons accused of committing crime. In case of petty offences, the magistrate could award the sentence of corporal punishment not exceeding fifteen stripes, or fifteen day's imprisonment. If the crime appeared to be serious, the accused was to be tried by the Court of Circuit, when it visited the district next.

#### 5.5 MAGISTRATES GIVEN CHARGE OF JAIL

The Regulation of December 3, 1790, transferred the management and control of the jails from Indian hands to European hands; the Magistrate was put incharge of the jails in his District. He was commanded to inspect

jails at least once a month, and to redress all valid complaints. He was to pay special attention to the health and cleanliness of the prisoners, who were to be attended when sick by the Company's Surgeon. Prisoners under sentence of death, those sentenced to a term of imprisonment by the Court of Circuit, those committed for trial, and those sentenced to short terms by the Magistrate for petty offences, were to be confined in separate parts of the jail, one for each grade of prisoner. The Judges of the Court of Circuit, too, were required to visit each jail and to issue such orders to the Magistrate as were calculated to improve unsatisfactory conditions. (6)

#### 5.6 THE SECRETARIAT RECORDS

The Revenue Department commenced recording its judicial business separately, since 6th August, 1790. (7) This arrangement continued till the end of April 1793, when as a result of the reform introduced by a Resolution dated 26 April, 1793, final separation of Revenue and Judicial series was effected from 1 May, 1793, following the creation of a distinct Judicial Department, justice began to be recorded in the Judicial Department. Two separate sets of proceedings were started from 1795, one for civil justice and the other for criminal justice (including police) and this system continued till the year 1815.

#### 5.7 THE CONDITION OF JAILS

Aspinall (8) comments, "The failure of these Regulations to improve the state of the prisons, compelled Government in 1792 to make further provisions, after some alarming reports from the Magistrates had been received. The goals in the Shahabad District, for

example, were said to be wretched beyond description. The foudari gool, consisting of one small room with mud walls, confined prisoners of every class, who, for safety, were not only fettered at night but also put in stocks. "It may easily be conceived," said the Magistrate, "that in such a building deprived of a free circulation of air, the noxious vapours arising from the filth and stench of such a number of prisoners, must render it very unhealthy; so much so that since the setting in of the hot season I have been obliged to remove the sick lest infection should become general."

The Magistrate at Sarcar Saran reported that the prisoners were exposed "to all the baneful effects of the noxious effluvia which naturally fly off from the body of many persons closely pent up in small apartments, deprived of a free circulation of air, tormented day and night with various species of reptiles, vermin and insects which, engendered in the filth, nastiness and stench of this miserable habitation, come forth in swarms at this season of the year." (9)

The Magistrate at Tippera reported that the necessity of keeping the prisoners of his District in stocks made their lives truly miserable. (10)

The Magistrate of Murshedabad reported that the Diwani jail was in such bad repair that, situated near the bank of the river, it was in danger of being completely swept away during the rainy season as soon as the river rose above its normal level. (11)

#### 5.8 HUMANITY CRIED FOR A REMEDY : CORNWALLIS

Aspinall (12) writes, "In 1791, 179 prisoners were confined in a room 72 feet by 48 feet; at night their feet were locked in stocks, and each person was allowed

a height of 25 inches. The floor, of damp earth, was filthy. Many prisoners were so enfeebled either by old age or sickness that they could scarcely support the weight of the chains which ensured their safety during the day. They cooked their food in this room, to which there was only one door. They were supplied water from a small dirty tank. The jail was built on low, marshy, unhealthy ground, and deaths were naturally frequent. Undertrial prisoners were confined indiscriminately with murderers." Aspinall added, "Cornwallis declared that humanity cried for a remedy."

#### 5.9 REBUILDING OF JAILS

In December, 1792, Cornwallis (13) informed the Court of Directors that he had resolved to rebuild all the jails in the Province, in such a style that the health and morals, as well as the safety of the prisoners would be secured. The initial expenditure, he said, would be great, but, if constructed of durable materials, the new prisons would be kept in repair at a trifling cost, whereas the annual charges for the upkeep of temporary buildings had been considerable. Five brick prisons were to be built each year until the whole were completed. The plans provided for the segregation of the sexes, of different descriptions of prisoners according to Regulations of 3 December, 1790, and also of prisoners of different religious persuasions. (14)

#### 5.10 FURTHER JUDICIAL REFORMS :

In 1792, the Government sanctioned payment of a small daily allowance to all prosecutors and witnesses, in need of assistance, for the days they were in attendance in the Courts of Circuit and for the days taken by them during their journey to come from and

return to their respective homes; abolished the practice of attaching property of those committed to take their trial for criminal offences.

#### 5.11 THE BASIC JUDICIAL SCHEME

Lord Cornwallis introduced his last and the most famous judicial reforms in Bengal, Bihar and Orissa, in 1793. Jain (15) comments, "The new judicial plan contained many radical innovations and constituted a definite break from the past in many respects. - It remains a standing testimony to the maturity of judgment, breadth of outlook and the liberality of vision and conception with which Cornwallis approached the task of judicial reconstruction in the last year of his Governor-Generalship."

#### 5.12 THE LAW GOVERNING CRIMINAL JUSTICE

Firminger (16) reports, "In making the Mahomeddan law the rule for the administration of criminal justice, the British government has followed the practice of the Mogul government reserving to itself, the right of introducing such alterations and modifications, as reason and humanity may suggest." Referring to the formation of the new code of regulations in 1793, he writes, "a wider range was taken in modifying and supplying the defects of the Mahomeddan law, for the government of decisions to be passed in the provincial courts. The most important and necessary of these alterations were, in ever ruling the distinctions made by Aboc Haneefa, and directing, that in determining on the punishment to be inflicted for the crime of murder, the intention of the party, rather than the mode or instrument used, should be considered; in controlling the seasut, or discretionary correction, and

Introducing a remedy to the obstruction of justice, arising either from interference or neglect on the part of the heirs of the person murdered, and in commuting sentences of mutilation to imprisonment and hard labour. The deficiencies of the Mehomedden authorities were supplied, in regard to what might be deemed an adequate punishment for perjury and forgery, or subornation of either of these crimes, which have a peculiar prevalence among the natives of India; and to this intent, in addition to the ordinary punishment, the gross offence is marked in characters indelible on the offender's forehead."

#### 5.13 .. CODIFICATION OF RULES FOR JAIL MANAGEMENT

Changes were introduced in the structure of criminal judicature, with a view to integrate and coordinate the scheme of criminal and civil justice, which had necessitated consequential modifications in the working of the jails. The Regulation IX of 1793, though mainly re-enacted the 1790 scheme, it introduced changes of a far reaching importance. From the point of view of emergence of prisons as a system, the Regulation provided the first comprehensive codification of rules for the management of jails, which also specified the objectives thereof. Because of its importance as being the first declaration of 'Prison Policy and Procedures', it is quoted, at some length.

#### 5.14 REGULATION IX, 1793

A REGULATION for re-enacting, with Alterations and Modifications, the Regulations passed by the Governor-General in Council on the 3rd December, 1790, and subsequent Dates, for the Apprehension and Trial of Person charged with Crimes or Misdemeanors : PASSED

by the Governor-General in Council on the 1st May, 1793.

...           ...           ...           ...           ...  
 ...           ...           ...           ...           ...

XX- The magistrate is to visit the gaol at least once in every month, and redress all well-founded complaints of ill-treatment which may be preferred to him by the prisoners against the gaoler, or any officers having charge of them.

He is to be particularly attentive to the health and cleanliness of the prisoners, and to see that the surgeon of the station attends and administers to the sick.

XXI- Separate apartments in gaol are to be allotted for the following descriptions of prisoners :

- Prisoners under sentence of death;
- Prisoners sentenced to confinement by the Court of Circuit or the Nizamut Adawlut;
- Prisoners committed to take their trial before the Court of Circuit;
- Prisoners sentenced to confinement by the magistrate for petty crimes or misdemeanors cognizable by him; and
- to separate those who have been found guilty or accused of heinous crimes, from such as have been convicted of or charged with crimes of less magnitude;
- to separate the male from the female prisoners, so as to prevent them having any communication with each other; and
- the rules prescribed in this section, for keeping apart the several descriptions also apply to the latter.

The magistrates are further enjoined to endeavour to prevent drunkenness, gaming, and other immoralities being practised in the gaols.

...            ...            ...            ...            ...  
 ...            ...            ...            ...            ...

XXV- The magistrates are to pay all persons who may be released from gaol, after an imprisonment of six months or upwards, in actual need of such assistance, a sum sufficient to maintain them for one month, but it is in no case to exceed five rupees.

...            ...            ...            ...            ...  
 ...            ...            ...            ...            ...

XL- There shall be two general gaol deliveries annually in each zillah (excepting the zillahs of the Twenty Four Purgunnahs, Moorshedabad, and Dacca Jelaipore) for which purpose, the judges shall make two circuits in each year.

...            ...            ...            ...            ...  
 ...            ...            ...            ...            ...

XLIV- Monthly gaol deliveries to take place in the cities of Patna, Dacca, and Moorshedabad, and the Zillahs of Moorshedabad and Dacca Jelaipore, excepting when the judges are making the half yearly circuits.

...            ...            ...            ...            ...  
 ...            ...            ...            ...            ...

LI- ~~No criminal shall suffer~~ the punishment of mutilation. If a prisoner is sentenced in conformity to the futwah of the law officers, to lose two limbs, instead of being made to undergo such punishment, he shall be imprisoned and kept to hard labour for fourteen years; and if any prisoner shall be so sentenced to lose one limb, he shall, in lieu of such punishment, be

imprisoned and kept to hard labour for seven years.

...           ...           ...           ...           ...  
 ...           ...           ...           ...           ...

LVI- The religious persuasions of witnesses shall not be considered as a bar to the conviction or condemnation of a prisoner; but in cases in which the evidence given on a trial would be deemed incompetent by the Mahomedan law, solely on the ground of the persons giving such evidence not professing the Mahomedan religion, the law officers of the Court of Circuit are to be required to declare what would have been their fatwah, supposing such witnesses had been Mahomedans.

...           ...           ...           ...           ...  
 ...           ...           ...           ...           ...

LXII- The judges of circuit are to visit the gaols at each station, on every circuit, and..... to issue to the magistrates such orders as may appear to them advisable for the better treatment and accommodation of the prisoners.

LXIII- The Courts of Circuit are to report to the Nizamut Adawlut, every instance in which it shall appear to them that the magistrates have been guilty of neglect, or misconduct, in the discharge of their duty.

...           ...           ...           ...           ...  
 ...           ...           ...           ...           ...

LXXI/- The sentences of the Court shall be regulated by the Mahomedan law, excepting in cases in which a deviation from it may be expressly directed by any Regulation passed by the Governor-General in Council.

...           ...           ...           ...           ...  
 ...           ...           ...           ...           ...

LXXIX- ( Nizamut Adwalut may recommend convict to mercy. ) --- Rescinded by Section II Regulation XIV, 1810.

1795

5.15 SECRETARIAT RECORDS

Under the Judicial Department, two separate sets of proceedings were started from 1795, one for civil justice and the other for criminal justice (including police), and this system continued till the year 1815.

5.16 REGULATION XVI, 1795

REGULATION XVI, laid down :-

XIII- There shall be two general gaol deliveries annually in the zillahs of Mirzapore, Ghazipore and Junpore, for which purpose, two of the judges shall make two circuits in each year.

... ..  
 XXIV- First .. ..

- Second- The judges of circuit are to visit the gaol in the city of Benares, once in every three months.  
 (Repealed by Act XVIII - 1844.)

5.17 OBSERVATION ABOUT GAOL

The State Papers - N.W.P.- Judicial Series 1795-1814 for Mirzapore contain observations about the gaol.(17)

5.18 CONCENTRATION OF PHYSICALLY UNFIT CONVICTS

"All prisoners now confined in the gaol of Mirzapore and unfit for manual labour due to sickness or old age may be sent to the Twenty Four Parganas for their transportation. (18)

5.19 A WARRANT FOR EXECUTION

Transmits a warrant for execution of the final sentence passed by Sedar Dewani Adawlut on prisoner Sheo Bilakh Gusein. If the prisoner is incapable of doing any labour due to old age or illness, he may be sent to the Magistrate of the Zilla of Twenty Four Parganas for transportation under a proper guard. (19)

1796

5.20 TEMPORARY ACCOMMODATION

As a new jail is being constructed at Mirzapur, arrangement may be made for the temporary accommodation of the prisoners. (20)

5.21 MOHAMMEDAN LAW AND EMPLOYMENT ON ROAD

Employment of all convicts for the repair of public roads or similar works is consistent with the Mohammedan law.

Convicts shall be applied with the exception of those who are incapable of doing such work due to their illness or old age. (21)

5.22 FRESH MODE OF CORPORAL PUNISHMENT

The age old practice, coming down from the Moghuls, of using a "kora" for inflicting corporal punishment, even to the extent of killing the victim, was modified in 1756, to make it non-fatal, by successive instructions, as follows :- (22)

".... Kora, the long established instrument of corporal punishment in this country has been proved fatal. So, while, whipping, the undermentioned precautions should be taken :-

- (1) -The whipping post is so constructed that when a prisoner is tied to it, he may be secured from receiving any blow on his breast or forepart of the body;
- (2) -The Kora-Burder is positively enjoined to strike the prisoner on the back only with every possible attention to prevent the blow falling on any other part of the body;
- (3) -All prisoners are to be examined by the surgeon of the station previous to their being punished, and the punishment may be postponed if any prisoner is found unfit for receiving punishment;
- (4) -Native doctors attached to the jails of the several stations, are required to be present when the prisoners are punished with Kora and the punishment can be stopped at any stage when the surgeon thinks that further infliction would endanger the health of the prisoner."

#### 5.23 MEDICAL EXAMINATION BEFORE WHIPPING

"....Before corporal punishment is awarded to a prisoner, he should be examined by the surgeon of the station or in his absence from the station he shall be examined by the native doctor." (23)

1797

#### 5.24 PROVISION OF JACKET BEFORE WHIPPING

Extract from a letter from the third judge of the Decca Court of Circuit :

"Jacket may be prepared of a strong hide, so formed and fitted as to cover and defend from injury the whole of the forepart of the body, the neck and loins and shoulders, on which the stripes should actually fall. (24)

5.25 A SAMPLE OF JACKET

"Jacket may be prepared according to the sample sent herewith for the use of the prisoners while they are punished with the Kora." (25)

5.26 PUBLIC DISPLAY OF HANGED BODY

"Police officers may also be instructed that after prisoners have suffered death, his body is to be suspended upon a gibbet on or near the spot where the murder was committed. Directs that the prisoners body may not be removed by his friends or any other person from the place where it is to be suspended. (26)

5.27 "GODNA PROCESS"

REGULATION IV, 1797, Section II. - Prescribes the manner in which "godna" process is to be carried out.

5.28 LONG-TERM CONVICTS MAY BE TRANSPORTED

REGULATION IV, 1797, Section X. - Authorises the Nizamut Adawlut to transport convicts sentenced to imprisonment for life or for seven years.

17985.29 EMPLOYMENT OF CONVICTS

Transmits an extract from the proceedings of the Vice-President-in-Council containing his observations relating to the employment of convicts sentenced to imprisonment, for soliciting opinion of the Magistrate on the same to be transmitted to Nizamut Adawlut. (27)

17995.30 REGULATION II, 1799 : MONTHLY GAOL DELIVERY

Referring to Sections XIX and XX of REGULATION XVI of 1795, under which a monthly gaol delivery was directed to be held for the city of Benares; requires

that the goal delivery of the cities of Dacca, Moorshedabad and Patna, should also be held monthly, for the convenience of foreign merchants.

1800

5.31 EMPLOYMENT OF CONVICTS IN MINES

Extract from the Resolutions of the Governor-General-in-Council in the Judicial Department. Advantages by employing the convicts into the working mines :- (28)

- 1.- It would be the safest mode of confining them to prevent the frequent escapes.
- 2.- It would be least expensive and the number of guards would be reduced.
- 3.- It would be most laborious employment, and more work would be taken from the convicts.
- 4.- The species of labour would be regarded as a real mode of punishment.

1803

Percival Spear (29) writes, "Mughal authority was never formally repudiated. When the British became the protectors of the now aged and blind Shah Alam in 1803 they accorded him imperial status, but no treaty was made defining the position on either side. He continued to be addressed as a superior and to be disregarded in practical affairs. One by one the honorifics of sovereignty were denied to his successors, but the position was never clarified."

5.32 LOCATION OF NEW COURTS

REGULATION - I, 1803, Sec. II (Courts)

Adawlut shall be established in :-

Moradabad	Cawnpore
Bareilly	Allahabad
Etawah	Gorakhpore
Farruckabad	

5.33 OBJECTIVES OF "GODNA"

REGULATION - VII, 1803, Section XXXV. Prescribes the objectives of "Godna" (indicating the crime on the forehead of the prisoner.)

5.34 TRANSPORTATION OF CONVICTSREGULATION - LIII, 1803

Section-VIII- First. So much of Section X Regulation IV, 1797, as authorises the transportation to some place beyond sea of convicts sentenced to be confined for a term of seven years, or for any limited terms of years.....is hereby rescinded.

Second. Transportation beyond sea shall be hereafter restricted to convicts who may be sentenced to confinement for life; and in all instances wherein a sentence of confinement for life may be passed against a prisoner, whether by the Courts of Circuit in the first instance, or finally by the Court of Nizamut Adawlut, the court passing such sentence, if it deem the prisoner a proper object of transportation beyond sea, shall at the same time adjudge him or her to be transported for life.

Section-IX-Second. Provides that any convict under sentence of transportation for life, who may be transported to any place beyond sea after the promulgation of this Regulation and shall escape from such place of transportation, and return without permission to Bengal, or to any part of the Company's territory under the Presidency of Bengal, shall, on conviction therefore, and if no circumstances appear to that court to render such convict an object of mercy, be judged to suffer death.

18065.35 REVISED PLAN FOR SAHARANPUR GAOL

Government asks for a revised plan for the construction of gaol at Saharanpur, with detailed estimates. (30)

5.36 GRANT FOR SAHARANPUR GAOL CONSTRUCTION

Government sanctioned Rs. 9,266-12-1 for the construction of a gaol at Saharanpur. (31)

5.37 ENTERTAINMENT OF BURKUNDAZES

Authority to entertain four additional Burkundazes at Rs. 4/- per mensem each to guard the convicts employed on public roads. (32)

18095.38 DISMISSAL OF A GAOLER

\*Nizamut Adawlut have approved the dismissal of Amanat Khan from the office of the Gaoler. Proper person may be nominated in his place to succeed him. (33)

5.39 REDUCTION IN EXPENSES : SUGGESTIONS

Contains extracts of a report from the Committee of Finance, set up to suggest reduction in expenses : (34)

- (1) Expenses incurred on the maintenance of prisoners confined either under sentence or for trial and in the subsistence allowed to indigent prosecutors under the Regulations;
- (2) Practicability of reducing the contingent allotment of the department.

5.40 PAYMENT FOR REPAIRS

Authorises to disburse the sum of Rs. 209/5/- for repairs of the gaol at Saharanpur. (35)

5.41 SOLICITS OPINION

Solicits opinion on the following points :-

- (1) State of goals, security of prisoners and accommodation for the guards;
- (2) The rules which should be framed for, defining the respective duties and responsibilities of the gaoler and his officers on one hand and the military guards stationed at the goals on the other. (36)

1810

5.42 FUTWA NOT ESSENTIAL

REGULATION - I, 1810 :- Invests in the executive government powers to dispense with the attendance and futwa of the law officers of the court of circuit.

5.43 REGULATES EMPLOYMENT OF PRISONERS

Directs that in conformity with Section 11, REGULATION XXII, such prisoners may be employed ....as are authorised in Circular orders of Nizamut under dates the 6th April and 10th August, 1796.

5.44 CIRCULAR ORDERS : EMPLOYMENT ON ROAD

Forwards copies of two Circulars relative to the employment of convicts on public roads. (37)

5.45 WEEKLY REST FOR PRISONERS

Suggests that prisoners should have rest for a day in the week and recommends that they may be exempted from working on Sundays. (38)

5.46 PROVISION FOR PARDON

REGULATION - XIV, 1810 - provides for the remission and mitigation of punishment - Pardon.

18115.47 RULES FOR MANAGEMENT OF GAOLS

The Government approved the printed rules for the management of the public gaols.

18125.48 PRISON OFFICIALS LIABLE TO BE WHIPPED

REGULATION - III, 1812, Sec. VI : Provides that all descriptions of watchmen subject to a cutwal, or darogha of police, are liable to corporal punishment, not exceeding thirty stripes of a ratan, instead of fine or imprisonment, when proved guilty of gross neglect or misconduct, in the discharge of their duty.

18135.49 CONVICTS FOR TRANSPORTATION

REGULATION - IX, 1813, Section - II.

Second. It shall be competent for the Governor General in Council to detain in gaol at Allypore, for any period, any convict sentenced to transportation.

Third. Authorises Governor-General-in-Council to send any convict under sentence of transportation to any British settlement in Asia.

18145.50 MOONSIFFS CREATED

REGULATION - XXIII, 1814, Sec. VI - With a view to expedite disposal of cases, creates a new establishment of moonsiffs, whose local jurisdictions shall be so arranged as to correspond exactly with those of the thanes or local police jurisdictions.

5.51 UNSTAMPT PETITIONS

REGULATION - XXVIII, 1814.

Permits the court of criminal judicature to receive petitions from prisoners in actual confinement, on unstampt paper.

5.52 ON CONVICTION SENT DIRECTLY TO WORK-SITE

A letter from the Superintendent of police in the Lower Provinces to the Zilla Magistrate, to the effect that all prisoners convicted and sentenced to confinement by the Magistrates or their assistants, instead of being sent to the public gaols may be sent immediately from the Lockup House to the proposed tents and huts and such persons may be employed on public works in distinct parties from other persons. (39)

5.53 ATTENTION ON GAOLS & HOSPITALS

Directions to the Magistrates to pay proper attention to the state of the gaols and hospitals, and that the surgeons of the civil stations have been directed to transmit quarterly statement of the sick and casualties to the Medical Board at the Presidency. (40)

18165.54 GAOL MANAGEMENT

REGULATION - IV, 1816

The REGULATION enacts the following rules :-

- (1)- The courts of civil procedure may receive petitions on unstampt paper, from prisoners who may be in actual confinement.
- (2)- The judges of zilla and city courts shall visit the civil gaols at their respective stations once in every week, and shall redress all well-founded complaints, and pay proper attention to the health and clean-

liness, as in the case of the criminal goals; and  
 (3)- The judges shall issue such orders as may appear  
 advisable for the better treatment and accommodation  
 of the prisoners.

#### 5.55 ANOTHER REGULATION ON GAOLS

REGULATION - XIV, 1816.

A REGULATION to provide more effectually for the  
 Management of the Public Jails, and to enable the  
 Magistrates to maintain good Order and Discipline in  
 those Jails, as well as among the Prisoners Employed on  
 the Public Roads or other Public Works - Also to place  
 the Jail at Allypore, in the vicinity of Calcutta,  
 under the Inspection and Control of the Court of Nizamut  
 Adwalut; and to provide for the Transportation of  
 Convicts to the Island of Mauritius, or its immediate  
 Dependencies - PASSED by the Governor General in Council,  
 on the 17th May, 1816.

II- The Magistrates and their officers, who have  
 charge of the public jails, shall be guided by the  
 printed rules which have been prescribed by the Governor  
 General in Council or the court of Nizamut Adwalut, for  
 the better management of those jails.

III- Magistrates who have charge of prisoners employed  
 on the public roads, or on other public works, shall  
 be guided by rules transmitted to them by the court  
 of Nizamut Adwalut, with the sanction of Government.

IV- Magistrates were vested with authority to punish  
 prisoners, on a summary inquiry, for the offences  
 specified in the following section.

#### 5.56 V - PRISON OFFENCES

1- A contumacious refusal to work, by any prisoner  
 sentenced to hard labour, or though not so sentenced

who may be subject to labour, under any provision in the regulation, and not exempted from labour by the court; and not incapable of bodily labour from age, sickness or other infirmity.

2- Wilful neglect and indolence in the performance of any prescribed work, especially after previous admonition.

3- Wilful disobedience to any of the written rules for the observance of the prisoners.

4- Refractory behaviour by prisoners; such as resistance to the jailor, guards, or other public officers, in the regular discharge of their proper functions; abusive language to any such officers; and generally any culpable behaviour towards them.

5- Any other instance of disorderly conduct by prisoners; such as riot, insurrection, attempt to escape, taking off or loosening or attempting to loosen, by filing, cutting, or otherwise his own irons, or those of other prisoners, with a view to escape, conspiring with other prisoners for the purpose of insurrection or escape, or for any other criminal purpose; and generally any misconduct, committed by a prisoner, whilst in custody, which under the regulations in force, or from its aggravated nature, may not exceed the competency of the magistrate.

#### 5.57 VI-PUNISHMENTS THAT MAY BE AWARDED FOR PRISON OFFENCES

1- Vests the magistrate with the power to punish as follows :

2- In cases of contumacious refusal to work, or of wilful neglect and indolence in the performance of any prescribed work within the first or second clause of section-V of the regulation :

- moderately corrected with a retan;
- in the instance of pertinaciously, refusing to work - diet allowance to be reduced in such degree as may be consistent with his support, until he shall perform the work required from him.

3- The offences specified in clauses III, IV and V of the preceeding section :

- stripes with a retan, not exceeding thirty retans; or
- solitary confinement; or
- when a prisoner attempted to escape, by substitution of heavy fetters,
- by the temporary addition of neck-chains of a moderate weight, when the prisoner is refractory, turbulent or guilty of violence; and
- in aggravated or emergent cases, further restraint of handcuffs.

VII- Powers declared to be vested in magistrates, may be exercised by joint-magistrates, and by assistant-magistrates not stationed in the same place with the Killah and other-magistrates.

The magistrates may also refer any cases to their assistants at the sudder stations.

Rules to be observed in such references.

VIII- It shall not be necessary to make a detailed record of the evidence. But a record shall be kept of every summary conviction, and punishment; stating the name of the prisoner, the offence charged against him, the substance of the evidence and conviction.

The record so authenticated shall be kept ready for the inspection of the judge of circuit on his visiting the jail at the ensuing jail delivery; that a reference may be made to it, in the event of any complaints being preferred by the prisoners. Should the judge see cause to disapprove the order, he will notice the same to the magistrate, with any instructions which may appear necessary.

Any gross neglect or misconduct, required to be reported to the Nizamut Adawlut, under section 30, Regulation VII, 1803, the judge, after calling for requisite explanation, report the same accordingly.

#### IX -

1. Provides that Section 6, Regulation III, 1812, whereby all descriptions of watchmen subject to outwal or darogah of police, who may be proved guilty of gross neglect or misconduct in the discharge of their duty, are made liable to corporal punishment, not extending thirty stripes of a ratan, by sentence of the local magistrate, instead of fine or imprisonment, when the offender may appear a fit object of corporal punishment by stripes, is extended and made applicable to burkundeze, pyke or other inferior officers, attached to a public jail, or employed in the charge of prisoners.

2- Magistrates to prevent any maltreatment of prisoners by the native officers having charge of them.

Complaint of prisoners to be immediately inquired into, and the guilty awarded punishment.

3- The two foregoing clauses are not applicable to military guards or any person subject to military tribunal.

X-1. If any convict, under sentence of imprisonment, deserves a remission of further punishment, the magistrate shall transmit a report with full details to the court of Nizamut Adwalut, which is empowered to remit further punishment.

2. In case of short imprisonment, the magistrate is empowered to discharge a prisoner, who may appear to deserve a remission of punishment.

XI- Enacts provision for occasional inspection of Allypore jail, in the vicinity of Calcutta, to which convicts under sentence of perpetual imprisonment, transportation and banishment are received from all the zillahs and city jurisdiction, as follows :

XII -

2. The duty to be performed by one of the judges of the Nizamut Adswlut, in rotation, or as may be determined by that court.

XIII- Clarifies that the foregoing section does not restrict the duties of the Calcutta Court of Circuit in respect of the Calcutta zillah jail, which is separate from the Allypore jail.

XIV- Further clarifies that nothing in the present regulation is meant to alter the established

jurisdiction of the court of circuit.

XV- The provisions contained in clause third, Section-2, Regulation-IX, 1813, for sending convicts under sentence of transportation, to any of the British settlements in Asia, at the discretion of the Governor General in Council, and for employing such convicts within the limits of such settlements, as well as for transferring them from one place to another when found requisite, are hereby extended to the exercise of similar discretion by the Governor General in Council, in sending convicts under sentence of transportation to the Island of Mauritius, or its immediate dependencies.

#### 5.58 REVIEW OF ESTABLISHMENT

REGULATION - XVIII, 1816.

A REGULATION for the occasional revision of the regular Police and Jail establishments;

Section-VII - Second - The zillah or city magistrates are empowered to appoint jailors and other subordinate officers of the criminal jail; and to remove such officers for misconduct, incapacity, or other sufficient cause, without reference to other authority.

#### 5.59 RECORDS IN SECRETARIAT

From 1816, in the Judicial Department, the two separate sets of proceedings for civil justice and criminal justice, each was further subdivided into "Lower Provinces" and "Western Provinces". This arrangement was continued till 1834, when the formation of the Presidency of Agra did away with the necessity for the two series, and the 'Civil' and

'Criminal' series were consolidated into one series from July 6, 1835, though the records continued to be marked 'Civil' and 'Criminal' as before for sometime more.

1817

5.60 RESTRICTIONS ON "GODNA"

REGULATION - XII, 1817.

1. Section I rescinds Section III of REGULATION-II, 1807, that authorised "godna" of crime on convict's forehead, of prisoners sentenced to imprisonment for a limited period.

2. Only convicts sentenced to imprisonment for life, shall be marked by the process of "godna", in the manner and for the purpose stated in Section 11, Regulation-IV, 1797 and Section 35, Regulation VII, 1803.

3. The Court of Nizamut Adawlut was authorised to exempt any prisoner, sentenced to imprisonment for life from being marked by the process of "godna" prescribed in the above sections.

4. The Magistrate shall cause the "godna" operation to be performed, early in the morning, and adopt precautions to see that the convict does not try to efface it in the day. The Magistrate shall renew the inscription, if defaced.

5.61 LABOUR INTERMISSION FOR RELIGIOUS CEREMONIES

A circular order of the Court of Nizamut Adawlut, dated 30th April, 1817, directs that "An intermission of labour" allowed on Hindoo and Mahomedan festivals, but only as far as may be indispensably necessary to enable convicts to perform their religious ceremonies."(41)

18195.62 RESTRICTIONS ON FETTERING

By a Circular Order of the Bengal Court of Nizamut Adawlut, dated the 27th of August, 1819, Magistrates were prohibited from sentencing prisoners for misdemeanor to be fettered, and the practice was allowed only in case of misconduct during imprisonment. (42)

18205.63 EMPLOYMENT ON ROAD RESTRICTED

By an order of the Bengal Court of Nizamut Adawlut dated the 18th August, 1820, "it was prohibited to employ on the roads convicts sentenced for offences not heinous; and it was ordered that such convicts should work privately within doors. But subsequently it was found necessary to issue a third order, dated the 17th of May, 1822, which by allowing a discretion to Magistrates in this matter, particularly annulled the preceding order. In fact it is apprehended that almost all prisoners are employed on the roads, and that very few indeed of those so employed are without fetters." (43) It will be relevant to the topic to add the following observations of the 1838 Committee: "at present we will only allude to the injustice as well as to the impolicy of the ignominious and public exposure, generally in fetters, of persons who are in no case known to have formed vicious habits of a very bad order, and who in many cases are known to have formed such habits, besides subjecting them to contamination from association with the most hardened criminals." (44)

18235.64 JUDGES RESTRICTED

REGULATION-IV, 1823, laid down an important principle that the Judges were not to try the cases of the prisoners whom they had themselves committed as Magistrates.

5.65 CONVICTS AT BENCOOLEN

"Upon December 20, 1823, Sir Stamford Raffles again wrote to the Government- "As the management of convicts ought to be a subject of consideration, I send you a copy of the regulations established for those of this place. The convicts now at Bencoolen amount to 800 or 900, and the number is gradually increasing. They are natives of Bengal and Madras; that is to say of those presidencies. The arrangement has been brought about gradually, but the system now appears complete, and, as far as we have yet gone, has been attended with the best effects. I have entrusted Mr. John Hull with the superintending of the department, and he feels great pleasure and satisfaction in the general improvement of this class of people."(45)

18255.66 WHIPPING OF FEMALES PROHIBITED

REGULATION-XII, 1825, Sec.III.- No female shall hereafter be sentenced to corporal punishment by stripes.

5.67 'RATAN' REPLACES 'CORAH'

REGULATION-XII, 1825, Sec. IV - The use of "coreh", as an instrument of punishment for the execution of sentence of corporal punishment is prohibited.

In future the "retan" shall be used as the only instrument of punishment in the infliction of corporal punishment by stripes.

#### 5.68 SINGAPORE PENAL SETTLEMENT

The English got the possession of Singapore island by a treaty signed on February 6, 1819. Adam (46) writes, "It was on 18th April, 1825, the first batch of convicts were transferred from India to Bencoolen, and thence to Singapore. They consisted of 80 convicts from Madras, 74 of whom were for life and 6 on short term sentences. Among these was one female, sentenced for life. On the 25th a fresh batch from Bengal, 89 of whom were for life, and 33 for short term."

1828

#### 5.69 COMPUTATION OF SENTENCE

REGULATION-I, 1828 - Those imprisoned for life, may have their sentences computed to transportation by the order of Governor-in-Council.

#### 5.70 BISHOP HERBER IN NORTHERN INDIA - 1828

Leird (47) reports Bishop Herber's impressions of Bengal, in early eighties, "Capital punishments are described as far from frequent, and appear to be inflicted for murder only; for smaller crimes, offenders are sentenced to hard labour, and are seen at work in the public roads, and about the barracks, in groups more or less numerous, each man with fetters on his legs, and watched by police men, or sepoy. These poor creatures, whatever their original crimes may have been, are probably still more hardened by a punishment which thus daily, and for a length of time together, exposes

them in a degraded and abject condition, to the eyes of men. I never saw countenances so ferocious and desperate, as many of them offer, and which are the more remarkable as being contrasted with the calmness and almost feminine mildness which generally characterizes the Indian expression of features." He also recorded his impressions after visiting a jail, as "The prison was very well arranged, with roomy wards, dry and airy apartments. and permission given once a day to all the prisoners to go out on a large plain, within a low outer wall, to dress their victuals. This indulgence indeed, joined to the lowness of even the main wall, makes it necessary to keep them all in irons, but that is, in this climate, a far less evil than a closer confinement, or the increased interruption of the fresh air. The prisoners complained loudly that their allowances were not sufficient. Mr. Master told me that the present dearth of rice, made them, indeed, far less than they used to be, but that the original scale was too high, and more than a man could earn by labour. Some Burmese were here, and the only persons not handcuffed (except the debtors).....The debtors were numerous and very miserable objects."

#### 5.71 INCREASING PRESSURE FOR JAIL ACCOMMODATION

An outstanding feature of this period of approximately forty years is the growing pressure for jail accommodation. Imprisonment was largely being resorted to as <sup>the</sup> punishment. There was an ever increasing demand for the cheap convict labour, urgently required for the construction of public roads and buildings, becoming more and more necessary in the interest of administration for better and quicker

communication and secure lodgings. The following records of the punishments awarded by the Courts of Justices, during the years 1826 and 1827, show that the prison accommodation needed for convicts alone was roughly thirty-one thousand for the Lower Provinces and another thirty-seven thousand for the upper Provinces :-

During the period 1816-1827, the punishments awarded by the Courts of Justices were as follows :-(48)

Year	Persons sentenced to death		Persons imprisoned for life or transportation	
	Lower Provinces	Upper Provinces	Lower Provinces	Upper Provinces
1816	64	51	213	69
1817	57	57	214	54
1818	24	30	150	103
1819	42	52	240	105
1820	25	30	224	100
1821	22	36	189	89
1822	20	30	103	62
1823	42	35	56	62
1824	31	20	89	59
1825	26	40	51	77
1826	26	41	70	101
1827	23	32	96	57

During the years 1826 and 1827, the punishments awarded by the Courts in the Upper and Lower Provinces were as follows :-

Punishments	Lower Provinces	Upper Provinces
Imprisonment for 2 yrs. & above	1,777	2,340
Imprisonment for 1 yr. & under 2 yrs.	2,169	1,930
Imprisonment for 6 Mths. & under 1 yr.	237	64
Imprisonment for 6 Mths. or under	14,461	20,040
Fines .....	6,317	14,647
Whipping .....	12,606	14,704
Hard Labour .....	12,473	13,211
Dismissal or suspension of of Govt. officials .....	929	1,687

18315.72 CRIME CONDITIONS

A despatch from the Court of Directors in 1831 stated, "In the Ceded and Conquered Provinces, depredations with murder and wounding were above six times more prevalent than in the Lower Provinces; affrays with loss of life about five times; and murder and homicide about two or three times." (50)

18335.73 ALIPORE GAOL

ALIPORE GAOL in Bengal, in 1833, presented the typical picture of a gaol that was constructed by the English rulers at that time. This gaol has been described as, "The buildings within which the prisoners sleep consist of twelve wards, but this large area between them and the outer enclosure is not divided by any partition walls, so that all the prisoners are together from midday till sleeping time. During this time they purchase their food in a sort of bazar within the area, cook, eat and amuse themselves as they like. This want of internal divisions, as it enables the whole mass of convicts to congregatc at one point in a moment, makes the merely entering the Gaol, for the purposes of inspection, a matter of danger. This defective construction sufficiently accounts for the entire absence of discipline in this Gaol, and for the very small quantity of work done by the prisoners. Thus, though nothing can be worse than the management of this prison, the building itself, rather than the gentlemen who have successively had the superintendence of the prisoners, is the cause of this great evil..."

Some years before, the convicts in this Gaol deliberately cut off the nose of one of the native officers attached to it, against whom they had taken offence." (51)

#### 5.74 CONVICT ROAD - GANGS UNDER ENGINEERS

".....there were, in round numbers, 13,000 prisoners, on an average, under the charge of Engineer Officers, and employed at a distance from their Gaol on the great-trunk road, and other roads."

"This system was commenced in the Lower Provinces on the first of March, 1833, when every prisoner sentenced to labour, for whatever crime, whose unexpired period of imprisonment exceeded one year, was sent to Captain Thomson from the Gaols of Benares, Mirzapore, Ghazepore, Sarun, Shahabad, Patna, Bihar, Ramghur, Beerbhoom, and the Jungle Mahals...."

"The system was, we believe, commenced in the Upper Provinces about the same time as in the Lower Provinces." (52)

#### 5.75 THE EMERGING PRISON SYSTEM

Since the day Company became Zamindar of the three villages, it began to exercise all those powers which other zamindars in Bengal enjoyed, at that time. Company's zamindari functions, within the settlement of Calcutta, were entrusted to an English officer, known as the Collector or Zamindar, who used to be a member of the Governor's Council. (53) He discharged judicial powers in all cases, criminal, civil and revenue, pertaining to the Indian inhabitants of the settlement. The Calcutta jail was established to cater for these requirements.

On May 11, 1772, with the proclamation that the Company shall stand forth the character of Dewan, the whole fiscal administration of the province of Bengal and Bihar passed into their hands. Warren Hasting's first task was to redesign the revenue collection. As a second step, leaving criminal justice to the Nawab, he interposed a loose supervision of the English officers in the district, over criminal courts. The arrangement did not prove effective, which was ultimately given up.

Whatever may have been the philosophical thoughts and ideals of an erudite Warren Hastings, at the action-level as the Governor-General, he exhibited no time, will or patience to practice the slow moving administration of just methods himself or get them practised by his officers. Having reached the highest wrung of the ladder, he appeared to be in a great hurry to present financial gains that would immediately appease his masters. Peace, happiness and welfare of the subjects was no where listed in his plan of actions. In the words of Herbert Spencer (54) "Cold blooded treachery was the established policy of the authorities. Princes were betrayed into war with each other; and one of them having been helped to overcome his antagonist, was then himself dethroned for some alleged misdemeanor. Always some muddled stream was at hand as a pretext for official wolves. Dependent chiefs possessing coveted lands were impoverished by exorbitant demands for tribute and their ultimate inability to meet these demands was constructed into a treasonable offence, punished by deposition." It seems as if there was a cold calculated manner of acting to drive home the largest benefits, by means fair or foul,

not to create a general atmosphere of loot, lawlessness, disorder and awe, to justify their presence and interference. Light is thrown on the then prevailing terror-stricken conditions in the society, wherever East India Company operated, by Herbert Spencer's (55) remarks, "Judge to what a pass things must have come when in describing a journey, Warren Hastings says : 'Most of the petty towns and serais were deserted at our approach.'"

On December 3, 1790, Cornwallis took over the entire responsibility for criminal justice, long neglected so far. He abolished the last kept up vestiges of the shadowy authority of the Nawab of Bengal for administration of criminal justice. The Muslim criminal law was continued to be in use, but with several modifications and clarifications, that purported to induct the English law and thinking on the subject. A three tier structure of criminal judiciary was set up and Regulations enacted from time to time to guide the work of criminal justice administration.

The loose and shoddy buildings in which the jails were housed during the decaying rule of the Nawab, were tolerated to continue. Some attention had to be paid to their general management. Fredric J. Moust (56) discussing the prison system in India in its historical perspective writes, "The prison system of India, like British rule in that country, has grown up by degrees, until, as the Empire was consolidated and order introduced in all departments of the Government, the treatment of the criminals took its place among the recognised branches of the judicial administration."

"In the beginning, when the laws were imperfect, their administration defective, the courts few and far between, and the rulers gradually acquiring a knowledge of the strange country and stranger people they were called upon to govern, the subject of prison discipline attracted little attention. Places of detention for those who had committed crimes were constructed, and were placed in the charge of judicial officers. Rules for the guidance of these officers were from time to time issued by the Government and the higher judicial courts, but these had no authority to enforce obedience to them, and each officer in charge of a prison did very much as he pleased with the criminals of his district. The real charge of the prisons was in the hands of ill-paid native subordinates, and abuses of every kind, as might have been expected, prevailed."

#### 5.76 SOCIO-POLITICAL INFLUENCES

The political conditions, on the Indian sub-continent, during this period, were in a state of flux, undergoing quick quirks and cataclysmic changes, all around. In 1790, when the story of this chapter starts, British possessions in Bengal included the territory that now forms part of Bihar and large part of north-eastern U.P. During the next 43 years of this story, Wolpert (97) writes, "Tipu fell before the full force of British arms.....on May 4, 1799. Almost half of Mysore was now annexed to the company's domain, linking Madras to the west coast.....Soon after Hyderabad's nizam was obliged to cede his cotton rich region of Berar to the British.....In 1801, Wellesley ordered British troops to strip Oudh of its rich western Doab and Rohilkhand..... The wealthy port-state of Surat

was also now absorbed.....as was Tanjore in the South... By February, 1826 the Burmese king had surrendered his coastal provinces and all claims to Assam and Manipur." In the extensive new territories grabbed by the British, the wars and insurrections, had destroyed the stability, economy, trade, peace and prosperity of the natives, giving rise to a wide spread upheaval, ruin, terror and travail, with no one to take care of law and order.

On the other side, in the territories over which the Company had claimed its responsibility for law and order, the story as told by Wolpert (58) was, "Between 1813 and 1833, the decades that marked the collapse of Bengal's vast home-spun cotton industry, millions of Indian women and men were thrown out of work by machines half a world away. Bengali unemployment reached unprecedented levels as the industrial revolution rocked India's peasant economy, transforming what had hitherto been an inter-dependent but self-sufficient state of relative economic prosperity into a precariously dependent market of peasants, whose numbers would continue to swell during the remaining decades of the nineteenth century, increasing the economic pressures on India's arable land." The law and order situation was summarised in a despatch from the Court of Directors on March 30, 1831 as, "In the Ceded and Conquered Provinces, depredations with murder and wounding were above six times more prevalent than in the Lower Provinces; affrays with loss of life about five times; and murder and homicide about two or three times." (59)

Majumdar (60) comments, "Thus within half a century of the battle of Plassey, the phenomenal

prosperity of Bengal suffered a serious setback from which it has not recovered even today (1946)." And, describing the picture on the other side Michael Edwardes (61) writes, "But the expansion of British domain in India soon produced a burden of debt instead of a revenue surplus. By 1813, the company had become basically a military and administrative power....." Thus, there was no time, energy, money, resources and peace with the Company functionaries to fund and foster adequate number of criminal courts, judges, prisons etc., necessary to establish a comprehensive and effective system of rendering criminal justice. It was only in ups and starts, under pressing circumstances, that a sporadic splash of sketchy and shoddy regulations appeared on paper, which were haltingly executed.

#### 5.77 SHAPE OF PRISONS BY 1833

In the final shape of things, as the prisons existed at the end of 1833, the following picture of Prison-System stands out :

##### 1. ORGANIZATION

Prison, by now, was a well recognised, separately identifiable institution, for the detention of persons awaiting trial before the court, and also for keeping persons found guilty and awarded a sentence by the court. The new role of prison as an instrument for carrying out imprisonment as a punishment, got well established as a common practice, without being questioned at any level.

As an institution, it was crude and rudimentary, with a number of arrangements made on a temporary and make-shift basis. The staff was few in number,

unqualified and low paid, and even ill-treated as the inferior officials were made subject to corporal punishment for dereliction of duty. The more important security staff was borrowed from the police and military. Despite the fact that prison was a residential institution, there was no post of a residential superintendent or a medical officer, to provide requisite whole time attention and care. Most of the jails were housed in hired buildings of mudwalls and a thatch roof, which were highly insecure and unhygienic for lodging a large number of inmates.

There was no Prison Department as such. Even the institution of Central Jails had not come up. At this time, even in England, no Prison Department had been established. "The Home Secretary was, by an Act of 1835, empowered to appoint persons to inspect prisons on his behalf and to report to him. (62)

## 2. SPREAD OF JAILS

A jail was attached to each Zilla and City criminal court, in the province.

In 1796, construction of a new jail at Mirzapur was started.

In 1803, seven new Adawlut were established at Moradabad, Bareilly, Etawah, Farruckabad, Cawnpore, Allahabad and Corekhpore.

## 3. ADMINISTRATIVE CHARGE OF JAILS

The Collector and Magistrate of the district held the charge of the Zilla Jail, who was required to visit the jail at least once every month. A native officer known as "darogah" was to look after the jail, and "had,

in practice, the whole administration in his hands."(63) Since 1816, Zilla and City Magistrates were required to visit the jail at least once every week. Judges of the Circuit Court were required to visit the jails, half-yearly for jail deliveries and administrative inspection of the jail.

Since 1793, Judges of the Circuit were required to visit the jails in the cities of Patna, Dacca and Murshedabad and the Zillas of the Twenty Four Paragahs, Murshedabad and Dacca Jelalporo once in every three months.

Since 1795, Judges of the Circuit were required to visit the jails in the city of Benares, once in every three months.

Since 1799, jail deliveries for the city of Benares, Dacca, Murshedabad and Patna were to be held every month.

#### 4. JAIL ESTABLISHMENT

- i. The supervision and charge of the jail was held on part-time basis.
- ii. A darogah was a low paid official.
- iii. There were one or two assistants known as 'moharer'.
- iv. Watch and ward was carried out by men drawn from the police.
- v. The jail guard was provided by the military personnel.
- vi. Miscellaneous - When the convicts were employed on Road construction or other public works, supervisors were engaged.
- vii. The system of employing well selected convicts as Burkundaz, was introduced. They were paid a sum of Rs. 4/- per month.

Sedar Nizamut Adawlut was the appointing authority for the darogha and all other staff under him. Since 1816, this power was vested in the Magistrate incharge of the jail.

The subordinate jail establishment varied from place to place. Patra (64) writes, "From the anonymous but private Notes on the Early Administration of the District of Midnapore, we get the following account of the jail establishment in one of the leading districts of the three Provinces :

1 Mirda and malconnah (store keeper)...	Rs. 25/-p.m.
30 Burkundaizes .....	Rs. 3/-p.m.
1 Tabeeb (doctor).....	Rs. 20/-p.m.
1 Tazeen berdar (flogger).....	Rs. 4/-p.m.
1 Jullaad (hangman) .....	Rs. 4/-p.m.
1 Gorekend (grave digger) .....	Rs. 4/-p.m."

##### 5. CUSTODY

"Under the Bengal Presidency the manner in which the prisoners are guarded when at work out of Gaol is by placing over them Burkundaizes or armed men, who vary in number proportionally to the number of prisoners to be guarded, one being allowed to be retained for five prisoners. One Duffadar, or petty officer is allowed for 25 Burkundaizes or 125 prisoners, and one Jemadar or chief officer is allowed for 50 Burkundaizes or 250 prisoners."(65) The pay of these guards in the Lower Provinces was :-

Burkundauz	....	Rs. 4/- per month.
Duffadar	....	Rs. 6/- per month.
Jemadar	....	Rs. 10/- per month.

The business of this set of guards was confined to keeping watch on the prisoners who were employed on work out of the Gaol.

"There is besides another guard of Burkunduzes on the fixed establishment, called generally the Gaol guard.....to guard the prisoners when in Gaol whether by day or night.....The Gaol guard was entertained on the abolition of the Provincial Battalions, by whom the Gaols used to be guarded, and the men employed were mostly sepoys in those battalions." (66)

"Prisoners are guarded under the Madras Presidency in the same way as they are guarded under the Bengal Government." (67)

"Under the Bombay Government, every Gaol is guarded by a party of regular Troops; besides this a certain number of Peons is attached to every Gaol, and to some Gaols, pikes or sepoys of local corps are allowed. The last two descriptions of guards are generally employed over prisoners at work on the roads." (68)

#### 6. JAIL BUILDINGS

There was heavy overcrowding in most of the jails. The buildings were tottering, unhealthy, damp and inadequate. Proper jail buildings could not be constructed. Jails were continued to be housed in buildings, mostly hired for the purpose, in the days of the decaying rule of the Nawab. These were made of mud walls with thatched roofs, that were open to severe damage during heavy rains, gales, storms and fire etc. The upkeep and repairs of these structures was costly and time and labour consuming. Prison labour was employed on the repair and construction work of jails.

At Serampore Jail "all the prisoners were being kept in the jail house which was also damp, without

roof ventilation, and very dirty. In one corner there was a puddle of urine; hanging against the wall were some dirty rags, the bedding had a musty appearance, and the ward was lighted by cherags. In fact, every thing about the place was dirty and untidy." (69)

In 1792, Cornwallis had expressed his resolve that "Five brick prisons were to be built each year until the whole were completed," (70)

A new jail construction had been ordered at Mirzapur in 1796. In Midnapore, half the fort was used as a jail, in 1802. (71) H. Strachey had made a survey of the jail accommodation throughout the territories of East India Company and submitted a report in 1805. The jail at Bareilly was a pucca one by that time. (72) Another jail was constructed at Saharanpore in 1806.

#### 7. CLASSIFICATION & SEPARATION OF PRISONERS

In general, the prisoners were kept mixed together. They were locked up in association at night, and worked in groups in the day.

For purposes of separation, both the under-trials as well as the convicts were categorised as males and females; and each class was further categorised into six different categories depending upon the nature of crime. There were instructions to keep all these different categories of prisoners separate from one another, but since the requisite amount of separate accommodation was not available for this break up, practically no classification and separation was carried out.

Patra (73) writes, "When the Select Committee was writing its Fifth Report in 1812, prison-houses had

been erected with a scheme of separating the debtor prisoners from the ordinary criminals, the undertrials from the convicts, and women from men."

#### 8. SANITATION, HEALTH & MEDICAL CARE

The Magistrates were directed "to be particularly attentive to the health and cleanliness of the prisoners."

The Surgeon attached to the station was required to attend and administer to the sick.

As per report of the various Magistrates, the sanitary conditions were poor, ventilation of the barracks defective, and in several jails the land and buildings were damp and marshy.

Arrangements of drinking water were neither adequate nor satisfactory.

Sickness and mortality rates among prisoners were high.

It was reported that "at Serampur the jail was an old Danish structure, and quite unsuited for its purpose. The hospital was damp and very dirty, the bedding of the sickmen was filthy, the wards were also damp, unventilated, and unfit to confine human beings in." (74)

#### 9. EMPLOYMENT OF CONVICTS

There were no arrangements to employ the prisoners indoor in any industry or vocation. The only indoor employment was prison services such as necessary for the repair and upkeep of the buildings; general sweeping and cleansing etc.

The main employment of convicts was outdoor on the construction of public roads and other public works. When the site of such works was far away from the jail, the prisoners stayed on at the work site in tents and huts.

The working conditions for prisoners employed on roads and public works were inhuman, derogatory and unhealthy. The prisoners worked in irons, and additionally at night they were secured by a chain. Handcuffs were freely made use of. Though this mode of employment of prisoners, repeatedly came under adverse criticism, yet it was continued throughout this period.

"The manner in which the labour of all criminal prisoners is now generally employed is by making them work upon the public roads, in fetters, but the system varies in some degree in the provinces subject to the different subordinate Governments." (75)

"In the provinces, subject to the Bengal Government there is properly speaking, no system of indoor labour for male convicts, excepting those sentenced to imprisonment for life." (76)

The cost to the State on account of prisoners employed on the construction of public roads or buildings under the charge of Executive Officers was more than the cost on prisoners employed indoors under the charge of Magistrate, as would be seen in the following statement: (77)

Under the charge of	Lower Provinces		N.W. Provinces	
	Total yearly cost	Yrly. cost of each prisoner	Total yearly cost	Yrly. cost of each prisoner
Magistrate	Rs. 5,30,927	Rs. 32-13-2	Rs. 5,61,100	Rs. 49-14-1
Executive Officer	Rs. 2,43,916	Rs. 46- 4-6	Rs. 3,17,727	Rs. 50-11-1

10. DIETARY

During this period the jails bore no responsibility to supply the jail inmates with cooked food or even the uncooked rations. Patra (78) writes that the "Convicts received diet allowance as three-fourths of an anna a day." The scale of diet money given to prisoners widely varied from district to district and from Province to Province. Thus, while it ranged from 5 pies to 12 pies a day, per prisoner, in the Lower Provinces; it ranged from 9 to 15 pies a day, per prisoner, in the North-Western Provinces. (79) The prisoners cooked food for themselves, individually or in groups, wherever and wherever they found it convenient. "The system of paying daily subsistence allowance to prisoners meant that catering was left to jailors who made all they could out of it." (80)

In 1820, Bishop Herber (81) had observed during his visit to a jail in Bengal that "The prisoners complained loudly that their allowances were not sufficient." There was no uniformity in the amount of money allowed as subsistence allowance, in the various jails. The prices of the items of ration, widely varied from jail to jail, as did the quality. In general, "Every prisoner in the jails of the Upper Provinces used to receive a monetary subsistence allowance while he was there. Out of this sum he could purchase his requirements according to his choice from a fixed number of available edibles. This system required the Government to maintain shops within the jail buildings, to stock different commodities of daily requirements and to make some arrangement for their sale etc. Moreover it gave rise to a lot of corruption and bribery in

the jail administration, specially among the low-paid staff. Naturally all this created confusion and trouble." (82)

#### 11. PRISON OFFENCES AND PUNISHMENT

- Prison offences had been defined.
- Prison punishments had also been prescribed.
- Whipping was the most commonly awarded punishment, which was resorted to very light-heartedly and was thought to be the mildest of all other punishments for the directions read "moderately corrected with a ratan".
- There was no such punishment as 'warning'.

Physical torture appeared to be the main plank of prison punishments. Besides whipping, the other punishments were putting on heavier fetters, adding an iron neck-chain of moderate weight, handcuffing, solitary confinement and reduction of the diet allowance.

#### 12. AMELIORATIVE MEASURES

At the administrative level, printed rules were supplied for the guidance of the Magistrates for better management of jails. The prisoners were also made available jail rules for their guidance, translated in local language. Similarly, rules were prescribed for the guidance of superintendents of convicts employed on the construction of Public Roads or other Public Works.

Prisoners sentenced to imprisonment for life were given the option to have their sentence computed to one of transportation.

Mutilation as a punishment was abolished.

Infliction of corporal punishment by the use of 'kora', which very often proved to be fatal, was prohibited. Corporal punishment was to be inflicted by a 'ratan' after providing a protective leather jacket to the convict. The convict, before being awarded corporal punishment, was required to be declared medically fit to undergo the punishment, and at the time of infliction of punishment the native doctor was required to be present, who could stop further infliction if the condition of the prisoner so warranted it.

In 1825, corporal punishment for females was abolished.

A weekly day of rest was allowed to the prisoners, on Sunday.

A system of remission of the remaining portion of sentence was introduced.

A measure of after-care was introduced when it was ordained that a prisoner who had undergone a prison sentence for six or more than six months, was entitled to receive, if in need of it, an allowance enough to maintain him for a month, which was not to exceed Rs. 5/- per person.

#### 5.70 NEW PENAL ADVENTURES

Jain (83) discussing the judicial system forced by the English Company in Bengal comments "features of the Calcutta judicial system show that, from the very beginning the Company's representatives at Calcutta asserted and exercised more powers than belonged to them as a zemindar under the customs prevailing in the land." There is however, another characteristic feature, in the methods of the Company functionaries

that attracts particular attention, which refers to the quantum of inhumanity and brutality in their handling the general run of natives, with whom they had dealings.

Long (84) writes, "On Nov. 17, 1760, the Governor and Council thinking that the usual method of punishment of capital crimes in the zamindari by whipping to death did not sufficiently contribute to deterring criminals as the example was not sufficiently public. Therefore, they ordered that punishment may be changed into that of blowing by a gun."

In 1779, by an 'Act to Explain and Amend the Laws Relating to the Transportation, Imprisonment and Other Punishment of Certain Offenders (19 Geo. 3. c. 74-1779, Great Britain) 'the British Parliament abolished branding of offenders, but, eighteen years thereafter, in India the English rulers inducted branding ("godna") by Regulation IV of 1797, Section II. The branding of offenders remained in operation for more than half a century, till it was abolished by Act II of 1849.

In 1797, the English rulers in India ordered the Police Officers that after prisoners have suffered death, the body is to be suspended upon a gibbet on or near the spot where the murder was committed, which was not to be removed by the friends of the offender or others. Leonard Orland (85) points out that, "Early English law relied extensively on physical punishment, as opposed to fine or imprisonment.....Although mutilation ultimately disappeared from English law, the brutality of Anglo-Saxon criminal punishment continued unabated into the eighteenth century. ....Ordinary hangings were frequent, and drawing and quartering, where the hanged offender was publicly disembowled and

his still-beating heart held up to a cheering multitude, was not uncommon."

Long also narrates that in one case the punishment awarded was "to receive one hundred and one lashes every Friday for 3 months." (86) It has already been pointed out that Regulation III, Section 6 of 1812, introduced the innovation that native employees of the Company, such as the watchmen under the Kotwal or the Darogha, were liable to corporal punishment, for gross neglect of duty.

Another feature of greater importance was that prior to the British in India, transportation of prisoners had never been a mode of punishment here, nor it is so in Independent India. The Company officers, as early as 1707, acting as zamindars manipulated to introduce the sentence of transportation and give effect to it, while in their home country, Hinde (87) records, "By 1776, the Government realised that the system of transportation was very wasteful in man power. The preamble of 16 Geo. III, C.43/<sup>sets</sup> that out." Adam (88) writes, "The first Indian penal settlement, then, was Bencoolen, known to the Malay's as Banka-ulu, and is situated to the south-west of Sumatra. Convicts were first transferred from India to this place in the year, or about the year 1707, when the transportation system between England and Australia was inaugurated. When we took Bencoolen in 1685, it was not a very populous place, nor had the population much increased when it became a penal settlement, for which it was considered to be admirably adapted in 1707." The number of convicts at Bencoolen, in 1823, ranged between 800 to 900. (89)

A grave constitutional question is, what right the British, even as zamindars, had to sentence to transportation and execute the sentence on an Indian and thus remove him from his motherland. To quote the English law, in this reference, Blackstone (90) writes, "No power on earth except the authority of Parliament, can send any subject of England out of the land against his will; no, not even a criminal." We shall leave the legal aspect of the issue, but what concerns us is the peno-correctional aspect of the matter. Specifically, what was the peno-correctional press and purpose for which the transportation of prisoners was resorted to ?

In England, "Transportation has never been a punishment under the common law.....In 1717 a special statutory provision initiated a systematic transportation to the New World.....An apparent want of servants, 'who by their labour and industry might be the means of improving and making the said colonies and plantations more useful to this nation,' was another motive for the lawgivers," writes Grunhut (91) adding that the practice of transporting convicts, "came to an end by the American Declaration of Independence in 1776."

Bencoolen was not the only penal settlement to which Indian prisoners were sent. There were several other penal settlements, such as Penang, Malacca and Singapore etc. "In 1825, as already stated, the Bencoolen convicts were transferred to Penang, and later to Malacca and Singapore." (92) In 1825, Singapore was first selected for the transportation of convicts from India. (93) "It was on 10th April, 1825, the first batch of convicts were transferred

from India to Bencoolen, and thence to Singapore. They consisted of 80 convicts from Madras, 74 of whom were for life and 6 on short term sentences. Among these was one female, sentenced for life. On the 25th a fresh batch was received, consisting of 322 convicts from Bengal, 89 of whom were for life, and 33 for short term." (94)

Penang, situated at the northern extremity of the Malacca Straits, was acquired by the British from the Rajah of Kedah in 1785, where the first prison "was situated on the Penang road, and was known as 'Chowrasta Lines'. As the number of convicts from India continued to increase the jail was found to be too small, so another larger jail was erected on the <sup>side</sup> opposite/of the road.....Prior to the transportation of convicts from Bencoolen, Penang had already been made a penal settlement, convicts having been sent there direct from India."(95)

Adan (96) also quotes from the Anecdotal History, "Singapore, Malacca, Penang and Moulmein were the sydney's of India. There are upon an average about 1,100 to 1,200 native convicts from India constantly at Singapore."

This large scale resort to transportation of convicts to penal settlements, out of India, to territories not in Indian possession, after collect-  
 int from different British occupations in India, appears to have been a part of some larger scheme of things, controlled from outside India. Whatever the real motives behind initiating and continuing this practice, one apparent relief to the British administrators in India from the practice was that they were

spared the expenses on maintenance of this large number of prisoners, and the urgent need of providing funds for the construction of bigger and more secure jails to house that increasing number of convicts. "Warren Hastings, as President of the Council, recommended on July 10, 1773, the punishment of transportation outside India for life-term prisoners so that the expenditure on erecting prisons, maintaining the guards and providing the prisoners with food and clothing might be saved. He also suggested the sale of convicts as slave labour." (97)

5.79 TO SUM UP :

(i) THE OVERALL VIEW

The period under view has been a period of great political activity, much beyond the bounds of a trading company. It presents long drawn scenes of ruthless repression, cruel exploitation, merciless extortion, forcible occupation, brutal annexation, show of muscle and power, resulting in the destruction of indigenous trade and industry, large scale unemployment and ruin of economy of the inhabitants of the land. The servants of the Company were not answerable to anyone for detaining anyone in the jail, however flimsy or trivial the charge be. The jails were getting more and more overcrowded. At this time, imprisonment came to be accepted as an accepted form of punishment, more in use than all the other modes of punishment, still available and in use, in India.

A lot of hard work was put in, at the highest level, in chelking out a prison policy and drafting detailed rules for the upkeep and management of jails, which was incorporated in the Bengal Regulations of 1793, which have already been quoted earlier at some length. There

cannot be a better commentary on the utility or futility of the prison policy and programmes executed in India, than the one recorded by John William Kaye, (98-A) in the opening paragraph of his book "Administration of The East India Company", which reads :

"When Mr. Barlow, then Secretary to the Indian Government, drew up the elaborate minute, on which the Bengal Regulations of 1793 was based, Sir William Jones, to whom this important document was submitted, struck his pen across the first three words. The correction which he made was a significant one. Barlow had written : "The two principal objects which the Government ought to have in view in all its arrangements, are to insure its political safety, and to render the possession of the country as advantageous as possible to the East India Company and the British Nation." Sir William Jones, I have said, crossed the first three words. Instead of "the two principal objects", he wrote : "two of the primary objects;" and then he appended this marginal note : "I have presumed to alter the first words. Surely the principal object of every Government is the happiness of the governed." Sixty years have passed since that significant correction was made, and now it is a moot question, whether the practice of the British Government in India, throughout that time, has been in accordance with the words of Mr. Barlow, or those of Sir William Jones. "

(11) MADRAS DEVELOPMENTS : TELESCOPIC VIEW

The inroad of the English Company, had taken a different course of events on the south-eastern coast of India, which ultimately ended in the full fledged independent Presidency of Madras in 1715, after struggling for more than a century. A brief reference is made to elicit the picture of early developments of criminal justice administration, under another set of circumstances and conditions. It was in 1611 that the English established a factory at Masulipatam, which was the principal port of the flourishing kingdom of Golkunda. In 1626, another factory was established at Armagason, which was located a few miles north of the Dutch settlement of Pulicat. (98)

In 1637, Francis Day "secured from the Raja of Chandragiri a grant of territory some three miles in extent from north to south and stretching one mile inland. The Firman empowered the Company to build a fort... to mint its own coinage and 'to govern and dispose of the government of Madraspatam for the term and space of two years', after which the Company would continue in possession subject to payment to the Raja of half the customs duties of the fort." (99) In 1640 the construction of the fort, named Fort St. George, was begun.

In 1646, the King of Golkunda over ran the Carnatic, but, in return for the presentation by the Company of a brass gun, the Company's privileges were continued and confirmed. "Otherwise", reported the agent "hee would not have confirmed our old priviledges formelye graunted us by the now fledd Jentue king." (100) In 1657, after an armed struggle, Mir Jumla, the general of the King of

Golkunda, agreed to leave the Company in possession of Madras on condition of an annual payment of 380 pagodes in satisfaction of all demands. (101) "In 1658, all the settlements in Bengal, Bihar and Orissa, and on the Coromandel Coast, were made subordinate to Fort St. George." (102) In 1672, the payment was raised to 1200 pagodes and it was agreed that Madras 'should be wholly under the English with unrestricted power of commerce, government and justice.' (103)

In 1687, Aurangzeb defeated the King of Golkunda and became the overlord of the Company in Madras, and in 1690, his general Zulfiqar Khan, confirmed the Company's privileges in Madras and Masulipatam. The position now was that "the English power of government was plenary, but the sovereignty of the Emperor was fully recognised by the payment of a substantial quit rent." (104)

"The Moghul Empire now began to disintegrate and the Nizam-ul-Mulk, nominally the Emperor's viceroy, became for all practical purposes independent and the Company had to look to him for its privileges. In the eighteenth century, however, his power also waned.... he became increasingly dependent on the English, and in 1701 a usurping Nawab installed by the English handed over the entire administration to the Company." Griffiths (105) adds, "until the end of the eighteenth century the Company always had an overlord and that for the first hundred years or so the overlordship was a reality.....In 1645, in confirming the earlier grant, the Raja of Chandragiri made the position even clearer, for his grant distinctly stated that 'for the better

managing of your business, we surrender the government and justice of the towne into your hands.' The legal position thus was that as regards Indians, judicial authority was derived from the Company's suzerain, while that over Englishmen rested on the a Act of 1623 which had authorised the Company to grant commissions to its Presidents and Chief Officers for the punishment of offences committed by the Company's servants on land, subject to the provision that in Capital cases trial must be by jury. (106)

In 1665, on a reference from the Agent, the Company Directors clarified that "the respective Governors and Councells established by us in any of our fortes, townes etc., have power to execute judgment in all causes, civill and criminall."(107) "There was, however, the technical difficulty that the Company's Chief Officer in Madras was only an Agent, while the Charter of 1661 had conferred the necessary authority on the Governor and Council of any of the settlements. To remove this difficulty, the Agent was now appointed Governor and George Foxcroft thus became the first Governor of Madras. in 1666."(108)

The south-east sector had powerful kingdoms to contend with. The foreign trading companies kept themselves increasingly militarised and battle ready. For a long time the Dutch, French and English were embroiled in armed conflicts of direct origin, as well as those arising out of lending support to opposing rulers. In their fortified settlements, to maintain law and order, they introduced judicial system on the pattern of their own country, which they tried to force on the Indians

who lived in those settlements. The creation of Madras as an independent Presidency, strengthened their hands. Fine and flogging were the chief punishments with no large scale requirement of prison accommodation. After the Regulating Act of 1733, the Presidency of Madras began to fall in line with the general pattern of English administration for India.

(111) BOMBAY IN THE TELESCOPE

What is now called Bombay City, originally consisted of seven islands, which were ruled by a succession of Hindu dynasties. In 1534, the Portuguese, who had waged naval battles for three years against the fleets of Gujrat and Egypt, acquired Bassein and the seven islands or villages of Bombay from Sultan Bahadur. (109) In 1661, the Treaty of Marriage between Charles II and the Infanta of Portugal provided for the transfer to the English Crown of the absolute sovereignty of 'the Island of Bombay in the East Indies with all the rights, profits, territories and appurtenances whatsoever thereto belonging', subject only to the stipulation that Roman Catholics must enjoy the free exercise of their religion." (110)

Fewcett (111) writes, "Bombay was the first place in India where British justice was administered to native inhabitants by a special Court of Judicature..... When Bombay was delivered to Humphrey Cooke on 8th February 1665, the Islands had been under Portuguese rule for over a century and a quarter, and Portuguese laws and customs had become firmly established.... Cooke apparently at first intended to introduce English

law.....but subsequently he changed his mind." The first prison <sup>established</sup> by the English in India was in Bombay. Fawcett (112) records that a complaint was made against Cooke that the officers appointed were mainly Portuguese, "On this point Cooke in his report of 3rd March 1665 → says: 'In this Island was neither Government or Justice, but all cases of Law was carried to Tannay and Bessin; now it is in his Majesties Jurisdiction there must be a settlement of Justice, according to such Lawes as his Majestic shall think fitt. For the present I have nominated for the whole Island a Tannadar, which is a kind of an under Ceptain; hee had the place afore with 300 serapheenis a yeare, I am to allow as much, I have likewise nominated a Justice of peace, to examine all causes with a Beiliffs, that matters being brought to a head, they may make report to mee, to sentence as I shall see cause; I have likewise nominated two persons to take care of Orphants Estates, one for the white people and one for the Bleck, as it was formerly; with other officers under them. I have enordered a Prison to bee made to keepe all in quietness, obedience and subjection, these people generally being very litigious. I have also nominated two Customers, one at Naym and another at this place."

"This shows that under Portuguese regime the main official at Bombay was a thanadar, a military officer charged with the policing and defence of the place; and Cooke continued this office."

"Bombay being little more than an insignificant fishing village in the time of Portuguese, there was no judicial court in the Island; and cases had to be taken to the Judge (Ovidor) at Thana, or to the higher Court

(Relacao) at Bassein."

That prisons were established and 'Keeper of Prisons' appointed was evidenced in the following account by Wilcox (113) of the opening of the Court on 8th August, when <sup>There was</sup> a ceremonial procession from the Fort through the Bazaar to the Guildhall in the following order :

- \*- Fifty Bendaries in Green liveries marching two by two.
- 20 Gentues                    | each representing their several
- 20 Mooremen                 | cast or sect marching two by two.
- 20 Christians                |
- His Honours horse of State lead by an Englishmen.
- Two trumpets and kettle Drum on horseback.
- The English and Portugal Secretary on horseback carrying his Majesties letters Patents to the Honourable Company and their Commission to the Governor tyed up in scarfes.
- The Justices of the Peace and Council richly hebited on horse back.
- The Governor in his Pallenkeen with fower (four) English pages on each side in rich liveries bare headed Surrounded at distance with Peons, and blacks.
- The Clerke of the Papers on foot.
- The fower Attorneys, or Common pleaders on foot.
- The Keeper of the prisons and the two tipstalls on foot, bare headed before the Judg.
- The Judg on horse back on a Velvet foot cloath.
- His servants in Purple surge liveries.
- Fower Constables with their staves.
- Two Church wardens.
- Gentlemen in Coaches and Pallenkeens.
- Both the Companies of foot (except the main guard) marching in the Reare."

Shafest Ahmed Khan writes, "The day was also celebrated by a distribution of medals, bearing the Company's Arms, which had been specially minted for the occasion, and by a general release of prisoners." (114)

Phillip Woodruff (115) records, "By 1674, when the useful Dr. Freyer wrote his description, a good deal of progress had been made:

"The Government here now is English, the soldiers have martial law. The freemen, common; the chief arbitrator whereof is the President with his Council at Surat; under him is a judiciary and Court of Pleas with a committee for regulation of affairs and presenting all complaints."

".....The justiciary was perhaps more versatile than learned in the law and was not even very consistent to any principles of its own. Captain Nicholles, the first judge, was a retired sea Captain, a freeman of Bombay; he was removed from office for refusing to pay his debts. However, he soon took up his half-pike as Captain of infantry, only to be again in trouble for an offence which " we know not well how to put into such decent terms as may become us to your Honours." He was succeeded by Old Gary.....He is described of a mercurial temperament, and his justice certainly seems to have been unpredictable as summer lightning, for he "condemned a man to be hanged on a Tuesday and the Man suffered according to sentence; but on the Friday after, the poor dead Fellow was ordered to be called before the court but would not comply with the summons."

"Even Dr. John St. John, Doctor of Laws, sent out from England to be judge, sentenced a man 'to lose all that he had in the world and a thousand pounds beside

and to lie in prison at his own charges till the fine was paid."

Fawcett (116) quotes Malebari to say that Bombay Letter of 13 April 1687 "mentions that the priest had been committed prisoner to the jail in the Beazaar by Judge Vaux, who would surely not have done so, if he had strictly followed Sir Josiah Child's Ex oethedra opinion that Acts of Parliament were entirely inapplicable in India."

According to Bombay Public Proceedings there was a jail in Dongri Fort, in which a Mohammedan woman who was convicted of infanticide, was sentenced to imprisonment. (117)

The Bombay Public Proceedings of July 6, 1726 throw light on the then management of jails when it records, "Not being able to get any satisfaction from Jevan or Jeva nor able to recover any money they being wretchedly poor, and subsisting upon the charity of the Prison Keeper, The Court ordered them to be discharged, the boy to serve the Marshall six months to answer the Expenses he has been at in maintaining the Prisoners and to pay his Prison fees." (118)

Jain (119) observes, "Manned by non-lawyers, mainly traders and merchants, the early courts were too much under the control of the executive.....justice was largely discretionary depending upon the notions of equity and fair play entertained by the presiding judge.....The major breakthrough in this situation occurred, after nearly 150 years of the British administration, when the Supreme Court was established at Calcutta in

1774." Uniformity in judicial laws, procedure and machinery was introduced by the Regulating Act of 1773. Sir John Strachey (120) observed, "Before the transfer of the Government to the Crown, the administration of criminal justice was in an unsatisfactory condition." As far as the prison system was concerned, the Select Committee of the House of Commons in 1812 (121) reported, "Under the new system, prisons have been erected, at a great expense, on plans, separating the debtors from the criminals, and prisoners under sentence from those detained for examination, or further evidence."

REFERENCES

## CHAPTER - 5

1790-1833FACTORY OWNS RESPONSIBILITY FOR JAILS

1. Keye, John William : Administration of the East India Company, Richard Bentley, New Burlington Street, London - Second Edition.
2. Aspinall, A. : Cornwallis in Bengal, Manchester University Press - 1931, pp. 114-15.
3. Aspinall : Ibid., p. 63.
4. Bengal Regulations : 3rd December, 1791; Article 33.
5. Bengal : Ibid., Article 34.
6. Benaras Revenue Consultations : 3 December, 1790.
7. Catalogue of the English Records, 1750-1858.  
Preserved in the Historical Record Room of the Government of Bengal, Calcutta - 1922, p. 14
8. Aspinall : op.cit., 1, p. 117
9. Bengal Revenue Judicial Consultations :  
21 September, 1792.
10. Bengal R.J.C. : Ibid., 11 March, 1791.
11. Bengal R.J.C. ; Ibid., 21 September, 1792.
12. Aspinall : op.cit.; 1, p. 118.
13. Aspinall : op.cit., 1, p. 118.
14. Bengal R.J.C. : op.cit.; 8, 12 December, 1792,  
and Bengal Public Letter to Court, 12 Dec., 1792.
15. Jain, M.P. : Outlines of Indian Legal History;  
N.M. Tripathi Pvt. Ltd., Bombay - 1966,  
Second Edition, pp. 208-233.
16. Firminger, W.K. : Editor - Affairs of the East India Company (Being the Fifth Report from the Select Committee of the House of Commons-  
Reprinted-1964, pp. 70-71.

17. Mirzapore (43) State Papers Volume 43 : 5 November, 1795, Vol. 43, p. 7, Available at Government Central Record Office U.P. Allahabad at Regional Archives Allahabad; vide 'A Catalogue of State Papers - N.W.P. - Judicial Series 1795-1814, Vol. I, Part-I.
18. Mirzapore (43) : Ibid., 3 December, 1795, Vol. 43, pp. 15-16, Deputy Registrar to H.T. Coolbrooke Magistrate of Zilla Mirzapore.
19. Mirzapore (43) : Op.cit., 17, December 18, 1795, pp. 21-22.
20. Mirzapore (43) : op.cit., 17, April 2, 1796, pp. 33-34.
21. Mirzapore (43) : op.cit., 17, April 6, 1796, pp. 43-44.
22. Mirzapore (43) : op.cit., 17, December 21, 1796, pp. 129-132.
23. Mirzapore (43) : op.cit., 17, December 28, 1796, pp. 135-36.
24. Mirzapore (43) : op.cit., 17, October 10, 1797, pp. 183-84.
25. Mirzapore (43) : op.cit., 17, November 3, 1797, pp. 181-82.
26. Mirzapore (43) : op.cit., 17, January 11, 1797, pp. 137-38.
27. Mirzapore (44) : State Papers, Vol. 44 : January 22, 1797, pp. 5-6.
28. Mirzapore (44) : Ibid., 27, March 14, 1800, pp. 89-92.
29. Spear, Percival : India - A Modern History : The University of Michigan Press-1961, p. 211.
30. Beharapur State Papers Vol. 23 : August 7, 1806, pp. 47-49.

31. Saharanpur (23) : Ibid., 29, October 16, 1806,  
pp. 59-60.
32. Saharanpur (23) : Ibid., 29, December 4, 1806,  
pp. 63-64.
33. Mirzapur (45) State Papers Volume 45 : March 22,  
1809, pp. 09- 90.
34. Mirzapur (45) : op.cit., 33, March 27, 1809,  
pp. 115-118.
35. Saharanpur (23) : op.cit., 30, April 1, 1809,  
pp. 195-96.
36. Mirzapur (45) : op.cit., 33, November 6, 1809,  
pp. 163-64.
37. Saharanpur (24) State Papers Volume 24 :  
August 16, 1810, pp. 33-34.
38. Mirzapur (46) State Papers Volume 46 :  
September 20, 1810, pp. 115-18.
39. Saharanpur (24) : op.cit., 37, March 30, 1814  
pp. 132-133.
40. Saharanpur (24) : op.cit., 37, March 26, 1814,  
pp. 109-11.
41. Prison Discipline Committee - 1830, p.17 Para 29.
42. Committee - 1830 : Ibid., 41, p.13, Para 17.
43. Committee - 1830 : op.cit., 41, p.13 Para 17.
44. Committee - 1830 : op.cit., 41, p.13 Para 17.
45. Adam, H.L. : The Indian Criminal, John Milne,  
London - 1909, p. 56.
46. Adam : Ibid. 45, pp. 64-67.
47. Laird, M.A. : Bishop Herber In Northern India,  
(Selections from Herber's Journal - first  
published in 1920 in two volumes by Herber's  
wife Amelia; Cambridge University Press -  
1971, pp. 47-48; 79-80.

48. Despatch of the Court of Directors to the Governor General dated March 30, 1831. Parliamentary Papers, House of Commons, Report from Committee, 'East India Affairs (Judicial), 1831-32, Vol. XII, Appendix-A, pp.207-20 .
49. Despatch. : Ibid, 47, pp. 207-200.
50. Despatch : op.cit., 47, Appendix-A, p. 206.
51. Committee 1830 : op.cit., 41, Para 143.
52. Committee 1830 : op.cit., 41, Para 104.
53. Wilson : The Early Annals of The English in Bengal, I, (1895-1917), p. 191.
54. Herbert Spencer : Social Status; Quoted by Pandit Sunderlal in How India Lost Her Freedom; Bombay Popular Prakashan - 1970, p. xxi.
55. Spencer : Ibid., 53, p. xxi.
56. Moust, Fredric J. : Prison System of India; National Association For The Promotion of Social Sciences - London-1972, p. 3.
57. Wolpert, Stanley : A New History of India; Oxford University Press, New York-1977, pp. 201-207.
58. Wolpert : Ibid., 57, p. 214.
59. Despatch : op.cit., 41, p. 206.
60. Majumdar, R.C. and others : An Advanced History of India; Macmillan, St. Martin's Press, New York-1967, Third Edition, p. 003.
61. Edwardes, Michael : British India (1772-1947), Sidwick & Jackson; London-1967, p. 67.
62. Fox, Lionel W. : The English Prison And Borstal Systems; Routledge & Kegan Paul Ltd., London-1952; p. 37.
63. Dodwell, H.H. : Editor, The Cambridge History of India-Vol.VI. S. Chand & Co., Delhi-1950,p.56.

64. Patra, Atul Chandra : The Administration of Justice Under The East India Company In Bengal, Bihar and Orissa; Asia Publishing House, New Delhi-1962, p. 143.
65. Committee-1030 : op.cit., 41, Para-10.
66. Committee-1030 : op.cit., 41, Para-10.
67. Committee-1030 : op.cit., 41, Para-20.
68. Committee-1030 : op.cit., 41, Para-21.
69. Adam : op.cit., 45, p. 23.
70. Bengal R.J.C. : op.cit.; 9, October 5, 1792.
71. Answers dated 30 January, 1802, of H.Strachey Judge Magistrate of Midnapore, to the Interrogatories of Lord Wellesley.
72. Report to S.J. Good, Registrar to the Nizamut Adawlut from H. Strachey, 3rd Judge, No. 2, Bareilly Division, 1805, dated 25 January, 1805.
73. Patra : op.cit., 63, p. 143.
74. Adam : op.cit., 45, p. 23.
75. Committee-1030 : op.cit., 41, Para-24.
76. Committee-1030 : op.cit., 41, Para-27.
77. Committee-1038 : op.cit., 41, Para-120.
78. Patra : op.cit., 63, p. 143.
79. Committee-1838 : op.cit., 41, Para-56.
80. Dodwell : op.cit., 55, Chapter-II, p. 56.
81. Bishop Herber : op.cit., 40, p. 88.
82. Dharam Bhanu : History and Administration of the North-Western Provinces; Shiva Lal Agarwal & Co. Pvt. Ltd., Agra-1957, pp. 290-291.
83. Jain : op.cit.; 15, p. 50.
84. Long : Selections from Unpublished Records of Government, Vol. I, pp. 224 & 298 (1869); Quoted by Jain, op.cit., 14, p. 49.

85. Orlando, Leonard : 'Prisons : Houses of Darkness'  
The Free Press, Macmillan Publishing Co.,  
New York-1975, pp. 14-15.
86. Long : Ibid., 47, p. 178.
87. Hinde, R.S.E. : The British Penal System 1773-1950;  
Gerald Duckworth & Co. Ltd.-1951, p. 40.
88. Adam : op.cit., 45, p. 46.
89. Adam : op.cit., 45, p. 50.
90. Blackstone, W. : Commentaries on the Law of  
England, 4th Edition, Oxford-1770; 1, p. 137.
91. Max Grunhut : Penal Reform; Clarendon Press  
Oxford-1948, pp. 73-74.
92. Adam : op.cit., 45, p. 51.
93. Adam : op.cit., 45, p. 53.
94. Adam : op.cit., 45, p. 67.
95. Adam : op.cit., 45, pp. 56-57.
96. Adam : op.cit., 45, p. 72.
97. Dharam Bhanu : op.cit., 81, p. 63.
- 98-A. Keye : op.cit., 1, pp. 1-2.
- 98-B. Majumdar:op.cit., 60, p. 629.
99. Griffiths, Sir Percival : To Guard My People;  
Ernest Benn Ltd. London-1971, p. 25.
100. Foster, W. (Ed.): The English Factories In India;  
1637-41, pp. 156-8.
101. Foster : Ibid.,100, 1655-60, p. 174.
102. Majumdar : op. cit.;60, p. 630.
103. Love, H.D.: Vestiges of Old Madras. I.p.345;Quoted  
by Griffiths:op.cit.,99,p. 25.
104. Keith, A.J.Berriedale : A Constitutional History  
of India,1600-1935;First Ed.-1936,p.24, Quoted  
by Griffiths:op. cit.,99, p. 26.
105. Griffiths : op. cit.,99, pp. 26-27.
106. Keith : op. cit., 104, p. 45.

07. Foster : op. cit., 100; 1665-67, p. 252.
08. Griffiths : op. cit., 99, pp. 27-28.
09. Griffiths : op. cit., 99, p. 37.
10. Malebari, Phiroze B. M.: Bombay In The Making;  
T. Fisher Union, London-1910, p. 90.
11. Fawcett, Sir Charles : The First Century of British  
Justice In India; Clarendon Press Oxford -  
-1934, pp. 2-3.
12. Fawcett : Ibid., 111, pp. 3-4.
13. Khan, Shafast Ahmed : Anglo-Portuguese Negotiations  
Relating to Bombay, 1660-70; Oxford-1922,  
pp. 495-9; Quoted by Fawcett: op. cit., 111, pp. 52-53.
14. Khan : Ibid., 113, p. 499.
15. Phillips Woodruff : The Men Who Ruled India, Vol. II-  
-The Guardians; Alden Press London-1953-55,  
pp. 58-59.
16. Fawcett : op. cit., 111, p. 137.
17. Bombay Public Proceedings; Consultations of 4 Dec.  
1705, Vol. #2, p. 103
18. B.P.P.: Ibid., 117.
19. Jain : op. cit., 15, p. 2.
20. Strachey, Sir John : India Its Administration and  
Progress; Reprint-1977, p. 92; Quoted by T.S.  
Batra : Criminal Law In India, Metropolitan  
Book Co. Pvt. Ltd. New Delhi-1981.
21. Birringer : op. cit.; 16, p. 68.