

PRISON AND CONVICT LABOUR IN COLONIAL AND POSTCOLONIAL INDIA

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CERTIFICATE

This is to certify that the thesis entitled *Prison and Convict Labour in Colonial and Postcolonial India* submitted by Jyoti Dineshrao Bhosale (07 SPPH01) for the award of the degree of Doctor of Philosophy in Political Science is a bonafide work carried out by her under my supervision and guidance. This thesis has not been previously submitted in part or in full to this or any other university or institution for the award of any degree or diploma.

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I, hereby declare that this thesis entitled “Prison and Convict Labour in Colonial and Postcolonial India” submitted by me under the guidance and supervision of Prof. K C Suri is a bonafide research work. I also declare that it has not been submitted previously in part or in full to this University or any other University or Institution for the award of any degree or diploma.

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Chapter 1

Prison and Convict Labour in Colonial and Postcolonial India

By making a historical study of convict labour policy in India, this study is primarily an attempt to identify and analyze the broader relations of punishment of imprisonment with the changing requirements of state power and economy. It also examines the crucial role of convict labour in the operation of imprisonment itself. For this, it will largely focus on imprisonment as imposed in British colonial India, as that is when imprisonment along with labour was first introduced as the most common form of punishment. Thereby, the study examines convict labour policy and the major shifts within it. It will try and identify the colonial rationality / rationalities that guided these shifts and analyze their influence on the nature of imprisonment. Finally, this thesis discusses postcolonial Indian state's approach to imprisonment and convict labour policy and look for the colonial continuities and discontinuities within it. Thus, by analyzing the evolution of convict labour policy and the major shifts within it, the study also aims to reflect on the nature of the state, both colonial and postcolonial.

In the historical narration of the convict labour policy as it evolved in British India, the study will historicize the convict labour policy as practiced in Great Britain itself. This will provide an account of the changing nature of state power and economy and its effect on convict labour policy in the metropolis, and its subsequent extension in the Indian colony. It will also help in identifying the similarities and differences in the convict labour policy between the metropolis and the Indian colony and will give explanations for the same.

1. Studying prison and convict labour

Convict labour plays a central role in imprisonment as it is largely around this labour that modern penal ideologies of deterrence and/or reformation are worked out. Also, as labour, both punitive and non-punitive, forms a major component in the daily schedule of the prisoner, it acts as an instrument which helps in maintaining discipline and thereby renders punishment more manageable. Labour itself is also one of the forms of punishment for breach of prison rules (including for lack of labour). Apart from helping the prison institution to sustain itself, convict labour acts as a cheap reserve of labour power which is readily available for appropriation by the state. In fact, as the utilitarian

philosopher Jeremy Bentham argued, one of the reasons for punishment evolving into less corporal form to that of imprisonment had to do with the preservation of the labour power of the individual. Therefore it was considered that keeping the convict inactive in prison was an expensive waste of productive power (Semple 1993: 27). If convict labour was identified as a cheap reserve of productive labour, then such labour could be used in several productive/exploitative ways in the colonies. That labour plays such a crucial role in the functioning of the prison, and that it was imposed on the Indian colony, makes the evolution of convict labour in India an interesting area of study.

Colonialism, for its expansion and sustenance depends, on building effective strategies to harness the labour power of the subject population. Though the colonial regime in India, introduced modern laws towards the abolition of slavery, to meet its own contingencies of production and the demands of metropolitan capitalism, the colonial state allowed and promoted various forms of bondage. Not only were laws formulated for the recruitment of 'statute labour' to perform public works, but also low-paid workers were recruited as personal servants of colonial officials. Use of coercive labour was also common in times of military urgency or natural calamity. Similarly, convict labour, another form of coercive labour operating through the ideologies of modern punishment, could be used by the colonial regime in various ways. This study in detail examines in what ways convict labour was used to satisfy the political and economic imperatives of British colonialism.

The colonial attitude towards convict labour in India is enmeshed in the introduction of modern institutions such as that of a centralised state, law, punishment and wage labour to India's traditional social setting where punishment was imposed by diverse authorities and it was more corporal in nature, and the idea of work/ labour was rather related to notion of status attached to communities (Robb 1993: 7-11). Also, as Sudipta Kaviraj (2000) argues, these modern institutions were introduced in India piecemeal. Thus one can speak of sequential modernity in colonial India which can be distinguished from the concurrent development of modern institutions in the West. More importantly, this form of punishment was introduced in a society which saw very few of the western modern developments such as industrialization and values of citizenship, liberty, right to private property etc. Therefore, convict labour in British colonial India stood a good chance of acquiring a different form, from that of the experiences of metropolitan modernity which witnessed a concurrent development of modern institutions. Moreover, because the natives were subjects, unlike citizens of

the metropolitan modern, who on several occasions challenged the growing influence of liberalism, it is interesting to explore whether in the Indian colony there were instances of experimentation in more liberal reforms in punishment (specifically in convict labour) than in Great Britain itself.

Recent labour historians such as Dipesh Chakravarty (1989), Rajnarayan Chandavarkar (1994) have studied how primordial identities such as caste, religion and region played an important role in the constitution of free labour, right from the beginning of establishment of modern industries in 19th century India. As stated earlier, labour is important to the punishment of imprisonment and as caste was the basis not only for the division of labour but also for the division of labourers in India, this thesis will attempt to study, how from the days of introduction of imprisonment as a modern and superior form of punishment based on utilitarian and individual principles, the colonial regime dealt with the primordial entity of caste. Kaviraj's (2000) idea of 'sequential modernity', will help in understanding the existence of the pre-modern form of division of labour within the modern form of punishment based on labour. It will further probe whether shifts in the political rationalities of the colonial regime which lead to shifts in convict labour policy affected the colonial stance on caste *vis a vis* convict labour.

Also, as penal institutions reaffirm state power and represent its repressive face, the study of the prison and specially convict labour deserve more attention. By doing so, the study seeks to draw attention to certain key, neglected or undeveloped themes within Indian penal history. Through the study of convict labour, this study in addition, hopes to offer a fresh and illuminating way of conceptualizing punishment as an object of political inquiry, mainly by extending the scope of the inquiry beyond the institution of the prison proper to the legal, political, economic, and cultural (caste) dimensions of punishment, and cast new light upon punishment's place in the broader political history of India. This study mainly refers to convict labour policy as practiced in the Central Prisons where mostly the convicts sentenced for a long term were imprisoned, and not so much of the District or other local prisons where mostly short-term convicts were confined.

1.2 Imprisonment and convict labour: Theoretical perspectives

The questions relating to imprisonment and convict labour can be approached from different perspectives including the Utilitarian, Marxian, Foucauldian, Postcolonial and the Political Economy perspective. This section will review these perspectives and highlight their central arguments.

1.2 Utilitarian

Modern punishment of imprisonment along with convict labour is heavily influenced by the Utilitarians especially Cesare Beccaria and Jeremy Bentham. Beccaria on the legitimacy of punishment argued: “Every act of authority of one man over another, for which there is not an absolute necessity, is tyrannical. It is upon this then, that the sovereign’s right to punish crimes is founded; that is upon the necessity of defending the liberty of all entrusted to his care, from the usurpation of individuals; and punishments are just in proportion as the liberty, preserved by the sovereign, is sacred and valuable.....The end of punishment is no other than to prevent the criminal from doing further injury to society, and to prevent others from committing the like offence. Such punishments therefore and such a mode of inflicting them, ought to be chosen as will make the strongest and most lasting impression on the minds of others, with the least torment to the body of the criminal (Beccaria as cited in McConville 1981: 80-81).”

Apart from such principles of deterrence, generally by believing that the greatest happiness of the greatest number should be the legislator’s maxim and by assuming human actions to be determined by pleasure and pain principle, Beccaria anticipated Bentham. Beccaria’s *Dei delitte e delle pene* (The Social Contract) was first published in 1764 (English translation came up in 1767). He is also important because his political philosophy coincided with that of Locke and the prevailing post-Revolution orthodoxy. Bentham too, in his philosophy derived largely from Locke, rejected the idea of the original sin, and with it the idea of incorrigible criminal. For Bentham criminal was capable of shame and remorse which could be awakened by scientific application of pain. New punishment aimed to ‘correct’ criminal (which does not necessarily mean ‘reform’) through combination of segregation, surveillance, labour and medicine. Criminality was reasoned as a product of socialization and not innate (Seam McConville 1981 and Sen 2000).

For Bentham, retributive punishment added one evil to another. He held, “... punishment when considered in itself appeared base and repugnant to all generous sentiments is elevated to the first rank of benefits when it is regarded not as an act of wrath or vengeance against a guilty or

unfortunate individual who has given way to mischievous inclinations, but as an indispensable sacrifice to the common safety (Bentham 1781).” On the proportion between punishments and offences, Bentham, like Beccaria, maintained: “The main objective was to prevent as far as possible all sorts of offences. But if a man must need commit an offence, the next object is to choose always the least mischievous of two offences that will either of them suit his purpose. This is followed by disposing him to do no more mischief than is necessary and whatever the mistake be which it is proposed to prevent, to prevent it as cheap a rate as possible (Bentham 1781)”.

Thus, what one can see here is that in contrast to Beccaria, Bentham was subjective in his approach to crime and punishment. Though his ideas were also rooted in the pain/pleasure principle, for Bentham, the intensity of pain or pleasure was not necessarily related directly to the strength of their external causes, but was mediated by a number of individual factors such as age, sex, strength, bodily imperfections, mental state, moral sensibility, financial circumstances and so on. He stressed on deterrence and in common with Beccaria, he subjected deterrence to the rule of parsimony. His penal regime insisted on three principles-

- a) The rule of lenity: the ordinary condition of a convict doomed to forced labour for a length of time, ought not to be attended with bodily sufferance, or prejudicial, or dangerous to health or life.
- b) The rule of severity: saving the regard due to life, health, and bodily ease, the ordinary condition of a convict doomed to a punishment which few or none but individuals of the poorest class are apt to incur, ought not to be made more eligible than that of the poorest class of subjects in a state of innocence and liberty.
- c) The rule of economy: saving the regard due to life, health, and bodily ease, proper instruction and future provision, economy ought, in every point of management, to be the prevalent consideration. No public expense ought to be incurred, or profit or saving rejected, for the sake either of punishment or of indulgence (Bentham 1781).

These utilitarian principles of Bentham identify convict labour as a crucial mechanism for producing the same effect. Bentham says, “Upon examining laborious punishment, we shall find it to possess the properties to be wished for in a mode of punishment, in greater perfection, upon the whole, than any other single punishment. Labour could be converted to profit, even if combined with the expense of imprisonment, since good management could make the profit equal to the expense; it is equable in

that it could be accommodated to different individuals and circumstances; it could be varied; it could lead to information, first as it tended to prevent intercourse between malefactors and secondly as it encouraged the habit of industry; it had an element of analogy as many crimes were the product of idleness; and prisons themselves could be exemplary (Bentham as cited in Semple 1993: 27)."

Bentham, in his initial writings proposed solitary confinement and hard profitable labour. However within a few years he changed his views on hard labour. Solitary confinement was spirit breaking and forced labour, he accepted, was not popular as it was too easily confounded in the public mind with slavery. He held, "The labour obtained by the force of fear is never equal to that which is obtained by the hope of reward. Constrained labour is always inferior to voluntary labour; not only because the slave is interested in concealing his powers, but also because he wants that energy of soul upon which muscular strength so much depends (Semple 1993: 27-28)." In the Panopticon, Bentham devised schemes which would ensure that prisoners would be inspired by the promise of reward, and perhaps he hoped that they could thus be enthused with 'energy of soul'. Such schemes had to be in tandem with his principle of commensurate punishment.

Bentham relied heavily on the characteristics of the Panopticon. The central feature of this design was dictated by his theory of psychopathology. As pain and pleasure were the determinants of actions, those whose actions did not confirm to these principles were considered to be radically deficient, unable to perceive, or indifferent to, the consequences of their conduct. Such action made these people very odd and dangerous. Bentham held, "Delinquents are a particular race of beings, who required unremitted inspection. Their weakness consists in yielding to the seductions of the passing moment. Their minds are weak and disordered, and though their disease is neither so clearly marked nor so incurable as that of idiots and lunatics, like these they require to be kept under restraints, and they cannot, without danger, be left to themselves. So the most suitable and logical building was one in which they would always be totally visible. The chief merit is the ease with which control and containment could be affected. It possessed the fundamental advantage of the apparent omnipresence of the inspector combined with the extreme facility of his real presence (Bentham as cited in McConville 1981: 118)."

2.2 Marxist

Although for Marx and Engels crime and punishment was not of central interest, they have discussed on this theme in some of their writings. Marx locates crime within the transformation from independent, petty commodity production to capitalism which entailed the taking of land, the criminalizing of the conditions of survival for those thrown off the land, and the violation of criminal law by people who had no choice but resorting to crime for their livelihood. This restricting of economic relationship led to the legislation during the 16th through 18th centuries against vagrancy, begging, idleness and petty forms of theft aimed to prevent all these alternatives to wage labour. Criminal law therefore was deployed to help give birth to a radically new form of organization; capitalism (Marx 2010: 896 and Greenberg 1993: 38-41)

Engels in his *The Conditions of the Working Class in England* published in 1845 says that industrialization had so dehumanized the workers that virtually only one human faculty was left to them: the capacity to rebel. He characterizes crime as a form of rebellion, a refusal to conform to the established order. He saw crime as the result of the atomizing effect of the capitalist economy wherever everybody sees each other as a potential competitor, an enemy which results in a social war (Greenberg 1993: 41-43).

Marx in his *Critique of the Gotha Programme* objected to the Programme's stated objective for regulating prison labour to protect the working class and to cope with the competition to which free labourers were exposed when prison labour was made available to manufacturers at low cost. Marx states that the socialists should have clearly said that they did not oppose humane treatment of prisoners, including the right to engage in productive labour- an activity that might help to rejoin the working class in a lawful occupation after their release. "It should have been clearly stated that there is no intention from fear of competition to allow ordinary criminals to be treated like beasts and especially that there is no desire to deprive them of their sole means of betterment, productive labour. This was surely the least one might have expected from the socialists", he held (Marx 1875: Appendix).

Studies which subscribe to the Marxian ideology not only argue that the nature of crime and punishment reflect the nature of economy, but also say that convict labour is one such crucial aspect of the punishment of imprisonment around which such influences are most prevalent. The studies of

Georg Rusche and Otto Kirchheimer (2003) draw clear interconnections between penal institutions and the economic requirements of modes of production. They argue that when demand for labour is more and supply is less, as was the case in the mercantilist period, the state and its penal institutions are less ready to dispense with the valuable resources which their captives represent, and are more likely to put their offenders to work in one form or the other. However, it is important to note that with the emergence of imprisonment as punishment, even in times of excess labour supply, physical exclusion of the prisoner does not seem necessary. This is because imprisonment effectively aids the economy as it not only succeeds in isolating the criminal from the normalised society but also generates conditions of engaging convict labour in productive/unproductive activity.

Michael Ignatieff (1978) points out that in US, because of labour shortage in the North prisoners were put to work on manufacturing goods or contracted to private employers or public works. This was curtailed at the end of the 19th century because free workers and their unions began to object to the competition and then prisons started producing goods for prison or governmental use rather than for the free market. Therefore he says that the determinants were fiscal forces and indirect economic forces rather than any immediate productive concerns.

2.3 Foucauldian

The latest development in the study of punishment is that of Foucault (1979) who analyses modern punishment through the lens of discipline. In his *Discipline and Punish: the Birth of the Modern Prison* he makes a structural analysis of power which he calls discipline through which the goals of modern punishment are achieved. The study of power through discipline results in highlighting points where power reaches individuals and influences them. This he calls the micro-physics of power and claims that this explains the essence of power more clearly than conventional political analysis.

Foucault is more concerned with power and its materialized forms— a matter of structural relationships, institutions, strategies, and techniques rather than with concrete politics and the actual people they involve. Power, therefore in his analysis, is all pervasive and not limited to the formal political, and also is productive in effect, rather than repressive. Therefore the Foucauldian analysis of punishment through the disciplinary regime, unlike the Marxian critique does not solely depend on the economic rationality of power. As for Foucault, that would happen at the cost of its

interesting specificity, its minute mechanisms and intricate constitutions. Thus it is also argued that Foucault attempts to show the relative autonomous materiality that the disciplinary mechanisms articulate and exhibit, and which could in fact perform in diverse kind of political regimes (Macdonald 2002: 281-282).

Nicos Poulantzas (1980) critiques Foucault's notion of power. He says, "For Foucault, the power relation never has any other basis than itself: it becomes a pure situation in which power is always immanent and the question what power and power to do what appears as a mere obstacle". Power is not identified with either capital or labour; its dislocation from capital obscures the class domination of capital over labour. Such conceptualization of power also has political ramifications. Further Poulantzas argues, "...this leads Foucault into a particular logical impasse from which there is no possible escape: his famous resistances, which are a necessary element of every power situation, remain strictly gratuitous assertions in the sense they are given no foundation: they are a pure affirmation of principle...in fact, no kind of resistance is possible if we follow Foucault's analyses. For if power is always there, if every power situation is imminent in itself, why should there ever be resistance? From where would resistance come, and how would it even be possible (Poulantzas 1980:149)?"

For the study of modern punishment Foucault uses three major interrelated concepts– power, knowledge and the body. Exercise of power depends on the knowledge of the target or field of operation and therefore the relationship between knowledge and power is intimate and internal which implies and increases the other. Such power operates through individuals rather than against them and it helps constitute the individual who is at the same time its vehicle (Foucault 1979: 137-139).

Foucault also rejects grand narratives (e.g., Marxist) of knowledge, for the study of micro-mechanisms of power. He instead focuses on more localized (decentralized) forms of knowledge which he calls subjugated knowledges (Foucault, 1980). Subjugated knowledges he says have been "buried and disguised in a functionalist coherence of formal systemisation" (Foucault, 1980, p. 81). Certain forms of knowledge (e.g., naive, popular) are subjugated because they have been disqualified as inadequate in the traditional hierarchy of knowledge. Foucault used the genealogy metaphor to refer to tactical methods of revealing the struggles of different subjugated knowledges. Genealogies reveal "the claims to attention of local, discontinuous, disqualified, illegitimate knowledges against the claims of a unitary body of theory which would filter, hierarchise and order

them in the name of some true knowledge and some arbitrary idea of what constitutes a science and its objects” (Foucault, 1980, p. 83). These genealogies, in stark contrast to traditional divisions of knowledge, reveal everyday struggles, and the relationship between truth and power. Foucault cites the example of the prison complex and says prison theorists are concerned with the motivations of criminals and how they can reform them to rid the world of criminality, the actual day-to-day existence of prisoners and what happens in prisons is ignored.

Foucault talks about imprisonment as something that takes punishment away from inflicting pain on the visible physical body to a more abstract level – to the soul, the heart, the thoughts, the will, the inclination etc. Never-the-less, he says, the infliction of pain on the remains important, as mere loss of liberty has never by itself functioned as punishment. The body actually becomes a crucial intermediary for the operation of this form of punishment, as apart from curtailing liberty there is rationing of the body through forced labour, sexual deprivation, dietary restrictions, corporal punishment, solitary confinement, etc. The older forms of cruel torture on the physical body or passing pain are now transformed into prolonged pain as reflected in days of hard labour which is found to be more effective on the guilty (Foucault 1979: 15-16).

In pre-modern times Foucault says, institutions such as forced labour mastered the body from the outside, but the modern institutions aim to have their command internalized, producing individuals who habitually do what is required without the need of further external force. This self controlled body is brought about by exerting an influence over the soul which in turn directs behaviour. Body, therefore, is the ultimate material which is seized and shaped by all economic systems of production, political institutions of domination and socialization and penal institutions. They require that bodies be mastered and subjected to training so as to render them docile, obedient and useful to a greater or lesser degree (Foucault 1979:139).

With regards to prison labour Foucault says:

Work is neither an addition nor a corrective to the regime of detention: whether it is a question of forced labour, reclusion or imprisonment, it is conceived by the legislator himself, as necessarily accompanying it. But the necessity involved is precisely not the necessity of which the 18th century reformers spoke, when they wished to make imprisonment either an example for the public or a useful reparation for society. In the carceral regime the link between punishment and reform is of another type.... It is intrinsically useful, not as an activity of production, but by virtue of the effect it has on the human mechanism. It is principle of order and regularity; through the demands that it imposes, it conveys, imperceptibly, the forms of a rigorous power; it blends bodies to regular

movements, it excludes agitation and distraction, it imposes hierarchy and a surveillance that are all the more accepted, and which will be instructed all the more deeply in the behavior of the convicts, in that they form part of its logic: with work 'the rule is introduced into a prison, it reigns there without effort, without the use of any repressive and violent means (Foucault 1979: 240-242).

Foucault highlights some of the problems of penal labour in modern penal history. He says that around the eighteenth century workers feared the undermining of their wages by competition from cheap prison labour. But he questions whether the issue of penal labour was not orchestrated precisely so as to constitute this hostility between delinquents and workers which was of such importance for the general working of the system. What worried the bourgeoisie, he says, was the kind of amiable, tolerated illegality that was known in the eighteenth century. Also he points out that in the nineteenth century, workers' feared and hated criminals as they were being used against them, in social and political struggles, as agents of surveillance and infiltration, preventing and breaking strikes, and so forth. But once capitalism had physically entrusted wealth, in the form of raw materials and means of production, to popular hands, it had become absolutely essential to protect this wealth. Because industrial society required that wealth be directly in the hands, not of its owners, but of those whose labour by putting that wealth to work, enables a profit to be made from it, to protect such wealth Foucault argues that prisons manufactured delinquents, as delinquents turned out to be useful, in the economic domain as well as the political (Foucault 1972: 39-42).

2.4 Postcolonial¹ studies on convict labour

I am using the term 'postcolonial' more in the literal sense rather than the way it is used in social theory as only a few studies on the penal system in India such as that of David Arnold's (1994) reflect such usage. David Arnold's study looks at how the prison system that emerged in the late eighteenth and early nineteenth centuries in India grew out of the British preoccupation with the extraction of revenue and the maintenance of 'law and order'. In this sense the prison was a strict material adjunct to a colonial system of economic exploitation and political control. It also helped to draw a line of demarcation between a colonial rule, which saw itself as uniquely rational and humane, and the 'barbarism' of an earlier age or 'native' society (Arnold 1994). In one of my initial chapters, I will be probing in what specific ways convict labour supported the mercantilist rationality of the colonial regime.

¹ Note: I am using the term 'postcolonial' more in the literal sense rather than the way it is used in social theory as only a few studies on the penal system in India such as that of David Arnold's (1994) reflect such usage.

David Arnold's reference to convict labour in British colonial India points out that apart from being concerned with mobilizing scarce labour, it also illustrates the growth of jail industries in the 20th century (Arnold 1994). This he feels was a rather remarkable development for a regime which was formally committed to laissez-faire and which otherwise denied aid to industry. Also this was an indication for him of the higher priority colonialism gave to prison as a 'school of industry' than as a 'house of correction'. What interests me, apart from identifying the possible reasons for the growth of jail industries, is a detailed examination of the higher priority given to the 'school of industry' idea. This study reveals that even though initially the colonial regime developed prison industries oblivious of the private – and in fact that is what distinctly marks its political rationality as colonial – very soon it started developing strategies of accommodating the prison industry with the private, under pressure from its own private industry. What is more interesting is that the underlying links between convict labour and industry largely remain unaltered even after the Indian Jail Committee of 1919-1920, when the official subscription to the ideas of reform and rehabilitation, with which the idea of prison as a 'house of correction' can be said to have begun.

R N Datir (1978) studies convict labour more from a historical perspective focusing on the State of Maharashtra. He tries to understand how the aims of prison labour reflect the dominant theories of punishment, and they change in accordance with the shifts in theories of punishment (Datir 1978). However though his analyses are useful in understanding the prison labour policy in detail, the study is wanting in terms of locating convict labour in broader political and economic history of India. Also, though he identifies prison industry not competing with the private industry as one of the principles of prison labour, he says that that question was not serious in the Indian context. My study reveals how this was not the case. Instead right from the days of emergence of the modern prison in India, prison industry was much contested from the existing European industries and later from the native industrial bodies as well.

Within labour history, the study of convict labour in colonial India, largely described as subaltern labour, has received some attention in recent times. Chitra Joshi (2009) examines convict labour as practiced in the first half of 19th century in British India where convicts were, by and large, engaged in extramural (outside prison premises) labour as a continuation of coercive labour. This, she says, was happening by the direct connivance of the state which otherwise claimed to be moving from a punitive to a more protective regime, through several labour (factory) laws including the abolition of slave labour

(Joshi 2009). Though interesting and useful, because her study is limited to the nature of convict labour as imposed in the first half of 19th century, it sticks to the framework of looking at convict labour within the transition from the feudal to the modern. As this study enterprises to critically review convict labour for the entire colonial period (including postcolonial), it tries to show the role convict labour plays during the process of the consolidation of free market economy as well.

Other important studies on convict labour in British India are in the context of transportation of convicts to the Andaman Islands. Satadru Sen (2000) and Aparna Vaidik (2009) not only talk of convict labour in terms of exploiting scarce labour but as Satadru Sen puts it, its goal was ‘to “reclaim” the tribal population of the islands, and to bring them however gradually and incompletely, into the political and social and economic orbit of the settlement(2000:89)’. When imprisonment was made the most common form of punishment in the early 19th century by the colonial regime in India, the ideology and practice of work were made central to this system. Punishment was inflicted through the imposition of labour which at the broader ideological level connoted the separation between work and idleness, with the former aligned with morality, civilization and law, and the latter with barbarism and vice (Sen 2000: 89-90, Vaidik 2009: 57). This study provides us with yet another fascinating account of the unfolding of convict labour through the punishment of transportation, in the overall colonial context wherein the application of colonial power was being directed towards reorganizing the conduct or habits of people themselves. A detailed study on the convict labour policy in the punishment of imprisonment as practiced in British colonial India, as I intend to do, will further enhance our understanding of the colonial rationality that was then being put in place.

Murali Karnam (2004) has looked at how there is a correlation between prison as a legal and administrative system on one hand and as a reformatory institution on the other. This he says is a constant source of tension. Reference to convict labour in his study comes as an overall review of convict labour policy in colonial as well as in independent India. He speaks about how through the act of punishment the colonial state extracted cheap labour from the native subjects. Also he says that though the postcolonial state invoked reformation, but as did not depend on prison labour and as it also took up the task of industrial production in the name of public sector, it hardly paid any attention to the process of providing work and education to the prisoners except at a token value (Karnam 2004). Though useful in terms of the evolution of the convict labour policy, his analyses does not throw enough light on its

rationale and the location of punishment and convict labour policy in the changing nature of the colonial state and economy.

Murali Karnam (2004) in his analysis of convict labour also says that in 1920 after the Indian Jails Committee's stress on reformation, the colonial state turned a deaf ear to the concerns of the private entrepreneurs' of the prison made products competing with their own products. However, it is important to question whether the question of prison made products competing with the private products continued to be raised even after the post reformation policy. Also, he seems to suggest that the postcolonial state, since it engaged in a mixed economy, did not pay much attention to prison industries. But, it is important to further probe whether apart from the reason cited by him there were other reasons for the lack of development of prison industries in the postcolonial state.

C Venkatesan (1981) mainly studies prison administration after the reformation policy of 1920. It says that the 1920 Indian Jails Committee Report laid down that the aim of prison administration was to reform criminals and bring them back to public life. The 1919 Montague Chelmsford Reforms provincialised jail administration but treated it as a reserved subject to be administered by the Governor General in Council and not as a transferred subject under a minister chosen from the Legislative Council. The Government of India Act 1935 did away with this indigenous device known as dyarchy, removed all distinctions between reserved and transferred subjects in provinces and facilitated the growth of the jail department on popular lines. In one of the chapters of his thesis he studies in detail the nature of convict labour as practiced in Madras Presidency. He studies how the Government of Madras though encouraged intramural convict labour and installed modern machineries for the same, and how the Madras Government was reluctant to totally give up extramural labour (Venkatesan 1981). In another report, C Venkatesan (2006) studies the prison administration in Tamil Nadu in general. With regards to convict labour, he looks at the development of agro-based industries as more number of prisoners were engaged in agriculture than in any other profession.

B Shalini Devi (1966) looks at the history of crime and punishment in the Presidency of Madras in 19th century and says that the British when they started administering justice accepting the existing punishment such as that of mutilation, torture, branding, tasheer etc. She also points out that for a long time prison administration in India was not uniform and each province followed a system of its own.

Uniformity was introduced only in 1894 with the passing of the Prisons' Act. Her study also includes a historical account of the evolution of convict labour policy in 19th century Madras Presidency.

The studies of C Venkatesan and Shalini Devi mentioned above, focus on prisons and convict labour policy as practiced in Madras presidency. They study the historical evolution of convict labour policy. However, not only are these studies limited to the Madras Presidency, but overall, they are found wanting in terms of looking at the colonial prison and the convict labour policy from a political economy perspective as I intend to do.

2.5 Political Economy

Another approach, in understanding punishment of imprisonment and convict labour is the Political Economy approach. This approach locates imprisonment in the interactions between the state and the economy and studies how the nature of convict labour reflects these interactions. As such there are points where the Political Economy Approach intersects with other perspectives and approaches especially Utilitarian and Marxian. Some of the studies cited in the Postcolonial approach also consider the influences the state and economy on punishment, though they might not articulate their arguments in the same frame.

In the context of colonial South Africa, Florence Bernault (2003) who uses the political economy approach points out that there the prison emerged in the beginning of the 19th century, closely following the prison reform movement in Europe and the Americas. Even before colonial powers were in full control of territories, early prisons were erected in all European Garrisons and administrative outposts. Thus, she says, the penitentiary began to emerge during the European conquest much before it had imposed full control over the colonies. In fact it served as a crucial tool to carry on colonial wars against Africa. Contrary to the ideal of reformation in Europe, the colonial penitentiary did not prevent colonizers from using archaic forms of punishment such as corporal sentences, flogging, and public exhibition. More importantly, colonial power put considerable emphasis on the economic ends of the prison and its role in the organization of forced labour. Also, the principle of amending the criminals was considerably altered in the colonies and largely submerged by a coercive doctrine of domination over Africans, seen as fundamentally delinquent race (Bernault 2003). This study, located in the colonial context, provides important leads, especially in terms of looking at the role of convict labour in

furthering the colonial agenda, studying the difference between punishment in the colony and the metropolis, the role of racial superiority in inflicting punishment.

For Alex Lichtenstein (1996) the development of the convict lease system in post-bellum Southern America was indicative of a system of labour recruitment, control, and exploitation which particularly suited to the political economy of a post emancipation society. Rebecca McLennan (2008), in her narration on the history of the emergence of the American penal state focuses on studying the centrality of productive labour both as an activity and as an element of penal ideology. She examines the reinvention of legal punishment in the 19th century as a species of involuntary servitude and the working of state power in and around the penal systems of the 19th and 20th century. Her important contribution is in revealing how in the age of Jackson the private contractors worked hand in glove with the state and exploited convict labour for private gain. However by the 1880s as a growing mass of Americans came to regard the prison labor system as immoral and unbefitting of a free republic as it fostered torture and other abuses, degraded free citizen-workers, corrupted government and the legal system, and stifled the supposedly ethical purposes of punishment, there was a shift to state-use system of convict labour.

1.3. Methodology and chapterisation

1.3.1 Methodology

This study aims to examine the punishment of imprisonment by making a historical study of the evolution of convict labour policy. Therefore, though it draws from the different approaches, to figure out the broader historical explanations for different convict labour policies and the changes within it, it adopts a political economy approach. Also, as the study is largely located in the colonial context, studying convict labour through the political economy lens will prove useful than approaches such as the Marxian and Foucauldian which are located in European (non-colonial) context. Moreover, the Marxist and Foucauldian perspectives have emphasized more on looking at punishment and convict labour in the overarching context of changing productive relations from that of feudal to the capitalist economy and from the medieval to post-enlightenment polity. Thus adopting the political economy approach allows us to explore how the convict labour policy reflected, and was based upon the necessities of political and economic imperatives of British colonialism and how the colonial experiences with punishment could differ from the metropolitan.

However, there could be instances where, the broader politico-economic analysis might not adequately explain the intricacies of the operationalisation of convict labour. This can especially be seen in cases where the penal regime evolved mechanisms such as that of remission, convict warder, payment of gratuity which were closely intertwined with labour to further discipline the prisoners. As Foucault's understanding of power, and looking at punishment through the prism of discipline is useful in understanding these mechanisms of punishment in greater detail, this study will be using such concepts to study them.

To contextualise various shifts in the prison labour policy in the overall changing political rationalities of the colonial regime this study will also draw from David Scott's (1995) idea of colonial governmentality as explicated in the case of colonial Srilanka. Borrowing from Foucault, Scott develops the formulation of colonial governmentality for understanding political rationalities of colonial power, to highlight not only the targets of colonial power but also the field of its operation. According to this formulation, in the mercantilist period, the application of colonial power centered around extraction of wealth. And when this was the objective of power its main concern was to see that people obeyed when commanded, but it did not have to work on reorganizing the conduct or habits of people themselves. However in colonial Srilanka, with the Colebrooke-Cameron recommendations for reform in three domains – that of government, economy and judiciary, Scott says a new political rationality began to emerge where governmental power sought at once to construct and to work through in order to induce its improving effects on colonial conduct (Scott 1995, 193 and 207-208).

For Foucault himself, mercantilist power exercised through the traditional weapons of sovereignty such as laws and regulations, was a restricted notion of power as its objective was to increase the might and wealth of the sovereign but not that of the population. However in the eighteenth century context of increase in population, agricultural production and greater availability of money, he says that there was a shift in the objective of the exercise of governmental power. With government beginning to perform at the level of population, whose health, welfare, prosperity and happiness becomes its concern, its power not only began to be conceived as autonomous from sovereignty but sovereignty itself had to reconcile with the increased functions of the government (Foucault 1991: 97-100; Dean 1999:102). However, the present study will use the notion of colonial governmentality in order to contextualise the shifts in convict labour policy and not so much on its actual operation as that would no doubt be interesting, but might need a different project for itself.

1.3.2 Sources

This study which is largely an analysis of archival documents relies on both statutory records and episodic records dealing with convict labour. The statutory records include reports of the various committees and commissions and also periodical reports on prisons by the Government of India and other prison authorities in different provinces. The episodic records include correspondence between the government and the prison authorities and vice-versa.

Most of the documents for the study are collected from the National Archives of India and Tamil Nadu State Archives. Some of them, especially documents on convict labour in the initial decades of 19th century, are collected from the India Office Records at the British Library, London. For making a comparison between the convict labour policy as practiced in colonial India and in England, apart from the published material available, I have looked at some of the old books and reports available at the Old Books Section at the British Library which are otherwise difficult to find. I would also like to mention that conversations and unstructured interviews with prisoners and prison authorities helped me in thinking about the question of convict labour.

1.3.3 Chapterisation

This thesis including this introductory chapter consists of seven chapters. The second chapter apart from presenting an introduction to the imposition of punishment of imprisonment in India by the colonial regime in the later decades of the 18th century, will also look at the nature of convict labour which was largely extramural in this initial phase, and how such labour could be identified with the mercantilist rationality of the colonial regime.

The third chapter speaks about the shift in the colonial rationality in the second half of 19th century and how this led to the introduction of penal reforms which led to the development of intramural convict labour. It will also look in detail at the various disciplinary techniques that emerged with the introduction of such labour.

The fourth chapter deals with the contestation that emerged to the introduction of intramural convict labour, as prison came to be seen as a competitor in the free market. The focus is on studying how convict labour policy is accommodated with the requirement of market economy that the British were introducing in India.

The fifth chapter critically analyses the introduction of the reformatory ideology of punishment in the 1920s and study how such a major shift alter or did not alter the nature of convict labour. The focus of the study is largely on locating this shift in the political economy of that period and especially on how the context of the World War impinged on the convict labour policy.

In the sixth chapter the study will look at independent India and its approach to the question of convict labour. Emphasis here is laid on presenting the continuities and discontinuities in the convict labour policy from that of the colonial to the post colonial period.

The concluding section shows how convict labour policy reflected the political and economic imperatives of the state, both colonial and postcolonial. It will also try to reflect on the broader links between the nature of punishment and the nature of the economy.

Chapter 2

The Genesis of the Prison and Extramural Convict Labour: Mercantilist Rationality

Commenting on the massive construction of roads by the convicts in 1835, the then Governor General of India said:

...thus a system for the general improvement of India has been established which from its permanency of character cannot fail in time to secure the object in view whilst as it advances it must bring into action the capabilities of this Great Region for employing its dense yet comparatively idle population in promoting internal commerce and in opening the field for the exchange of its valuable produce for the merchandize of other nations.¹

The quote above states the rationale of this chapter. The focus of this chapter is on convict labour in the initial phase of its imposition i.e. from the last decade of the 18th century when the East India Company for the first time introduced imprisonment with hard labour as punishment in India. David Arnold argues that the prison system that emerged in the later decades of the 18th and the initial half of the 19th century grew out of the British preoccupation with the “extraction of revenue and the maintenance of 'law and order'”. According to him, the prison performed as a material adjunct to a colonial system of economic exploitation and political control (Arnold 1994: 159). This chapter will probe in what specific ways convict labour, supported the political economy of the colonial enterprise. Also, an attempt is made here to locate the context of the use of convict labour for public works. Further the chapter tries to locate the colonial rationalities in imposing a particular kind of convict labour policy and to identify similarities and differences between the metropolitan and the subject country and the reasons for the same.

Convict labour, especially in the context of colonization, either through the punishment of transportation or through the punishment of imprisonment, performs an important function of providing cheap reserve of labour. In Great Britain itself, several systems of penal servitude were practiced. These included simple deportation or banishment to the colonies, assigning convicts to live as servants in families of free people, retaining them under the charge of the Government but

¹ Military Board Proceedings (henceforth MB Progs.), 2-13 Jan 1835, National Archives of India (henceforth NAI).

hiring out their labour to free people for the benefit of government, planting them out in bodies in a condition of semi-freedom, to work with pay for Government until employers hired them etc.²

The argument that convict labour is a state sanctioned continuation of forced labour after its formal abolition can be well applied not only in colonies where slavery was prevailing but also in other colonies. For Alex Lichtenstein, the convict lease system³ that emerged in post civil war southern states of the United States of America, was a fiscally conservative means of coping with a new burden, the ex-slaves who were emancipated from the dominion of the share-holder were now the subjects of the state authority. But from a broader perspective, the lease system can also be understood as a system of forced labour in an age of emancipation (Lichtenstein 1996: 3). In the context of colonial South Africa, the violence of the colonial prison, Bernault says, was derived from the central role it played in the colonial economy. She justifies this by stating how convict labour was being used. Firstly, the authorities imprisoned Africans who resisted forced labour and colonial extractions. Secondly, the authorities implemented the systematic use of detainees as cheap labour. The prison thus participated in the artificial economic system of the colonies, where surplus value was derived from wages maintained at a low level (Bernault 2003: 22).

Like Lichtenstein and Bernault, Chitra Joshi who looks at convict labour in the beginning of 19th century India, argues that the colonial regime pursued a dual policy. While it introduced on the one hand liberal laws for free labour, on the other hand, it used forced or convict labour to serve its own purpose. The colonial regime was in fact involved in distinct and different ways in the production and reproduction of different forms of coercive labour. Joshi points out:

....In tea plantations in India, state legislation formalized the penal powers of planters; it also sanctioned a wide range of 'informal' private powers of planters over labourers. But the state intervention in the working of these systems was indirect; it created the legal framework that allowed them to function. In the convict labour system the state was more

² Report by E F Du Cane, *An Account of the Manner in which Sentences of Penal Servitude are Carried Out In England*, 1872, pp. 3-4, British Library.

³ Convict lease is a system where the state hands over its convicts to private leasees who agree to take care of the convicts according to the rules of the state. In return they also provide steady employment for the convicts and pay to the State an agreed amount.

directly implicated in the working of a repressive regime of labour. Coercive labour strategies could act as a regulating mechanism, putting a downward pressure on the price of hired labour in the market (Joshi 2009: 3, 14-15).

For Arnold, the extensive use of convict labour on public works in late eighteenth and early nineteenth century India was not simply a way of keeping as many convicts as possible out of overcrowded jails though it had its administrative attractions, but it was a way of mobilizing scarce labour power especially for road construction and repair. In the 1830s, 13,000 prisoners were employed in road gangs in Bengal alone. They were also deputed to such tasks as clearing river beds, digging irrigation canals and building their own prisons. Thus for him “if India's prison system despaired of reforming its inmates and reaching their 'souls', it could still serve as an agency for a more practical form of colonial control over productive labour (Arnold 1994: 91)”.

Convict labour in the last decades of 18th century and the first half of 19th century was also extensively used through the punishment of transportation for furthering the imperialist intentions. Transportation from India to South East Asia first started in the 1780s. In 1824, the number of convicts who were present under sentence of transportation in the Prince of Wales Island from the different Presidencies of India (largest number was from Bengal) was 1500 men. The authorities declared,

However this labour has been confined to the low and cleared part of the island. And a very great advantage may yet be achieved from clearing roads along the ridges and valleys amongst the hills, so as to open communication and lead to the occupation and cultivation of the many spots of land adopted for that purpose..... The following are the objects to which prison labour can be used: a) making and repairing roads; b) performing all labour required for public works under the Engineer- making bricks, cutting timber etc.; c) clearing land for cultivation; d) those of less bodily strength and of better character in attending public offices; e) those of the next rank left out to hire as servants, *the Government being relieved from all expenses.*⁴

The Indian prisoners transported to Singapore were also engaged in constructing two lighthouses, a cathedral and Government House. One of the advantages from the colonial viewpoint of transporting convicts to Penang and Singapore was that they provided a cheap and

⁴ Boards Collection, 1820-1830, Papers regarding the maintenance and employment of convicts at Prince of Wales Island, 31st July-1824, India Office Records (Henceforth IOR), British Library. Italics are my own, the purpose of which will be subsequently explained.

fairly disciplined workforce in places where this was hard to obtain locally. In the later 1850s even the development of a penal settlement on the Andamans was a form of enforced colonization for which local labour could not be found. Arnold remarks:

Transportation commended by the Prison Discipline Committee in 1838 was identified as 'a weapon of tremendous power' in view of Hindu antipathy to crossing 'the black water'. In India, it noted, a sentence of transportation was regarded with 'indescribable horror'. The impact of such a sentence on the convict was 'little short of the effect of a sentence of death, whilst the effect of such a sentence on the bystanders is greater than the effect of a sentence of death'. Thus transportation was deliberately maintained at a time when it was losing favour in Britain (Arnold 1994: 176-77).⁵

The use of convict labour for the purposes of colonization reveals the political and economic imperatives of such punishments. This chapter will now proceed towards understanding the use of convict labour especially through the punishment of imprisonment in colonial India. First it will try and establish the context in which East India Company imposed imprisonment with hard labour as punishment. Then it will present a brief overview on the practices of punishment in Great Britain at around the same period. This will be followed by the study of the nature of convict labour as imposed by the Company and finally it will study the question of the relationship between caste and convict labour.

2.1 East India Company and punishment

The East India Company which had realised in the beginning of the 18th century that they could consolidate their position in India only with territorial sovereignty, in the later decades had begun to combine trade with warfare, fortification, military and political government. This was mainly because in the 18th century the changing industrial character of Britain had necessitated the importance of raw materials. Though Britain was weary of this after the experience of American War of Independence, Malthus' propositions expressing the need for an overpopulated country to acquire new territories bolstered the Company's efforts to gain political control over India (Ambirajan 1978: 44). By the first half of the 19th century, the East India Company had established its supremacy almost all over India and was consolidating its power with the military

⁵ For more on this see, Satadru Sen (2000) Aparna Vaidik (2009).

playing an active role in extensive mapping, exploring and building road networks to allow rapid movement of troops. It is in this context, as the study will soon present, convict labour assumes a significant role.

The Company when it formally started administering justice, especially during the Governor-Generalship of Lord Cornwallis (1785 to 1793) and specifically with the Permanent Settlement of 1793, which laid the foundations of the Anglo-Indian legal system and the introduction of property right (Washbrook 1981: 651), had accepted several forms of punishment that were found at that time in India. Punishments such as branding (later abolished in 1818), *tasheer* or exposure meant carrying the 'delinquent' through the town on an ass with his face blackened (abolished in 1849), torture (abolished in 1851 after the publication of the Torture Commission Report) and banishment (finally abolished in 1860) were used by the Company. Shacks and pillory⁶ were punishments existing in England were introduced in India by the British in 1816 (Devi 1996: 227-231)⁷. Arnold remarks, "But, despite the retention of many of these 'barbaric' vestiges of an earlier age, the ideological thrust of penal reform remained: however much the grim facts might seem to belie it, the British claimed to have introduced a more humane regime of punishment than India had ever previously known (Arnold 1994 :161)."

Also, the existing punishment of mutilation was followed by the Company. There were several instances where mutilation was ordered in cases of theft, misappropriation and when in possession of fake money. In such instances besides being whipped around the town and put in the pillory for a period, the culprits had their ears cut off. But the late eighteenth century saw a reaction by Company men against this as it was being increasingly regarded as inhuman and, in the case of dacoity and murder, an ineffective form of punishment. This shift in administrative thinking was exemplified by the abolition of mutilation in 1790 when Lord Cornwallis, the

⁶ Note, after 1849, no mention of pillory is made in the records.

⁷ In similar vein Arnold points out, "the public display of the bodies of executed criminals continued until 1836; a public gallows stood outside Madras Penitentiary as, late as the 1880s. The practice of branding the foreheads of convicts (known as *godena*) only ceased in 1849, following the observation of a member of the Government of India that 'it savours somewhat of barbarism and is opposed to the spirit of the age'. Despite repeated condemnation, bar fetters continued to be used to punish refractory convicts or prevent their escape, and in 1889 a government committee still looked forward to the day when 'these barbarous appliances' would be 'altogether abolished' (Arnold 1994:161)."

Governor-General, substituted a sentence of seven years' hard labour for the amputation of one limb and fourteen years for the loss of two. The rationale behind this shift given by the colonial authorities was that the severity of the existing Mohammedan law⁸ had to be done away with. Also in the view of British magistrates and judges, the then existing Islamic law concentrated too narrowly on the consequences of the criminal act and on claims made by the injured parties for compensation or retribution. What they wanted to communicate was that the criminal act affected the interests of all or the public interest that the state represented, and punishment would be meted out in those terms (Devi 1966: ix). Therefore it was felt that rigour and certainty of punishment had to be enhanced so that obedience to the law becomes a rational calculation, even as an external compulsion rather than as a moral transformation (Singha 1998: 232-235). One of the consequences of the abolition of mutilation, and later even of branding was to encourage greater reliance upon imprisonment (Arnold 1994: 32).⁹

Though imprisonment as such existed in pre British India, it was not a punishment by itself. While it was imposed by the aggrieved party (king/zamindar) under the native rule it was imposed by the state under the British (Devi 1966: 359). To give the example of the penal regime in the Maratha region in pre-colonial India, Sumit Guha (1995: 118-121) says that imprisonment was in practice in rudimentary parts of forts for crimes ranging from non-payment of fines to sexual impropriety. The numerous inaccessible hill-forts in the Maratha territory made this possible as these were not only difficult to escape from, but also needed a certain amount of

⁸ Shalini Devi (1966) states that at the advent of British, Hindu law existed only in Bombay and Malabar, in other places Muslim law was practiced. In both Hindu and Muslim law, law was not codified, there was no distinction between civil and criminal law, and no records of the proceedings were kept and both relied on human agency for propounding and elucidating their laws as laid down by their ancient law givers. Offences committed were not considered to be against the individual but society (Devi 1966).

⁹ Radhika Singha (1998) points out that in 1834 the native state was urged to subscribe to civilizational norms of the supreme power and give up cruel punishments like mutilation. In 1835 Bentick ordered the abolishing of corporal punishment in the Indian regiments of the Company's army. The pressure for fiscal retrenchment in the 1830s had made it difficult to buy the loyalty on better terms. But this abolition was criticised as the British soldier was still subject to the lash, and therefore was a dangerous imbalance in race authority. Corporal punishment was reintroduced in 1844 criminal justice because of high rate of over-crowding and the sickness and high mortality that were attributed to this. Also cost advantages. The Medical Board argued that in a poor country, corporal punishment released the offender to support his family and therefore was conducive to welfare. Also corporal pain left a greater impression on the lowly and the depraved whose sensibilities were too hardened from imprisonment (Singha 1998: pp. 233-34 and 250-53).

labour for their maintenance, as did government buildings in other locations. Prisoners, both men and women, could be usefully employed and cheaply detained. In addition to those undergoing trial, there were also long-term prisoners detained, at the king's pleasure. One important class among them was the Brahmans, both men and women, who had committed grave offences, but could not be executed on account of their caste. This notion of imprisonment however could not be compared to the English system, for the Maratha prison system did not stipulate fixed sentences, nor were prisoners subjected to discipline towards reformation and rehabilitation. Also, there was no authoritative monopoly of right to punish like the one the English system was trying to establish, and it was largely vested with private individuals, social associations and locally autonomous political authorities supported by but not affiliated to the state. Punishment stressed deterrence and coercion. Marathas heavily relied on fines in addition to mutilation and spectacular executions which the British found too lenient and reform was not thought to be the goal.

2.2 The genesis of the prison and extramural labour

The colonial Indian jails of the late 18th and initial decades of the 19th century were not structures that were specifically meant to be jails. Sections of old forts, rented bungalows, thatched mud enclosures and those structures that were usually right in the administrative centre were used for this purpose (Singha 1998: 254; Devi 1966: 361). For instance, in Madras Presidency the Nawab's palace at Cuddapah, the space between inner and outer walls of the fort at Chingleput, the fort at Palamcottah and Rani Mangammal's palace at Madurai were used as prisons (Venkatesan 1981: 9).

With such crude structures as the locations of imprisonment, the nature of convict labour in this phase was by and large extramural i.e. labour performed outside the prison walls. From the very beginning minor public works such as erecting small bridge-heads or repairing minor roads were occasionally entrusted to the prisoners. However, at least in Madras Presidency, it was only in 1816 after the criminal judge of Chittor, Mr. Wright, discovered the immense possibilities of employing convict labour for constructing large irrigation tanks and making or repairing trunk

roads that the Government ordered the systematic employment of convicts on such public works in all districts under proper supervision (Baliga 1943: 4).

By 1820s the courts generally considered the imposition of imprisonment without hard labour as an encouragement to crime rather than its suppression. Though the East India Company government occasionally employed the labour of the prisoners on the public works in the Madras Presidency during the 1820s, it was systematically done in Bengal Presidency from 1833.¹⁰ With the construction of a few prisons, by the 1820s some individual magistrates were experimenting with indoor labour, especially that of a few artisans and craftsmen, but this was only to supplement extramural labour and not with the thought to replace it as these kinds of labour were considered too light (Devi 1966: 423).

In Madras Presidency, Mr. Newnham, the Judge and Magistrate of Cuddapah, for the first time in 1815 systematically employed the prisoners in intramural labour for manufacturing carpenter's and mason's tools, bricks, mats, blankets, coarse cloth, and country paper for the use of courts. Tread-mills were erected in the prisons of Cuddapah, Bellary, Nellore, Masulipatnam, Chittoor, Chingleput and Tinnevely and the paper manufactured by them was sufficient for the use of both the Revenue and Judicial departments of those districts (Baliga 1943: 5) . However it must be noted that in the first half of the nineteenth century the East India Company hardly invested in building prison infrastructure and such modern prisons were but exceptions, and convict labour by and large continued to be extramural.

In the mean time there were suggestions for the systematic arrangement for making convict labour more useful. This was supposed to be done by teaching a portion of them to work as masons, bricklayers, carpenters and smiths. This was to ensure the bridges, *saraies* and bungalows required along the public roads which were being executed by the engineering officers who were highly competent to carry such an administration and the convicts would themselves derive great advantage from such occupations when they would be released. For further encouraging industrious habits among convicts it was suggested that a portion of the term of punishment could be remitted to such convicts who conducted themselves continuously with

¹⁰ Committee on Prison Discipline, 1836-38 (Henceforth CPD, 1838), p. 104.

industry and obedience. It was also thought that a small sum could also be given to each convict when released so that he should not be forced by poverty to return to criminal acts before they had time to procure employment for themselves. More importantly it was said, “The reform of criminals is now becoming an object of great attention in all civilized states. The employment of convicts in the execution of public works in the country may now afford some means of affecting that important object.”¹¹

What is worth noting is that the Company regime was contemplating reformation of convicts, with bare investment in prison infrastructure. The Company rule in this period especially in the 1830s initiated several reforms, but they could not be implemented, not only because the Company was busy in its military ventures and focused on expansion and revenue collection, but also because of financial retrenchment. Not only were many new prisons not constructed, but also as Singha puts it, “The punitive element of the jail system rested on the salutary example, constantly exhibited to the public of prisoners at hard labour rather than an elaborate set of regulations governing dress, food and conduct. Sentences formulated on terms like ‘years on the public roads’, indicated the sight of the prisoner toiling and in fetters was considered absolutely necessary both for punishment and deterrence (Singha 1998: 253).”

Applying David Scott’s idea of colonial governmentality as he has explicated in the case of colonial Srilanka (Scott 1995: 193 and 207-208), this phase of the history of punishment and convict labour can be marked with the mercantilist rationality of the colonial regime. Colonial power, operating through the traditional mechanisms of sovereignty of laws and regulation was largely restricted to the extraction of revenue and not so much on reorganizing the conduct or habits of people themselves. Also as Arnold says, the penal system that was emerging in this period focused more on the productive use of convict labour than on the modern penal ideologies of reformation.

¹¹ MB Progs, 6315- 6334, 4-17th January 1834, NAI.

2.3 East India Company, convict labour and the Public Works

The Company during its expansion of political control, engaged its military establishment in mapping, exploring and building road networks to allow rapid movement of troops. The construction of public works in India in this period was also under the supervision of the Military Board and the practice of using coercive forms of labour for works commissioned by military authorities was much prevalent. The demand for road building led to an increasing consolidation of military jurisdiction over questions of control and management of labour. Earlier convicts working in road gangs were under the charge of magistrates of particular districts. In the 1830s, military officials supervising road projects were given custody of convicts. They exercised control over the nature of work and discipline, the allowances, the system of rewards and punishment for convicts (Joshi 2009: 4). The convicts on such works under good management were expected to labour as much as the common daily wage labourer.

In 1832 the prison authorities were empowered to hold summary enquiries into all matters relating to discipline and to punish refusal to work or willful neglect, by about 60 stripes with a cat-of-nine tails (a kind of whip that was being used) and by reduction of diet allowances. Prisoners were made to work from 6am to 11am and 1pm to 5pm.¹² In 1836 elaborate rules for the care and custody of convicts when so employed were issued (Devi 1966: 425). Convicts had to work in fetters in the day, and at night groups of around twenty were bound together by a chain which ran through the central link chain that tied the convicts' legs (Joshi 2008: 6). As such extramural work had to bear with the harsh seasonal climates several arrangements had to be made for the proper lodging and preserving the health of the convicts. The Military Engineer of the Cuttack division was once pointed saying that even during the rains, if proper measures for hutting them and avoiding unhealthy positions were timely taken, and if native doctors appointed to each gang of 300 or 400, they were as likely to keep their health as they were in the jails.¹³

One of the questions that was often debated was the costs of employing convicts on public works. The military engineers who were in a hurry to execute vast road building projects were

¹² Indian Historical Records Commission Proceedings, Vol. Xix-xxi, 1942, B 708, Baliga B S, *Prison Administration in Madras, 1802-1840*, IHRC:20 (1943), 3-6, IOR, British Library.

¹³ MB Progs, 6190-6191, 4-17 January 1834, NAI.

insistent that prisoners could provide labour that, in the long-run, was more cost efficient than hired labour. The report of the Military Board of 12th September 1834, which made a comparison of the labour of convicts compared with the cost of guarding and maintaining them with that of free labour stated that the expense of attending to the introduction of this system of labour was trifling. It was also said that this would in fact result in a considerable saving arising from the discharge of large Civil Establishments and be beneficial to the state.¹⁴ The Superintendent Engineer, Cuttack Province reported to the Secretary Military Board on 30th January 1837 that the expense of hired labour is seven times more than the charges for the prisoners on the roads, even if it is assumed that five convicts do more work than six prisoners (Joshi 2008: 9)¹⁵.

Convicts were employed on tasks of varied nature such as that of clearing the jungles, filling of tanks, in the construction of jail buildings etc.¹⁶ At several places convicts were used to construct bridges such as the Hindun Bridge in the North Western Provinces where more than 300 convicts were employed¹⁷, the Dinagepore bridge in the Lower Provinces¹⁸, the Hydramari bridge in the North Western Provinces¹⁹ etc.

The convicts were however most extensively used in the construction of roads. As stated earlier the demands of road building led to an increasing consolidation of military jurisdiction over questions of control and management of labour and in the 1830s, military officials supervising road projects were given custody of convicts (Joshi 2008: 4). Given below is an abstract, of the convicts engaged in building roads within the Bengal Presidency including Agra.²⁰ (Note: Some of the cells are left blank, but I have retained them as they give us an idea of the various roads that convicts were employed upon in not their number, or miles)

¹⁴ MB Progs, Part I, 7207- 7215, 2-13 Jan 1835, NAI.

¹⁵ MB Progs, 9819-9821, 25-19 January 1837, NAI.

¹⁶ MB Progs, 6521- 6533, 4-17th January 1834. See also MB Progs, 6192, 4-17th January 1834, NAI.

¹⁷ MB Progs, 8161-8163, January 1840, NAI.

¹⁸ MB Progs, 8129, January 1843, NAI.

¹⁹ MB Progs, 8931-8933, January 1844, NAI.

²⁰ MB Progs, Part I, 7207- 7215, 2-13 Jan 1835, NAI.

Abstract Report of Roads under superintendence of the Military Board, 31st October 1834²¹

Roads	Length in miles	Monthly average number of prisoners	Remarks
Hoogly to Bacoorah	91	235	Commencement in 1830, March. Prisoners employed since August 1833
Bencoorah to Benares	330	1952	Commencement in 1833, May. Prisoners employed since May 1833
Benares to Allahabad	70	-	-
Allahabad to Cawnpore	121	1044	Commencement in 1832, January. Prisoners employed since that date
Cawnpore to Kerowlie	116	959	Commencement in 1833, July. Prisoners employed from that date
Kerowlie to Hindun	18	1497	Commencement in 1832, July. Prisoners employed from that date
Hindun to Delhi	18	-	-
Mirzapore to Jabbulpore	239	352	Commencement in 1834, January. Prisoners employed since May 1833
Jubbulpore to Saugor	106	355	Commencement in 1834, May. Prisoners employed from that date
Jokai to Dhumow	64	-	(they are constructed consecutively) All the five roads from Jubbulpore are constructed consecutively
Baraset to Jessore	60	297	Commencement in 1834, May. Prisoners employed from that date
Jessore to Ganges	63	252	Commencement in 1834, Sept. Prisoners employed from that date
Chittagong to Daoood	115	203	Employed in repairs of the old road
Nocolly to Camilla	34	-	-
Barrackpore to Berhampore	95	-(finished in 1829)	-

²¹ In this table I have retained the spellings as mentioned in the files for the names of places.

Bishenpore to Rajghat	93	306 (finished in 1830)	Prisoners employed in repairs
Rajghat to Braminee river	90	107	Prisoners employed in repairs
Braminee river to Juggernathg	78	-	-
Cuttack towards Fort St. George	82	188	Recommended in May 1834.

Therefore, as can be seen from the table above, almost all the major road projects undertaken in the 1830s and 1840s including the Grand Trunk Road from Calcutta to the north-West, the Western Road in Madras Presidency, the Delhi-Allahabad road, the Deccan Road from Mirzapore to Jabalpur, employed large bodies of convict labour of about 1000-3000. On the road between Delhi to Allahabad around 4,686 prisoners over 15 gangs were distributed. Usually convicts were employed in work that required large bodies of workers-like digging and raising embankments. An elaborate system of surveillance and control was established. For example, on the Delhi Allahabad road, there were a total of 1338 guards watching 4686 prisoners. There were in all 15 gangs of prisoners working on this road (Joshi 2008: 4).

The prisoners were placed entirely under management of the Executive Engineers and the Officers appointed to superintend the work for which the convicts were destined. Those officers were charged with the duty of paying them their diet money and with clothing them. Medical attendance of native doctors and medicines were supplied to the prisoners and native doctor being stationed with each gang of convicts and in case of unusual sickness the services of the nearest European surgeon were made available at the requisition of the officer in charge. Shops were also established with the several gangs for the purpose of ensuring to the prisoners a due supply of wholesome diet and the greatest care was enjoined to prevent them from spending their money allowance on noxious articles as spirits, opium etc. to excess which they were too apt to do even to the sale of their clothing if not prevented. They were lodged in tents or in huts prepared for them according to the nature of the country season or other circumstances.²²

²²MB Progs, Part I, 7207- 7215, 2-13 Jan 1835, NAI.

In this period, indoor employment, wherever it was practiced, was partly a result of government injunctions against disgracing ‘respectable’ prisoners through public exposure within their communities but it was also related to high death rates among outdoor workers. In 1836, provoked by the issue of how to punish prisoners of status but perturbed by high mortality, the Government of Bengal appointed a Committee of Convict Labour. Though it recommended that prisoners should work inside the jails but as there was no proper system of prison management they continued to work outside. The Committee also considered the relationship of road gangs with free labour and concluded that as prisoners would have been in competition with outside labour if they weren’t imprisoned, they did not displace labour of local populations. Thirdly it looked at the relationship between punishment and public disgrace and concluded that the sight of working prisoners had negligible effect (Anderson 2007: 30).

2.4 Convict labour in the initial decades of 19th century in Great Britain

In Great Britain, though the Pentonville prison constructed in 1842 represents the culmination of efforts to devise a perfectly rational and reformatory mode of imprisonment, the places of confinement including the Bridewell²³ and the other ‘houses of correction’ in the late 18th century Britain had witnessed a series of reforms. Michael Ignatieff (1978) argues that the emergence of imprisonment as a form of punishment and which had led to the establishment of such ‘houses of correction’ coincided with the Black Act, which reflected the commercialization of agriculture and the new criminal penalties were required as a legitimizing sanction for the assertion of property right (Ignatieff 1978: 11-15)’.

In the ‘houses of correction’ from the very beginning, it was intended that there should be close links between them and the productive life of the community. Prisoners were engaged in cap making, manufacturing feather mattresses and wool-cards, drawing of wire, spinning, carding, netting, and winding of silk and other profitable devices. The stubborn and harder prisoners were

²³ Bridewell, or one of the foremost ‘house of correction’ was the product of social innovation of the Tudor period. Here an attempt was being made to entrust imprisonment with reformatory and punitive objectives, which were to be secured by a closely regulated regime (note the objectives of the goals prior to the Bridewell were both deterrence and retribution). Therefore Bridewell is considered to be the first example of modern imprisonment.

engaged in making nails and iron work. All work was not necessarily productive, some tasks were taken up for their productive value like cleaning of the ditches and cleaning the streets. Treadmills were used from the earliest days.²⁴ A special hand and foot mill was invented so that vagrants who had lost a hand or foot could not thereby evade labour. Their penal side of punishment was further emphasized by preliminary flogging of certain categories of new prisoners especially prostitutes and vagrants. This punishment was inflicted in public — either at a cart's tail or in the whipping room. Only after this induction did these prisoners pass on to the industrial parts of the prison. Retributive and reformatory ends were thus jointly served (McConville 1981: 22, 32-33).²⁵

By the 1820s there were two main approaches to the reformation of prisoners in England — Evangelical and Associationist which had a substantive effect upon the development of English Prison up to 1860s. The Evangelicals²⁶ emphasized that all members of society were heirs to God's grace, children of a loving deity, and stressed on charitable links between rich and poor. On the reformatory side they contemplated the prison to be a moral/spiritual house in which relationships would be characterized by sincerity, compassion, endeavour and ardent enthusiasm

²⁴ According to CPD, 1838, there were treadmills in around 68 prisons in England in the same year. For more on this see pp.30-31 of the same chapter.

²⁵ Bridewell and the other houses of correction were an integral part of the broader Tudor social policy which was generally conservative. These institutions had mainly emerged to cope with the increased vagrancy which was mainly because of the dissolution of the monasteries which were the traditional sources of relief. Also with the growth of industries from the 16th century, the large towns had witnessed a concentration of paupers. Seasonal unemployment had also replaced the under employment of the medieval peasants. But as the Tudor commonwealth became increasingly Protestant measures against pauperism and vagrancy were promoted with even greater political urgency. Thus while the number of poor and vagrant subjects was increasing dramatically, political, social and religious attitudes were changing. The fact that many misdemeanor were condemned more as indications of a wanton, shameless, idle and unproductive life than as misdeeds in themselves gives Tudor social policy a particular relevance for penal history. Thus all those who could not establish to the satisfaction of the authorities their place in the social order and productive processes of the commonwealth were condemned (Mc Conville 1995: 23-26).

²⁶ For understanding the increasing influence of Evangelicals the prison of England it is important to understand the religious developments in the 18th century. The century opened with Church reacting to the travail of the previous century, theologically becalmed, and largely bereft of the invigorating social criticism of Puritanism and other Calvinist traditions; it closed with more and more institutions and spheres of life being brought under the effective assessment and intervention of the Evangelicals. Also the prevailing latitudinarianism emphasized the importance of good works and benevolence. Also the Methodist influence of emphasis on conduct rather than dogma (Mc Conville 1995: 78-79).

for Christian improvement. A new model of prison discipline had been advanced between 1830 and 1850 based upon this desire for moral and spiritual reclamation of the individual prisoner through the separate system. The main purpose of this model was to isolate prisoners from each other in separate cells, place them in separate cubicles in chapel, mask them whenever they moved from one part of the prison to another and so on, so that they could reflect on their action and to hear the voice of God (Forsythe 1991: 7-8). Elizabeth Fry one of the most fervent evangelical views on prison reforms focused on classification, inspection, productive labour, education, religion, and general healthfulness of the prisons. She was perhaps gentler than most reformers, being opposed to solitary confinement and cautiously recommending hard labour only for the most hardened criminal (Cooper 1981: 675-690).

The Associationist approach, influenced by Jeremy Bentham was a more secular and in theory a deterministic notion of conditioning of prisoners. This reformatory thesis of the late 18th century depended upon a view of human psychology which was widely argued and derived from 18th century philosophy. It was known as associationism and essentially the idea was that human attitude is founded upon experience, that the human mind seeks to repeat that which gives pleasure, and avoids that which gives pain. So, Bentham argued that the application of rewards and penalties within a prison was capable by such conditioning, of reversing the inappropriate mental links between crime and pleasure established in the years before the criminal entered the prison. Bentham assumed that crime and vice were fostered in early life by their association in the mind with pleasure because of deficient or inappropriate parental training and a failure of environmental influences during upbringing. Prison must eradicate this by rewards and punishment for appropriate behaviour. By conditioning therefore permanent psychological change and hence reformation might be brought about (Forsythe1991:8).

In 1778, Bentham published his first tract on penal matters, where he made clear his support of solitary confinement and hard labour basing on 'Beccarian rationale'²⁷ that such a regimen could

²⁷ The framework of classical thinking on crime and punishment had been outlined in what became one of the leading texts in criminology, *On Crimes and Punishments* by Cesare Beccaria wherein he states that the purpose of punishment can only to prevent the criminal from inflicting new injuries on its citizens and to deter others from similar acts. Always keeping due proportions, such punishments and such method of inflicting them ought to be chosen, therefore which will make the strongest and most lasting impression on the minds of men, and inflict the least torment on the body of the criminal. Within this classical liberal viewpoint the seriousness of the crime was determined not by intent but by the harm to society. Beccaria and Ideologues in the 18th century proposed system of

be easily proportioned by both intensity and duration. Bentham proposed several principles according to which punishment to all offences should be governed. He held that the main objective of punishment is to prevent as far as possible all sorts of offences what so ever. But if a man must commit an offence, the next object is to see that he chooses always the less mischievous of two offences that will suit his purpose. Third one being to dispose him to do no more mischief than is necessary and fourthly whatever the mistake be which it is proposed to prevent, to prevent it as cheap a rate as possible (Bentham 1778: 140).

However within a few years there was a marked shift in the Bentham's original ideas. In 1786 he came out with the idea of the Panopticon, where he rejected solitary confinement as unnecessary for under a system of perfect inspection the corrupting of one prisoner by another would prove impossible. He admitted that there were times when it was necessary to utilize solitary confinement in order to break the spirit of a particularly intractable offender. On the contrary, he advocated placing as many as four prisoners in a single cell in order to reduce expenses (Cooper 1981: 675-676).

Bentham also now emphasised on profitable labour which had struck a responsive chord with an English public under the financial burden of expensive prison construction and maintenance. It made good sense to allow prisoners to earn their own keep while adding to the productivity of the economy. In fact, Bentham was even criticized for not carrying out this plan to its logical conclusion. Bentham rejected benevolence as a motivating force, and his argument that a person incarcerated for breaking a law will not perceive benevolence in any prison regimen seems reasonable. Bentham felt that an artificial environment could be created where, by a series of positive rewards, the prisoner would be induced to adopt a pattern of socially acceptable behaviour. If such behaviour were continually reinforced, the prisoner would eventually become habituated to it and thus reformed (Cooper 1981: 676).

sanction which were starkly opposite to the ancient regime. Punishment need not be arbitrary on the capricious will of the sovereign but should be a reflection on the crime itself., as work against idleness, shame against vanity, pain against violence and so on thus establishing a natural link representing punishment as a effect of the law of nature instead of display of political power (Brown 2003: 117). For more on this see Chapter I, pp.5-6.

Such a shift in Bentham's views on prisons and prison labour may also be understood in the context of changing nature of state, society and economy of Great Britain. A host of legislative enactments, from the Reform Bill of 1832 through the New Poor Law, the repeal of the Corn Laws and the creation of the administrative state mark out the progress of liberal thought in British society. Liberalism incorporated a variety of heterogeneous views and evolved in an incremental manner. Therefore despite the new order inaugurated by the 1832 Reform Act, liberals often found themselves tightly constrained. Local bodies, backed by riotous urban workers, opposed sanitary legislation; landed gentry frequently contested the reorganization of local government as well as repeal of the Corn Laws; aristocrats sought to retain the right to duel and to purchase army commissions. Though far from a democracy in the 1830s and 1840s, England still possessed vocal constituencies who could not be brushed aside (Metcalf 2002: 57).

Imprisonment continued to take the physical forms of punishment and the death penalty continued to be imposed quite often. This was also the context of rapid increase in population and the increasing use of machineries and therefore the houses of correction were now forced to perform the function of charitable institutions and poorhouses and to deprive them of their real aim by combining them with orphanages and asylums in which the most heterogeneous elements were herded together. Therefore the reforming spirit of the earlier houses of correction with their organization of prison life on educational basis was lost. Neglect, intimidation, and torture of inmates became the rule of the day, and they were given work only for their discomfort or for the profit to be gained (Rusche and Kirchheimer 1939: 85-86).

As stated earlier, the period of building a large number of prisons in England was in the 1840s and 1850s which coincided with a decline in the use made of transportation and which was finally abolished in 1857. Penal servitude substituted for transportation in 1853. Transportation was first mentioned as punishment under an Act passed in reign of Charles II to America for there was a great want of servants in the colonies which ceased after the War of Independence. Around this time under the influence of Blackstone, Howard and others, the Penitentiary system for the treatment of crime began in England and an Act was passed in 1778 which rested on separate confinement, hard-labour, and instruction- secular and religious. But it took long years to institutionalize and after the Pentonville Prison was constructed in 1842, the principle of

separate confinement for the first stage of penal servitude was established. At the end of the period the principle of employing convict labour on national works of importance (Public works) was adopted, as affording, in connection with the reformatory influences brought to bear in separate confinement, the best means of training the men to those habits of industry which would fit them to earn an honest livelihood on discharge, either at home or abroad (Ruggles-Brise 1921: 29).

Employment of convicts on “Public Works” opened a new era. It was characterised by a — a) a fixed period of separate confinement, b) employment in association on public works at home for a period apportioned to the term of the sentence and c) disposal with a Ticket-of-Leave in the Colonies. The condition of the ticket-of-leave was that the holder was required to remain in a particular district, must be at his dwelling from 10 o’clock at night to day break, and must report himself periodically to the Police Officer of the District. For its success, this combined system of home discipline and colonial disposal depended on two factors. One is the conduct and character of the convict being such, while under the discipline of public works, that remission could be accorded with a view to expatriation. The second being, that the colony should be willing to receive convicts in ticket-of-leave i.e. on a state of semi-liberty. Convicts were able to render themselves ready for transportation after the completion of less than half the term of their sentence. Claims to this remission were carefully estimated from daily records of conduct and industry kept by the subordinate officers (no mark system then). A system of badges was the principle incentive of good conduct. As soon as the letters ‘V G’ or very good were inscribed on the badge the prisoner became eligible for a ticket-of-leave. There were three degrees of industry -- very good, good and nil. This system continued till 1852. However as there was a growing opposition to excessive number of ticket-of-leave holders, the Penal Servitude Act of 1857 said that the terms of Penal Servitude should be extended to a period corresponding to former sentences of transportation, and that every punishment by penal servitude should, in addition to separate imprisonment and labour on Public Works, include a further period capable of being abridged by the good conduct of the convict himself, i.e., that there should be a remission of part of a sentence of Penal Servitude in the case of those convicts whose conduct in Prison was such as not to deprive them of the indulgence. The portion to be remitted varied from one-sixth in the

case of a three years, or minimum, sentence, to one-third of a sentence of fifteen years and upwards (Ruggles-Brise 1921: 30-31).

Therefore, to compare the policy of convict labour as practiced in India and Great Britain, one can see that if in India right from the days of imposition of imprisonment (last decade of 18th century) convicts were engaged in extramural labour, officially engaging prisoners on extramural work was a stated goal in Great Britain only in last decade of mid 19th century. Convicts were formally employed on Public Works in Great Britain almost a decade later than in India. However it should be noted that Great Britain extensively used its convicts for its imperial motives through the punishment of transportation. Therefore convict labour whether in India or in Great Britain, continued to be identified as cheap reserve of labour which the state was putting to use according to its requirements. But if several reforms were being experimented within the existing British prison/'house of correction' right from the later decades of the 18th century, in India imprisonment itself took several decades to evolve as the most imposed form of punishment.

In Great Britain the emphasis was more on solitary confinement, where as in India, prisoners were held in large/small barracks in groups classified according to the nature of their imprisonment. Solitary confinement existed only as a form of punishment imposed for misconduct within the prison. However the reason for doing so was not guided with the effects of solitary confinement, but with the simple fact of lack of existing physical infrastructure and also the colonial regimes understanding of what according to them were the characteristic features of the native society.

2.5 Caste and extramural convict labour in India

As stated earlier, with the Permanent Settlement of 1793, big strides were taken in establishing norms of legal and revenue administration. Courts were to be established to administer the law and maintain order in every district of British-controlled India (Washbrook 1981: 651). However, such administration of the company was characterized by certain understanding of the Indian society by the British. For example, with regards to law, in revenue matters the law was

based upon their understanding of existing revenue usage; the law to be administered in personal matters was, Hindu law for Hindus and Muslim law for Muslims; for criminal matters, the law was to be pre-existing Muslim law. Where there was no law, the judge was to rule on the basis of 'equity and justice' (Cohn 1961: 464).

Also in late 18th century India, there was not one system of law or one political system, but multiple systems of each which differed from place to place, from group to group, and from situation to situation. Cohn says that the British assumed that there was a 'Hindu Law' which could be applied in matters of personal law to all Hindus. In fact it was not even perceived until too late that Hindu law was a changing body of law. It was not a fixed, written code, but it was commentators' interpretations of a prolix, and ever changing living law (Cohn 1961). Washbrook (1981) therefore concludes that if the public side of the law sought to subordinate the rule of 'Indian status' to that of 'British contract' and to free the individual in a world of amoral market relations, the personal side entrenched ascriptive (caste, religious and familial) status as the basis of individual right. Early colonial India therefore for him operated under a "state mercantilist" form of economy in which the institutions of the 'ancient regime' were made more efficient, brutalized and bastardized but, significantly, not dissolved (Washbrook 1981: 651-661)".

For Dirks (2001), caste was political all along, but under colonialism it was anchored to the service of a colonial interest in maintaining social order, justifying colonial power, and sustaining a very particular form of indirect rule. In the early years of colonial rule, these mechanisms were organised principally through "land systems" that were linked to modes of property, agrarian relations and revenue collection. Zamindars, individual collectors, and village communities were variably constituted— after long debates over Indian history and colonial policy —as the authentic heirs of pre-colonial local authority and as primary agents of revenue collection and local order (Dirks 2001:15). However, this study will reveal how right from the initial decades, even in formal penal institutions, at least through convict labour, the colonial authorities enforced a particular understanding of caste.

With regard to crime, most of the crime which preoccupied the British was collective activity which for them reflected the collective nature of life in India. Many of these collective actions

were thought to be intimately connected not just to crime, but to indigenous values which were challenged by the British style of rule (Freitag 1985:141-142).

Similarly, with regards to punishment and specifically to convict labour, one can also see a certain reflection of the British understanding of the Indian society. The colonial authorities as early as 1796 held that to compel high-caste convicts to work on the roads alongside 'common criminals' would be for both, them and their families 'much more severe than a sentence of death' (Arnold 1994:77). Also as this would be seen as a human regime of punishment, it was believed that this would enhance the legitimacy of the legal system instead of making the offender an object of pity (Singha 1998: 231-232). Of the prisoners confined for definite periods in District Goals, a certain number were employed in keeping their Goals clean, and in other necessary work of that sort; but these were selected on consideration of the caste of the prisoners so employed. In general, only those who were physically unfit for out-door labour, and the small number of low-caste men necessary for keeping the Goals clean were employed within doors.²⁸

Also as stated earlier the punitive element of the jail system in these initial years rested on the salutary example, constantly exhibited to the public of prisoners at hard labour rather than on an elaborate set of regulations governing dress, food and conduct. Sentences which were formulated on terms like 'years on the public roads', indicating the sight of the prisoner toiling and in fetters were considered absolutely necessary both for punishment and deterrence. Colonial rule therefore explored the terrain of social sensibilities both for terror as well as for suasion (Singha: 231-232 and 253). Thus in colonial India the shift from a more corporal punishment to imprisonment did not eliminate such spectacles. Therefore though Foucault says that with imprisonment and penal labour as punishment what was represented then to general public is the horror of the whole sentence, where as for the criminal it was divided by day (Foucault 1979: 253), in India, along with the horror of the whole sentence its spectacle was also into operation. Therefore the convict would not only be paying twice by the labour that they provide and the signs that they produce, but also by the labouring spectacle itself.

²⁸ CPD, 1838, pp. 15-16 and 45-46.

It was also held that separation from caste and kin was reputedly the only punishment that a native would dread (Sen 2000: 69) Therefore caste was seen as too potent a factor to be ignored in daily prison life. In Bombay Presidency, prisoners were classified on the basis of caste. Regulation XIII of 1827 of Bombay Presidency provided a provision which ensured all possible regard to religious prejudices. The CPD, 1838, rejected such classification but stated that it respects as much in prisoners as in free men the feelings of caste (Karnam 2004:53).

Such privileging of caste for Arnold (1994) was partly in response to the kind of overt opposition led by Rajput, Brahmin and Kayastha prisoners encountered in Bengal and northern India during the 1840s and 1850s; but it was also based on a belief that Indians belonged naturally and essentially to castes and close-knit communities in a way Europeans did not . Except when exemplary punishments were deliberately sought, caste—or the colonial perception of caste worked powerfully against the 'individualizing' project on which the Benthamite Panoptic was premised (Arnold 1994: 171). Clare Anderson (2007) states that that penal practices in jails further transgressed norms of religion and caste and therefore along with religion acted as important cultural part for the mutiny of 1857. Also jails embodied and symbolized broader social fears about colonial interference in religious affairs and forced conversion to Christianity (Anderson 2007: 29).

As the study will soon present, in the CPD, 1838, one of the opposition to the introduction of trades in the Indian prison was based on the question of caste. It was held that to force a man of a higher caste to work at any trade would disgrace him and his family forever. It would be looked upon as barbarous cruelty, and excite nothing but indignation against the laws, in the strength of which the most dreadful crime would be forgotten. Therefore it was thought that the work of agriculture, and labour resembling the work of agriculture like the work on roads, was absolutely prohibited to no caste.²⁹ Another suggestion was that prisoners be put to work on a treadmill since this form of labour would 'show no more favour to the foot of the rich Rajpoot than to the foot of a poor Chumar (Arnold 1994:179)'. While accommodating certain aspects of high-caste status, convicts at the lower end of the caste hierarchy, belonging, for instance, to barber, washerman and sweeper castes, were expected to perform their customary occupations in jail for

²⁹ CPD, 1838, pp.106- 107.

the benefit of other prisoners and in the interests of prison economy. In this way the prison tended to replicate, and extend formal colonial recognition to, the social hierarchy outside (Arnold 1994:173).

The colonial discourse on convict labour hardly pays any significant attention to the question of employment of female convict labourers. Most of the reference to their employment is expressed in terms of passing remarks. In the period of our reference, women prisoners were rarely sent on outdoor work. For Joshi, this gendering of the world of the convict labour left its imprint on the culture of work. Many prisoners preferred muscular, outdoor labour to indoor labour: spinning and grinding flour were seen as feminine activities and therefore more demeaning. Work outside did not however mean harder labour. At the work outside, it was often the weaker ones who were forced to do the strenuous tasks, while the stronger and macho bodies could bully the supervisors and get away with less (Joshi 2009: 5)

With regard to European prisoners the Indian Law Commissioners in 1837 remarked, 'It would be cruel to subject an European for a long period to a severe prison discipline, in a country in which existence is almost constant misery to an European who has not many indulgences at his command.' If not cruel, they added, 'it would be impolitic', when it was necessary for 'our national character' to 'stand high in the estimation of the inhabitants of India', to subject them to the 'ignominious labour of a gaol'. Separate prison wards were reserved for Europeans and at Ootacamund a jail was built exclusively to house European (and Eurasian) prisoners (Arnold 1994:65 and 170).

2.6 The beginning of prison reforms: The Prison Discipline Committee Report

From the 1830s, official debates on penal policy indicate a stronger effort, to reorder the identity of the offender in a more uniform and standardized way as the object of punishment. The punitive possibilities of separating the offender more rigidly from all the rhythms of the social and the familiar began to be explored through two related strategies; narrowing the role of public punishment in the penal design, and drawing a closer attention to the jail regime- to the details of daily routine, labour and diet (Singha 1991: 25). Therefore by the mid 1830s, there were efforts

from the colonial government towards establishing imprisonment as the most common mode of punishment.

T B Macaulay, who had arrived in India as the member of the Law Commission, mooted for the first time the idea of prison reforms. An extract from historic minute of Lord Macaulay issued at a meeting of the Legislative Council of India on Dec 21st, 1835 states:

It is scarcely necessary to say that the best criminal code can be of very little use to community, unless there be a good machinery for the infliction of punishment. Death is rarely inflicted in this country at present, and it must certainly be the wish of the government and of the Law Commission that it should be inflicted more rarely still. The practice of public flogging has been abolished, and we should, I am sure, be most unwilling to revive it....Imprisonment is the punishment to which we must chiefly trust. It will probably be restored to in ninety nine cases out of every hundred.³⁰

In the same spirit, Sir Charles Metcalfe (1835-36), the acting Governor General appointed in 1836 a Committee of members of the Council of India, Justices of the Supreme Court, Indian Law Commissioners and Officers of the Bengal Civil Service. Henry Shakespeare who was a member in the Council of India was made its president, with Macaulay as one of its members (Venkatesan 1981: 11). The Committee for Prison Discipline appointed in 1836, was the first Committee to be appointed to assess the conditions of prisons in India.³¹ This Committee report is considered to be the first landmark in the prison reforms of India and thereafter remained a reference point for prison administration for almost a century. Therefore it is important to look at this Committee report in detail, especially on its ideas on convict labour.

The Committee identified four main objects of punishment which included the deterring of society, the deterring of the offender, his incapacitation, and his reformation. Out of the four, it

³⁰ Original Legislative Consultation, Legislative, 21st December 1835, Prison discipline: Lord Macaulay's Minute and Resolution on the Subject, NAI. Arnold says that imprisonment was in fact, far from being the universal form of punishment employed by the colonial state. Capital punishment became (in contrast to the pre-existing Islamic system of justice in Bengal) a far more common penal sanction than previously, despite occasional complaints about its barbarity and one has only to think of the summary executions, whippings and collective fines, the confiscations of land and other property used by the British virtually until their final days in India, to realize that imprisonment was but one of the many modes of punishment deployed by the colonial power (Arnold 1994: 160).

³¹ Note: There were other reasons which added to the calling of this Committee, one of them was also the killing of a superintending magistrate by a convict. Original Legislative Consultation, Legislative, 21st December 1835, Prison discipline: Lord Macaulay's Minute and Resolution on the Subject, NAI. Also see Clare Anderson (2007: 30).

was held that the deterring of society was the most important end of punishment. In fact, Macaulay's minute itself said,

It is therefore of the greatest importance to establish such regulations as shall make imprisonment a terror to wrong doers, and shall at the same time prevent it from being attended by any circumstances shocking to humanity. Reformation was not to be an object at all, as the importance of reformation as an object diminished with the increase in penalty and in the mass of petty cases it became an object which it would be vain even to bear in mind.³²

Keeping the larger objective of deterrence in mind, the Committee identified three objects in the treatment of the prisoners confined for life. They were that of confining them with perfect security, making the punishment severe and employing them in such as manner as will best pay the state. As this class of prisoners was thought unfit to return to society, reformation was never to be an object.³³

The colonial attitude clearly shows that the stress was on making punishment as severe as possible and though at home, imprisonment to whatever extent it was being imposed, it had witnessed several reforms, it did not try to implement them in India. Or perhaps, as pointed out earlier, the contestation to liberal reforms back home made the British weary of introducing such reforms in India. The attitude of the British shows a clear influence of Bentham's ideas on punishment who stressed on deterrence but who saw retributive punishment as adding one evil to another.

In its review on convict labour, the Committee noted that all criminal prisoners were generally employed on the public roads, in fetters, but the system varied in some degree in the provinces subject to the different subordinate governments. In District Prisons about 13,000 prisoners were employed on the roads, at some distance from their prisons. All these prisoners they maintained were convicted of heinous offences but none of them were sentenced for life and neither of them for a term less than one year. They had not been selected on account of any mitigating or aggravating circumstances of their crimes, or general characters, but merely on the reason of the

³² CPD, 1838, p. 63.

³³ Ibid, p. 63 and p. 103.

district in which they have been convicted being within a certain distance of a particular tract of country.³⁴

Importantly for the Committee, the demoralizing effects of imprisonment could not be avoided until the system of putting convicts to out-door labour was abolished. It said:

Extramural labour rendered the mixture of prisoners in large gangs necessary whilst it makes it impossible to prevent communication between one prisoner and another. It affords facilities to convicts with money for procuring means of rendering their punishment, for all good purposes, little more than nominal, and thus it makes a poor prisoner think that whatever renders his punishment severe is the consequence not of his offence, but of his poverty.³⁵

Therefore attention was directed towards indoor labour which the Committee thought was not subjected to any of such disadvantages. It was suggested that prisoners could either be employed at such trades as will most readily pay for their maintenance, allowing those who know a trade suitable to a prison to practice it, and teaching some trade to those who knew none.³⁶ Another proposal suggested was to employ them in some dull, monotonous, wearisome, and uninteresting task, such as stepping upon a tread-wheel, turning a capstan or hand crank, pumping water, pounding bricks, grinding flour or the like.³⁷

There were several voices which supported introduction of trades. It said, “Some officers proposed to provide prisoners with the best European machines, to procure competent Europeans to teach their use, and to introduce improvements in handicrafts amongst them. It is thought by some that this course would be profitable to the State, and beneficial not only to the prisoners but also to the people generally, amongst whom the improvements taught in Goal might be disseminated by the convicts on their liberation.”³⁸

³⁴ CPD, 1838, pp. 15-16 and pp. 45-46.

³⁵ Ibid, pp.104-105.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid, p. 106.

But there were certain objections as well, “There is a peculiarity in India which makes the universal introduction of trades unfit for the goals of this country. The work of agriculture, and labour resembling the work of agriculture, is absolutely prohibited to no caste, and thus labour on the roads is obnoxious to no feeling of caste, however degrading it may be in other respects. But the case is very different with trades. To force a man of a higher caste to work at any trade would disgrace him forever, and be in fact inflicting a dreadful punishment not only on himself but on every member of his family. It would be looked upon as barbarous cruelty, and excite nothing but indignation against the laws, in the strength of which the most dreadful crime would be forgotten.”³⁹

This peculiarity it was held prevented the possibility of employing all convicts on trades but even on limited convicts it was inadvisable. The important fact to underline is also that in the shifting emphasis from extramural to intramural labour, agriculture, the occupation of the majority of the convicts in India was totally denied as a possible form of employment for the convicts.

Further the Committee expressed:

A common handicraft could not be profitably conducted, still less can a new handicraft be advantageously introduced, without interesting the mind of the craftsman, and making him feel from one cause or another, pleasure in success. It would seem, therefore, that either the work must be unsuccessful, or a certain part of the pain which is the object of imprisonment to inflict must be neutralised.... If trades be successfully conducted, as the working at them will be much less irksome than heavy monotonous exertion, then imprisonment must be made the longer, in order to produce the same deterring effect....Even in point of economy the less expensive confinement for a longer term may cost a larger sum than the more expensive confinement for a shorter term. It is held by those of the contrary opinion that the plan of trade possesses a peculiar advantage in as much as the habit acquired in prison by working at trades may lead to habits of industry out of prison. But we do not admit the soundness of this argument. If the labour be not compulsory, but of a sort to which the prisoners are stimulated by the ordinary incitements of honest industry, it certainly is not what is meant by a sentence of hard labour, and a prison becomes a workshop.⁴⁰

It is important to note how with the introduction of imprisonment as punishment, the characteristic feature of that punishment i.e. labour had to comply with the new rationale that the

³⁹ CPD, 1838, pp.106-107.

⁴⁰ Ibid

colonial regime was trying to enforce. More important fact to underline is to see how modern punishment has to correspond to the modern characteristics of wage labour including alienation whereby an individual becomes estranged from that to which he or she is relating. Therefore switching on to trades would disturb the coherence of the new rationality that was being introduced.

Also, it was held, “The difference between the produce of the labour of prisoners employed on work requiring more or less of skill, and the produce of labour produced by prisoners by the more exercise of their physical power will be probably less in Indian than in Europe, and very greatly less in India than in the United States America. Engines of mechanical power were in this country comparatively expensive than man, who was thought to be a comparatively cheaper machine.”⁴¹

The Committee makes an interesting argument when it comes to appropriating the previously acquired skills by some of the convicts and rejecting the scope of imparting some skills to the non-skilled. The Committee thought that there wasn’t anything unfair and impolitic to employ for the profit of the public the physical power or the previously acquired skill of a convict. It said:

The doing so lessens the charge to the public; and it takes bread from no man, because the convict would, if at large, either have employed his physical power or his skill for his own advantage, in rivalry with honest men, or else he would have done absolute injury to the honest men by robbing them. But a system which would charge the honest public for supporting the rogues, for years together, and for teaching the rogues during that time the skill which they would otherwise have no more been able to acquire than the honest men are able to acquire it, would make crime less odious, and make skill in honest trades a dishonourable distinction. If the government will assume the paternal care of instructing its subjects in useful arts, criminals would seem to be the least proper of all subjects to be commenced with.⁴²

The Committee also felt that convicts were in a better situation as to lodging, clothing, and food, than the greater part of the people. It was also remarked that the labour of the convict is lighter than the labour which an honest man of his class is obliged to undergo for his daily bread.⁴³ This

⁴¹ CPD, 1838, pp. 105-107.

⁴² Ibid, p.109

⁴³ Ibid, pp.104, 108-109

is very much in confirmation with Rusche and Kirchheimer's argument that penal sanctions are influenced by the Benthamite principle of 'less eligibility' and 'relative standards of living'. In order to function as a coercive ancillary to the labour market, penal institutions adopt regimes which are markedly more unpleasant than the conditions of life experienced by the lowest strata living in free society. It ensures that all efforts to reform the punishment are inevitably limited by the situation of the lowest socially significant proletarian class (Garland 1990: 93-95).

Also though Bentham himself had originally proposed hard labour for several reasons in England, had soon rejected it and supported productive labour. But the English still wanted to carry on with hard labour. Bentham had supported productive labour on the basis that it would produce a profit which could be used to compensate the injured party as well as to relieve the financial burden involved in operating the prison. Moreover, Bentham believed that less irksome labour was a better agent of reform since it taught the idle to love work rather than to avoid it, and idleness he thought was the root of criminal behaviour. He was convinced that it would not be necessary to coerce the prisoners to work, since the alternative would be sheer boredom. One major problem with this regimen as already stated was that Bentham thought it imperative that the condition of a convict "ought not to be made more eligible than that of the poorest class of subjects in a state of innocence and liberty" (Cooper 1981:677-680).

The Committee comes up with another suggestion which it finds would satisfy all their conditions. It held,

Enforcing labour through machines which render the working of them at a dull, wearisome, and a disgustful exertion, and which at the same time force every individual to exert himself equally and constantly, is open to none of the objection felt against the method of trades. Whichever plan may be adopted, provision would be made for this type of machine labour, for the use of all prisoners sentenced to labour when caste may make it objectionable to employ them at any trade, and of all prisoners so sentenced who are not tradesmen, and who are confined to terms so short to allow them to be taught any trade. The tread-wheel appears to be better adapted than any other machine for this purpose, because it prevented all risk of partiality on the part of overseers; as has been observed, it will show no more favour to the foot of a rich Rajpoot than to the foot of a poor Chumar.⁴⁴

⁴⁴ CPD, 1838, pp. 109-110

In England in 1838, there were tread-wheels in 67 prisons and this was regulated according to the following rules:

Rule I- Every tread-wheel should be provided with a regulator by which its rate of revolution may at all times be restrained within the same limits.

Rule II- The tread-wheel should be affixed a dial register, on reference to which the rate of labour may at any time be accurately ascertained.

Rule III- The daily rate of labour should in no case exceed 12,000 feet in ascent.

Rule IV- Care should be taken to apportion the diet to the rate of labour enforced.⁴⁵

More number of advantages were stated with the adoption of the tread-wheel:

It (tread-wheel) is extremely dreaded, and it produced no permanent ill consequence, moral or physical. A tread-wheel may be applied to machinery of any description and its power may be let out to a manufacturer. The manufacturer, his mill, and all his work people could be completely separated and hidden from the prisoners on the wheel. Thus the necessity is avoided of carrying on a Government manufacture by public officers unfitted for such business, which must ever be on an average a losing and a vexatious operation.....By adopting contrivances in use in several English Goals, the prisoner at work on the same wheel may be prevented from seeing each other: the wheel may be recorded the time for which it has been working, the number of its revolutions, and even the power exerted on it.⁴⁶

Therefore one can see that machine work is allowing itself more to be amenable to penalty and not trades. Trade or 'work', which could be easily characterized as belonging to the 'pre-modern' or the 'native' were relinquished with the introduction of imprisonment as punishment and labour, which is associated with modernity, easily flows into the idea of imprisonment. Also as Rusche and Kirchheimer say, "Every system of production tends to discover punishments corresponding to its productive relationship (Rusche and Kirchheimer 2003:5)", the colonial regime was trying to reinforce its post-industrial notions of punishment in its colony. But one must note that in this context they are particularly talking of machines which were specifically designed for being used for penal purposes. For Hegel, this would be the extreme end of labour, as his analysis of general machine labour says that with the division of labour, the value of labour decreases in the same proportion as the productivity of labour increases- "Work becomes more and more dead, it becomes machine labour, the individual's own skill become infinitely

⁴⁵ CPD, 1838, p. 111

⁴⁶ Ibid, pp. 110-111

limited, and the consciousness of the factory worker is degraded to the utmost level of dullness (Avineri 1972: 93)". And when it comes to machines like the tread-wheel and the use that they are put to, one can say labour becomes the most removed from the immediate satisfaction of the agent. For E P Thompson, machine production brought in a significant change, it intensified work. Such intensification regulated the continuity of work. Workers were forced to adjust to the pace of the machine rather than their own pace. Methods that insured intensification include: the speeding up of machines, piecework payment, and improvements in machine technology and operation (Thompson 1967). The tread-wheel can be understood as the largest intensifier of work.

To summarise, the CPD, 1838 emphasised on deterrence and their choice of the tread-wheel reflects the overarching penal ideology of deterrence that they subscribed to. Not only were they drawing from their experiences in the home country, but they were trying to justify how such a scheme would benefit the character and the social sensibilities of the native Indian prisoners.

2.7 Summary

Imprisonment with hard labour became the most favoured official form of punishment only in the late 1830s. Until then the colonial regime though avowed to impose its 'superior' form of punishment mostly imposed the existing forms of 'cruel' native punishments. In England, right from the 17th century, the practice of imprisonment in the early prisons or the 'houses of correction' existed and in the late 18th century, these institutions had witnessed several reforms under the likes of John Howard, Elizabeth Fry etc. However in India, only in the latter half of the 1830s, did the colonial regime appoint the first Committee for prison reforms.

The British imposition of imprisonment with labour as the most common method of punishing the natives carried forward the ideology and practice of work which was central to this system and which in England itself owed its origins in particular transformation in the modes of production. Thus punishing through labour connoted the ideological separation between the civilized colonizers who were hard working and the barbaric natives who were lazy and who needed to be forced to work. To standardize the treatment of prisoners, to whatever limited

extent, the colonial regime did explore various projects of modernity such as drawing upon metropolitan experiments in penal technology such as tread-wheel, and upon medical expertise and statistical information for an improved and yet avowedly humane prison discipline. However, though the emergent colonial state sought reference points to indigenous 'law', interwoven with this was an effort to enforce expanded concepts of state authority. Thus punishment through labour also displayed the might of the British over the colonized.

The colonial inflicting of punishment through labour on the natives was based on a certain understanding of the Indian society. If at home, the stress was on cellular confinement and intramural labour, in India they thought imposition of such punishment would be extremely distressful as they assumed Indians lived in well knit communities. A certain reflection of the colonial understanding of the Indian society is also visible in their consideration of caste in allotting labour to prisoners. Therefore it wouldn't be an exaggeration to say that though the colonial regime was introducing a form of punishment based on utilitarian principles, which decisively marks it as modern, through allotting labour on the basis of caste, it continues to retain some characteristics of the pre-colonial forms of punishment which were decided on the basis of caste. Though the colonial regime can be seen to a certain extent 'sensitive'(only to avoid indignation and for greater legitimacy) to the question of caste when it comes to imposing a certain kind of labour, it is important to note how this sensitivity is not reflected in its dealing with traditional occupation of the majority of the native convicts which was agriculture. Therefore with modern forms of punishment being introduced through the prison, a new idea of labour was also being introduced in the Indian colony. Though the recommendation of the PDC was for treadmill, as we will see in the next chapter with the emphasis on modern factory production in the prison, the prison becomes an important institution for the introduction of modern forms of labour.

Convict labour right from the initial decades of imposition of imprisonment as punishment in India was identified with several purposes that served the British and played an important role in the overall colonial enterprise. Even with minimal prison infrastructure, through the formal institution of the Public Works and even before that, it played a crucial role in supporting the expansionist phase of the Company's regime. Especially with the construction of roads, convict

labour was directly roped in building infrastructure for promoting internal commerce and in opening the field for the exchange of its valuable produce for the merchandize of other nations as the Governor General himself once stated. In fact even in England, though intramural labour was imposed in the houses of correction, through the punishment of transportation (abolished in Great Britain only in 1857), convict labour was extensively being used for establishing new settlements and expansion. Therefore, whether in India or in Great Britain, convict labour was identified as cheap reserve of labour available for state's appropriation, and in the colonies, to serve its imperialist ambitions. Also, as the colonial regime was characterized by mercantilist rationality, and the physical infrastructure was limited, a lot of emphasis was laid on labour alone than other modes of prison discipline such as rationing of food, dress or imparting moral training or education etc. Thus it is important to underline that in the context of the colonies, the history of punishment could in interesting ways be in variance, and at times on par, with those of the metropolis.

Chapter 3

The Birth of the Modern Prison and Intramural Convict Labour in Colonial India: Inducing Convicts to Discipline and Labour

The focus of this chapter is to study the development of intramural labour along with the emergence of modern prison system in India and to contextualise the shift from extramural convict labour policy to intramural in the changing colonial rationality in the second half of 19th century. It also aims at studying the various disciplinary techniques which include the system of remission, convicts officers and payment of gratuity that emerged with the introduction of such labour. The intention here is to study how such disciplinary techniques were intertwined with convict labour itself.

This study will begin by establishing the context of the emergence of modern prison in India followed by a detailed section on the nature of intramural labour that was being introduced. It will then look at the status of extramural labour within this new shift from extramural to intramural labour. This will be followed by a comparative study of the nature of convict of labour policy in India and in Great Britain. A detailed section on the different disciplinary mechanisms that were introduced along with the introduction of intramural labour will be subsequently presented followed by another section on the question of caste and intramural labour.

3.1 The Birth of the Modern Prison: The Rationale

The previous chapter revealed that imprisonment with hard labour was first imposed as punishment in British colonial India in 1790. This labour especially on public works was largely extra-mural in nature, the prison itself operating through crude structures of confinement. The first prison reforms committee, the 1838 Committee Prison Discipline (Henceforth CPD, 1838) recommended for unproductive intramural penal labour through the treadmill and the crank especially in circumstances of high mortality and weak disciplinary possibilities in extramural labour.¹ However, these recommendations of the CPD, 1838 or for that matter even the recommendations of the Law Commission which was appointed in 1835 could not be largely

¹ CPD, 1838, pp. 103 and 109-111.

implemented at least until after the Mutiny. This was mainly because as Stokes says by 1838 the Indian Government had launched upon a round of war and diplomatic activity that lasted for the following twenty years (Stokes 1982: 240). Also, though 1830s is generally identified as a decade of reform and modernization in the history of the Indian colony, it is lately criticized by few historians. It is argued that reform was simply a rhetoric intended for British Public Opinion in the context of the charter debates. Instead pragmatic goal of cost cutting was given precedence over the influence of Evangelical and Utilitarian ideology. Stokes says that brute facts of public order and fiscal retrenchment opened the way for Utilitarian reform (Singha 1998: 229). Thus, apart from studying the causes for not implementing such reforms, one has to critically study the nature of these reforms themselves.

To enforce the system of treadmill as expressed by the CPD, 1838 large penitentiaries were necessary. Reluctance to finance the construction of new prisons meant that there was overcrowding and very little space for indoor labour. Thus Singha (1998) says reform was undercut by “improvement in the other sphere: associating British paramountcy with public works on an imperial scale (Singha 1998: 230).” Also, the judicial critique of convict labour in India, Chitra Joshi (2009) says, developed in the context of a large conflict between civil and military authorities over questions of governance. By the 1850s the voice of the military authorities was marginalized by liberals and utilitarians, the prison establishment was expanding, and prison authorities were rethinking the value of labour on the roads. As scarcity and famine recurred, there remained a current of opinion within the judicial discourse which favoured the employment of convicts on public works (Joshi 2009: 12-13). The Governor General himself had ordered for outdoor labour to be continued under proper regulations within a reasonable distance from the prison. Thus the mixed system of indoor and outdoor labour was introduced throughout the country (Karnam 2004: 88).

Also any Government effort to expand intramural labour within the space available in the jails was constrained by the new trend of increasing rate of crime from 1860s and the subsequent overcrowding of prisons which accentuated the mortality rate. From the middle of the 19th century especially after the British Crown had taken over the East India Company, Murali Karnam (2004) points out that the prisoners were increasingly engaged in new and vigorous forms of extra-mural work such as the construction of jails, asylums, reservoirs, roads etc. Intramural labour was thus

introduced in a detailed and large scale first in central prisons which provided large space for it only from the late 1860s when new central prisons were being established (Karnam 2004: 88-89).

The new political rationality that guided the establishing of modern central prisons² was also influenced by the utilitarians who were directly involved with Indian administration. In the initial phase, utilitarians of the stature of James and John Mill, Bentham and Macaulay were intimately connected with Indian affairs. If Bentham himself had led the legal reforms in India, Macaulay, an ardent follower of Bentham, played a crucial role not only as a member of the Law Commission but also as a member of the first Prison Discipline Committee of India appointed in 1836, and the recommendations of this Committee continued to inspire prison administration until the Indian Jails Committee of 1920 (Stokes 1982: 54).

The emergence of the modern prison it can be said was also crucially aided by the new kind of knowledge that the colonizers were producing of the colonized. As Nicholas Dirks remarks, “Through the delineation and reconstitution of systematic grammars for vernacular languages, the control of Indian territory through cartographic technologies and picturesque techniques of rule, the representation of India through the mastery and archaeological display of mementos and assessment of land use, property form, and agrarian structure, and the enumeration of India through the statistical technology of the census, Britain set in motion transformations every bit as powerful as the better known consequences of military and economic imperialism (Dirks 2001: 9).”

Such new knowledge was vested on creating new categories and oppositions between colonizers and colonized, European and Asian, modern and traditional, West and East. On similar note, Arnold (1994) remarks that the birth of the modern prison helped to draw a line of demarcation between a colonial rule, which saw itself as uniquely rational and humane, and represented the ‘native’ as ‘barbaric’ (Arnold 1994:159). To speak specifically of convict labour, Satadru Sen in the context of punishment in Andamans says that stress was on rehabilitation through work because “in spite of the practical separation of punitive and rehabilitative labour, the separation at the broader ideological level was between work and idleness, with the former aligned with morality, civilization and law, and the latter with barbarism and vice (Sen 2000: 88-89)”.

² By 1870, in the whole of India there were on an average 64,600 prisoners on a daily average. There were 128 jails in total including 16 central prisons and an indefinite number of lock-ups. *Report of the International Penitentiary Congress, 1871*, p. 124.

The emergence of the modern prison in India is also to be located in general in the colonial enterprise's overall policy in India which moved in the direction set by the development of the British economy. The Industrial Revolution and the reversal it brought about had altered the economic relation between Britain and India and brought in a change in the purpose of political dominion. As it has already been seen, until the end of 18th century, British power largely depended on collecting tributes, but after 1800 the British power in India became an instrument for ensuring the necessary conditions of law and order by which the potentially vast Indian market could be conquered and the British political and economic supremacy in the world could be retained. This urgency had increased in the subsequent decades when the British exports of capital goods were falling due to industrialization in America and other Western European countries. Also, in the Parliamentary battle of 1813 the English free traders had stripped the East India Company of its commercial monopoly over India which finally culminated in the transfer of governing authority from the Company to the Crown in 1858 clearly indicating the transition from mercantilist monopoly to free market competitive economy, and thereby necessitating an active involvement in Indian administration (Stokes 1982: xiii- xv, Washbrook 1981: 654 and 671, Ambirajan 1978: 51-57).

When the Indian government began to proceed with the construction of railways, roads, telegraphs, irrigation works, docks and public buildings, growing demand for a wide range of goods was generated that led to the emergence of 'the three great consuming departments'— the Railway, Military and the Public Works Departments as well as the Civil Departments which purchased their requirements. The Government not only became the single biggest purchaser of steel and engineering goods in the country but also a big buyer of a variety of goods. The India Office through the Stores Department supplied these stores on receipt of indents from the Governor General in Council. The Government of India issued from time to time, with the Sanction of the Secretary of the State, rules which governed the purchase of these stores (Sen 2000: 218). These increasing necessities generated by emerging colonial governmentality prompted the Government to think on lines of using the prison for supplying to some of its departments.

3.2 The introduction of intramural labour

The Indian Penal Code recognised five forms of punishment – capital punishment, transportation beyond the sea, forfeiture, fines and imprisonment both simple and rigorous.³ While rigorous imprisonment entailed hard labour, a prisoner sentenced to simple imprisonment was not under any obligation to perform any work and similarly, an under trial prisoner and a detainee were immune from liability from work unless they volunteer to do so because in the case of simple imprisonment the circumstance on account of which simple imprisonment was awarded to a prisoner do not warrant such liability being imposed. In case of an under trial his/her presumed innocence in law makes him immune from liability to work. As a detainee is only detained in the interest of prevention of crime and therefore he/she was also not liable for work (Devi 1966: 226).

It was the Report of the Indian Jail Committee of 1864 (Henceforth IJC, 1864) which for the first time chalked out a detailed programme of intramural factory labour for whose implementation the newly built central prisons provided the necessary space (This should not be taken to mean that extramural labour or “unproductive” penal labour was completely stopped but, the emphasis had shifted). The new emphasis was on making punishment more deterrent. It held,

If residents in jails are not looked upon with dread, habits of industry and order and regularity could not be stringently insisted upon, as such habits were peculiarly distasteful and repulsive to the worthless and the vicious. Machine labour was to be the principle means for bringing in discipline as from it alone one could derive the possibility of insisting upon order, punctuality, and the clock-work distribution of time which was extremely burdensome to the lawless and irregular.⁴

This also reminds us of E P Thompson’s (1967) reflection of how in the early cotton mills, machinery itself acted as a powerful supplement to the time-keeper (Thompson 1967: 82). Foucault talks about time operating on punishment in another sense. In the punishment of imprisonment, prolonged pain of hard labour is thought to be more effective on the guilty than the passing pain of physical torture (Foucault 1979: 99).

³ This also means that from January 1862 when the Indian Penal Code came into operation the other forms of punishment apart from these five disappeared. However it should be noted within a couple of years whipping was reintroduced by the enactment of Whipping Act of 1864. For more on this see Murali Karnam (2004).

⁴ Report of the Indian Jail Committee, 1864, pp. 24-28.

Therefore one can see that not only the ideas of the idle/criminal against labour are reinforced which had their origins in the beginning of the capitalist modes of production, but it is also interesting to see how modern machinery, another typical characteristic of capitalistic mode of production assists in rendering punishment through imprisonment possible. Installing modern machineries was also useful in producing for the public departments and thus for saving of the colonial establishment. Also another important fact to underline, and as Arnold points out is that the birth of the modern prison and intramural labour in India are practiced within the overarching penal ideology of deterrence and not reformation as Foucault's writings assume. In contrast to the reforming intentions ascribed by Foucault to Europe's prisons (however imperfectly such goals may have been realized), Arnold says, in India until late nineteenth century there was little emphasis upon reform as opposed to confinement– “The body of the ‘Oriental’ might be disciplined, but his ‘soul’ remained out of reach (Arnold 1994:175)”. The Prison Discipline Committee of 1838 certainly spoke of ‘attempts to reform the character’ of prisoners as one of the cardinal objectives of the prison system, but it gave less weight to reform than to deterrence. The Jail Conference of 1877 went a step further. It said:

The idea of reforming prisoners, whatever its validity in the West, ‘has but little significance in India, where the great majority of criminals ... need but little reformation’. Anyway, it added, there were ‘practically no means of reforming those who do’. The majority of Indian prisoners were ‘not materially below the moral level of the outside population’, and no-one would be ‘so visionary as to wish to apply any other standard to them’. But if India’s prison system despaired of reforming its inmates and reaching their ‘souls’, it could still serve as an agency for a more practical form of colonial control over productive labour (The Jail Conference of 1877 as cited in Arnold 1994: 175).⁵

Also, as with machinery tasks could be precisely exacted, all chances of favouritism or other malpractices in respect with such exaction could be obviated. Therefore it was felt that an unerring test could be applied to the prisoners’ labour, which could be independent of the reports of the supervision of subordinate jail officials, who could not always be depended upon. Though earning profits was considered subordinate to that of imposing discipline, it was held that one could not be underrating the importance of such profits as a test proof of the enforcement of discipline. However there was another prominent voice which held that use of machinery in prisons was not advisable as

⁵ Note: this is not only the case with India as Arnold states, but as Garland points out, even in the case of England, Foucault makes this assumption. For more on this, see Chapter V.

the goods produced from them would compete in the open market (The question of such contestation will be studied in detail in the next chapter).⁶

The labour of all working prisoners was to be regulated as much as possible by task work, the task of each day being at least that performed by a free labourer of the same craft in the district. Ten hours of work had to be performed daily, exclusive of the time occupied at meals. Any prisoner not compelled to work by his sentence, or any person committed for trial who was willing to work rather than remain idle, was permitted to do so provided his consent was freely given and he was entitled for rewards of labour as others. All jailors were entitled apart from their salaries a net profit of 15% from the manufacturers. As a general rule, no handicraft that that was neither penal nor profitable, nor of the nature required for weak and sickly prisoners, was to be introduced. Labouring prisoners refusing or neglecting work, were to be punished according to rules of breaches of prison discipline. Except in menial offices and works of necessity, no labouring prisoner was to be compelled or required to work on Sundays and such special holidays. Any skilled labouring prisoner employed in handicrafts was exempted from further work as soon as his daily allotted task was completed.⁷

It is an interesting debate where modern machinery which provided for an easier control over labour process is also helping satisfy the necessities of the prison. Traditionally the shift towards modern production was not only the result of developments in technological innovation but also an attempt by employers to reduce costs by gaining greater control over production through more effective means of discipline and supervision. The labour process was therefore further transformed by mechanization. Marx says, “Machinery becomes in the hands of capital the objective means, systematically employed for squeezing out more labour-power in a given time. This occurs in two ways: the speed of the machine is increased, and the same worker receives a greater quantity of machinery to supervise or operate (Marx 1977: 536).”

For Thompson (1967), mechanization ushered in the principle of the factory. The substitution of human skill by mechanical science, and the partitioning of the production process into its essential constituents, progressively replaced skilled labourers by machine operators. Machine production

⁶IJC, 1864, p. 27. Also see, Home Judicial, May 1875, No. 74-78, Proposed introduction of machinery into the Bhagalpore Central Jail for Manufacturing purposes, NAI

⁷ IJC 1864, pp. 32-33.

profoundly altered the form and content of work. One of the significant changes was a growing trend towards the intensification of work. Intensification regulated the continuity of work. Workers were forced to adjust to the pace of the machine rather than their own pace. Methods that insured intensification include: the speeding up of machines, piecework payment, and improvements in machine technology and operation (Thompson 1967). Thus machinery, which aided increased production along with its inherent disciplinary possibilities which helped in gaining greater control over free labour, is found to be aiding modern punishment of imprisonment. Also the modern prison in India should also be seen as a place, especially when free modern factories were still very few in number, where a transformation from traditional to modern form of wage labour was taking place. In fact as will be seen in the next chapter, the prison was an initiator of several industries that were established in India.

Foucault's idea of discipline which helps in understanding modern greater forms of social control, not only informs us about modern forms of punishment but also how punishment through labour is achieved. Discipline is achieved in society by the distribution of individuals into space, and the temporal control of their activity. He refers to several techniques that were used to distribute individuals according to strict spatial arrangements including: enclosure, partitioning, functional sites, and rank. The temporal control of activity refers to various techniques that enable individuals to use time efficiently such as: the use of a time-table (establishes rhythms, imposes occupations, regulates repetition), the temporal elaboration of the act (a collective and obligatory rhythm), the correlation of the body and the gesture (relation between the gesture and the position of the body), the body-object articulation (relation between the body and the position of an object), and exhaustive use (maximum speed and maximum efficiency). Through such discipline, a body is rendered docile meaning that it may be subjected, used, transformed and improved. Such disciplines had always existed in monasteries and armies, but in the seventeenth and eighteenth centuries they became a general formula of domination (Foucault 1979: 136).

The IJC, 1864 decided that every prisoner sentenced to rigorous imprisonment and labour should undergo a certain portion of his sentence before any indulgences can be allowed to him. The three

descriptions of labour – hard, medium and light, the proportion of which allotted to a prisoner would be regulated according to the length of the sentence as follows.⁸

Description of labour according to the length of sentence

	Hard	Medium	Light
Upto 3 years	18 months	18 months	
“ 4 years	2 ”	18 ”	6 ”
“ 5 years	2.5	2 ”	6 ”
“ 6 years	2.5 ”	2.5 ”	1 ”
“ 7 years	3 ”	3 ”	1 ”

First class or hard labour consisted of oil pressing, lime grinding, flour grinding, paper pounding, pounding bricks for soorkee, paper polishing, drawing water etc. Second class or medium labour consisted of labour which included masonry, stone- cutting, paper making, blanket weaving, cleaning yards and wards, basket making, gunny weaving etc. Third class or light labour included tailoring, dyeing, cloth printing, folding and stitching books, barber’s work, leather work, weeding and removed decayed vegetation etc.⁹ The Committee also decided that the transfer of a convict sentenced to hard labour, from that to work of a medium and afterwards of a light order, must be looked on as an indulgence, not as a right and should depend on the conduct of the prisoner. Judicial sentence should remain inviolate.¹⁰

Such schemes of rewards were also in confirmation of the utilitarian principles proposed by Bentham. Bentham, who initially supported hard profitable labour was not keen about it a few years later. Forced labour, he accepted, was not popular as it was too easily confounded in the public mind with slavery. He says, “The labour obtained by the force of fear is never equal to that which is

⁸ IJC, 1864, p. 28.

⁹ Ibid, p.32.

¹⁰ Ibid, p. 29.

obtained by the hope of reward. Constrained labour is always inferior to voluntary labour; not only because the slave is interested in concealing his powers, but also because he wants that energy of soul upon which muscular strength so much depends (Bentham as cited in Semple 1993:27).” In the Panopticon, Bentham devised schemes which would ensure that prisoners would be inspired by the promise of reward, and perhaps he hoped that they could thus be enthused with ‘energy of soul’ (Semple 1993: 27-28).

Thus as R N Datir (1978) rightly points out, the notion of convict labour had now changed from merely producing a deterring effect to a principle means of enforcing discipline and the logic behind the classification of labour as hard, medium and light was not only to make prison labour punitive but to provide some indulgences to prisoners which again were aimed at maintaining prison discipline (Datir 1978:236). Satadru Sen’s (2000) remark, “...as the prisoner by the virtue of his conviction had given up the legal rights he may have had as a free man, the state’s power to coerce, to manipulate, and to experiment was relatively unimpeded by its own constructed limits (Sen 2000: 89)”, aptly summarizes the rationale of the intramural labour policy that was being implemented in the India colony.

3.3 The continuation of extramural labour

With the establishment of new central prisons, though the general stress of the convict labour policy was on intramural labour, the colonial authorities in this phase did employ extramural labour to a considerable extent. As has been discussed already, the Committee of 1836-1838 which found tens of thousands of hard labour prisoners employed on the roads, working generally in heavy fetter and without proper classification or discipline condemned such a system. The 1864 Committee which laid the foundations for intramural labour did not touch upon the question of extramural labour.¹¹

The Prison Conference of 1877 dealt with the question of employing prisoners on large public works, such as canals. This method was regarded as the most valuable and almost as a necessary adjunct of jail administration, but they did not recommend it for all convicts because it was not

¹¹ Note: the Prison Conference of 1877 was also the very Conference which openly asserted the right of the prison industry to compete in the open market. For more on this see Chapter IV.

suitable for all constitutions, would not fit into any scheme of progressive classification, would disorganise intramural industries and it could not everywhere be conveniently provided. It is striking to see that while on the one hand 1877 Prison Conference reasserted the policy of intramural profitable convict labour¹², it was also not giving up on the extramural engagement of convicts.

In 1882 once again there was a review of convict labour policy and the provincial governments were asked to submit a report on the same. The Madras Presidency reported, owing partly to the faulty construction of some of the District Jails as it was put, and partly to the difficulties of providing suitable indoor employment for short-term prisoners, a large proportion of convicts continued to be employed on extra-mural labour. The intra-mural labour in the central jails of Madras Presidency largely consisted of employing prisoners in weaving cloth for prisoners clothing and Police Department, coir-mat making for prison use, carpentry and blacksmith's work in connection with jail buildings, woollen and cotton carpet weaving, boot and sandal making for the Police Department, woollen blanket making, tent-making. The woollen carpets from Vellore Central Prison were exported to England and France. The woollen carpets from Salem Central Jail were principally sent to dealers in New York.¹³ As in principle, the prison manufactures could compete in the open market, there were no steam machinery in any jails of Madras. Only few power looms were found in Coimbatore Central jail which were worked by tread-mill and crank and which afford suitable hard labour for convicts in their probationary period. Also, new ways of employing prison labour continued to be explored. The Madras Government stated that with regard to the expediency of employing labour on large public works, there were considerable difficulties in the way. But his Excellency the Governor in Council had written to the Inspector of Jails to experiment with the employment of convicts on on extramural work after communication with the Public Works Department. The Inspector General in response had suggested that the Cocanada harbour works could form a project suitable for such labour.¹⁴

¹² This aspect of the 1877 Prison Conference is dealt with in detail in the following chapter.

¹³ Home Jails, Feb 1883, No. 131-134, *Precis of the Correspondence between the Government of India and Local Governments and Administration Subsequent to Home Department Resolution, 1882 on the Subject of Jail Manufactures*, NAI.

¹⁴ Ibid.

The most common forms of labour for prisoners confined in these jails were construction and repair of jail buildings, repairing roads, farming and gardening, quarrying stones and digging gravel, menial duties connected with the jails, preparing grain for use in the jail. In Guntur, Kurnool, Cuddapah, Chittoor, Cuddalore, Tranquebar, Madurai and Tellicherry with the exception of those employed on prison duties, convict gangs were placed at the disposal of either Municipalities or Local Funds Boards for the improvement of station roads, quarrying etc.,. In the jails at Tanjore and Tinnevely prisoners were employed on new jail works under the direction of the Public Works Department. From the Ootacamund Jail a gang of 80-90 prisoners were supplied daily to the Public Works Department and another gang of 30-40 was engaged in embankment work. Gangs of prisoners were also occasionally let out on hire in the Cuddalore District Jail to work for private individuals. The only District jail in which prisoners were employed on manufactures is that at Bellary, where there were both long and short term prisoners.¹⁵

In Bombay Presidency there continued a practice for some years to employ every available long-term prisoner fit for hard labour on large public works; accommodation was provided on the spot for the convicts in portable jails. Also as many short term prisoners as possible were employed on extra-mural work for the service of railway contractors, municipalities etc. As on 1st November 1882, 28.2% of the prison population was employed on extra-mural labour, 33.7% on factories, and 29.1% on prison-services.¹⁶

The Bengal Government, was against the views expressed by the Government of India in support of the system for the extra-mural employment of prisoners on public works. They forwarded a Note submitted to the Lieutenant Governor by the Inspector General of Jails (Dr. Lethbridge), in which that officer had dealt with the various points raised in the Resolution of 22nd September 1882, and urged the considerations of a number of questions- sacrificing the work of so many anxious years spent in improving jail buildings, prison discipline, the sanitary conditions, the intramural and industrial employment of prisoners. The Lieutenant Governor strongly supported Lethbridge and said that extramural employment would be fatally injurious to the health of prisoners, increase the already

¹⁵ Home Jails, Feb 1883, No. 131-134, *Precis of the Correspondence between the Government of India and Local Governments and Administration Subsequent to Home Department Resolution, 1882 on the Subject of Jail Manufactures*, NAI.

¹⁶ Ibid.

existing high mortality rate, it was expensive, and it was absolutely impossible to find suitable public works for such large number of prisoners. The prisoners also had to be brought from a long distance, and their labour was not remunerative. It would also subvert discipline and moral organization as it was difficult to supervise large number of scattered convicts. It interfered with the earnings of regular unskilled labour, climate was also not suitable for full year engagement, and it would result in a loss of existing manufacturing setups. Also a valuable opportunity of beneficially educating them would be lost. It was argued that if the Government substitutes convict labour for free labour on roads, railways and canals, it would diminish the earnings of a class which had no other means of support to fall back on (no agricultural land), and which would consequently require all the greater protection from the state.¹⁷

On the contrary, the Punjab Government opined that extra-mural labour in the form of executing large public works was one of the best systems devised for the employment of the convicts. The important conditions which the Lieutenant Governor considered necessary for imposing extramural labour were that convicts should be employed only in large bodies under strict discipline and under European supervision; full rates of market labour must be charged to the department executing the work, in order not to cause undue competition with the labour market; the cost of guards and prisons should be borne by the Jail Department; and other common rules remained the same.¹⁸

In the Resolution of 22nd September 1882 regarding the employment of convicts extramurally, it was clear from the reports submitted by the Local Governments that because of the practical difficulties, it was extremely difficult to anticipate the time when extramural labour could form the principal mode of employing long-term prisoners throughout British India. The Governor General in Council, however, continued to be of the opinion that such form of employment had been allowed “to drop too much of sight.”¹⁹ In this case, as shall be seen in the next chapter in more detail, the 1882 revision of intramural labour policy was in response to the complaints filed by the private

¹⁷ Home Jails, Feb 1883, No. 131-134, *Precis of the Correspondence between the Government of India and Local Governments and Administration Subsequent to Home Department Resolution, 1882 on the Subject of Jail Manufactures*, NAI.

¹⁸ *Ibid.*

¹⁹ Home Jails, December 1885, No. 34, *Jail Manufactures*, NAI.

European entrepreneurs who felt that the prison made goods were competing with their produce in the open market.

Therefore one can clearly see how the colonial state was constantly reviewing its stance on convict labour, depending on its necessity and maximising its utility. Important aspect to underline is to see how the Foucauldian assumptions of punishing through discipline through the rhetoric of reformation, may not be the case with the colonies, as along with the 'birth of the modern prison' in India, not only did the penal ideology continued to be that of deterrence, but extramural convict labour covalent with lack of disciplinary possibilities continued to be used for fulfilling state's of a different kind alongside disciplinary intramural labour.

Finally the Committee of 1889 strongly condemned the whole question of such extramural employment. It entirely opposed the use of prisoners on municipal roads and with regards the system of public work gangs, it remarked, "So complicated are the conditions which influence the capacity of a mixed gang of prisoners to perform heavy earthwork under a hot sun, that even the most careful and intelligent supervisor will fail to keep them healthy or to justify their employment from an economical point of view."²⁰

By 1890s, intramural labour was introduced even in the district prisons. They were largely engaged in brick-making industry which provided labour during dry weather and during the rainy season it provided labour in the form of sorkee pounding. In Bengal oil pressing was a popular form of engagement and the oil produced was used for cooking in the prisons. Rice-husking was introduced in the rice-eating districts to lessen the cost of diet. Grinding cereals for jail consumption was a popular form of employment in almost every district prison. Stone breaking for municipalities was a profitable industry in Patna. Making coir, fibre ropes and mats was practised in districts where coconuts were cultivated. In certain districts, to reduce the costs of prison diet, the prisoners cultivated in jail gardens (Karnam 2004: 105).

If imprisonment emerged as the most imposed form of punishment in this period, after capital punishment, the sentencing for transportation mainly to British penal settlements like Singapore, Penang and Malacca in the Straits of Malacca, Mauritius, and the Andaman islands was widely

²⁰ IJC, 1920, pp.128-129.

imposed on the convicts. One of the reasons for adopting this punishment was to capitalise on the taboo that existed in the Indian belief of crossing the sea. The Committee of 1838 recommended the general continuation of this policy. Post Mutiny of 1857-58, Port Blair began as a place where prisoners of the Mutiny could be transported. The convicts who were transported to Andamans were made to work to expand the settlement. They were extensively engaged in activities of forest clearance and land reclamation. The requirement that work had to be visible and subject to supervision by the state and its allies Sen (2000) says had to do with both, “the British desire to penetrate and control those areas of Indian society that remained beyond its reach, and the modern state’s ideological need of a monopoly on legitimate authority (Sen 2000: 89).” Therefore he says labour was critical to British to ‘reclaim’ the tribal population of the islands, and to bring them however gradually and incompletely, into the political and social and economic orbit of the settlement. It was also useful in making the penal settlement as self-sufficient and as economic as possible and it rendered people not only useful to the prison but at once useful to the society (Sen 2000: 89-93).

Extramural labour enabled colonial expansion and economic development. Convict labour in the Andamans was intimately connected in a circular self-legitimizing logic. The convicts who had passed beyond an initial stage of hard labour and had acquired a limited social and economic autonomy within the settlement were called “Self- Supporter” and from 1862 onwards female convicts were transported to Andaman mainly to encourage marriage between them and the Self-Supporters. This slow transition Satadru Sen says, “from a convicted criminal, to a convict in a chain gang, to employment as a Self-Supporter or a convict officer in the penal regime, to life as a free settler in a penal colony was in effect a process by which the state sought to transform the criminal classes of colonial India into loyal, orderly and governable subjects.” In England, the view that punishment should aim at the ‘correction of the mind’ promoted the penitentiary over transportation. In India on the other hand, the need to get rebels and others out of the country made Andamans an attractive penal option. Convict labour in the Andamans was predominantly outdoor labour in forests, swamps, and agricultural land (Sen 2000: 1-19).

So far, I have tried to locate the political rationality in which modern prison and with it, the shift from extramural labour to productive intramural labour emerged in colonial India and I have also tried to reason out the benefits that machine labour rendered towards the end of punishment. Then I

have looked at how if on one hand the emphasis was on making intramural labour the most common source of punishment, on the other hand interests were still being expressed in terms of making prisoners work on new colonial establishments. Simultaneously, along with imprisonment, not only did transportation continue to perform as another form of punishment but the colonial regime used convict labour through the punishment of transportation as well. Also, Great Britain even in its other colonies such as Jamaica²¹, Victoria²², Sri Lanka²³ practised similar forms of convict labour policies and utilized convict labour for its imperial purposes. I will now move on to the next theme of this chapter which is to attempt a comparative study between the convict labour policy as practiced in India and in Great Britain.

3.4 Convict labour as practiced in Great Britain

As stated in the last chapter, in Great Britain, a large number of modern prisons were built in the 1840s and 1850s. This period also coincided with the more effective methods of crime detection through organised police forces which began in the 19th century and the centralisation of the penal system. The notion that imprisonment might provide an opportunity for reform of the prisoner, as stated in the last chapter developed along two strands of thought. One strand of thought (Associationist / ‘silent system’) was built on the value of industrial work as a reforming experience. In this model, prisoners were put to work in large communal workrooms but were forbidden to talk to each other and were punished harshly if found doing so. The second tradition (Evangelical/

²¹ In Jamaica, convict labor was both of penal and industrial nature. The tread-mill was made slightly remunerative by being attached to a mill for grinding corn. Prisoners, when not at work on the treadmill, were employed in quarrying and cutting stone, and as brick-makers, lime-burners, carpenters, coopers, masons, blacksmiths, tinsmiths, tailors, shoe-makers, etc., under the instruction of competent tradesmen employed for that purpose, and supervised by an overseer of works from England. The convicts work in association, but in silence. The women were employed in the domestic work of the prison and in picking coir. For more on this see *Report of the International Penitentiary Congress, 1871*, p.125.

²² In Victoria the prisoners in the first stage of their sentence are kept in strict separate confinement, eating, working, and sleeping in their cells; those in the second, third, and fourth stages labor in association, but are separated by night; in the fifth and sixth classes they are employed on public works, receiving rations often. sugar, and tobacco, besides being allowed a small gratuity amount. For more on this see *Ibid*, pp.126-127.

²³ Here separate confinement with hard industrial penal labor was enforced during the whole term of short - and the first six months of long sentences. For more on this see *Ibid*, p.125.

‘separate system’) was based more on the strict model of Christian monasticism. Prisoners were confined to individual cells. They were given work to do on their own. Sometimes it was purposeful labour such as cobbling or sewing. At other times it had no purpose other than to occupy the prisoner and might involve endless turning of the crank or stepping on the treadmill (McConville 1981: 350).

The ‘silent system’ emphasized the importance of hard labour with the intention both of underlining the unpleasant nature of imprisonment and teaching the discipline necessary for an honest member of the working class. The ‘separate system’ on the other hand was much more concerned with changing the mindset of prisoners. It was based on a belief that criminals could be reformed by the very experience of imprisonment. They were to be left on their own in their cells to contemplate the error of their ways. In between the work which they were given to do they were encouraged to read the one book which was allowed to them, the Bible. They were not allowed to come into contact with other prisoners, nor talk to staff. The only people who visited them daily were the governor and the chaplain, ‘good people’, who were to have a beneficial influence on them (Coyle 2005: 29).

The above mentioned two strands of thought on the prison system were influenced by the penal institutions of the United States of America (USA). In the north-east of the USA such systems were developed in New York and Pennsylvania and came to be known by the names of the prisons in which they operated. The ‘silent system’ was favoured in Auburn jail in New York while the ‘separate system’ was used in Philadelphia penitentiary in Pennsylvania. In England the ‘silent system’ was favoured in the Middlesex House of Corrections at Cold Bath Fields, while the ‘separate system’ found favour in Millbank Penitentiary, opened in 1816, and later in the new Pentonville prison (1842), both of which had cellular accommodation as opposed to the previous ward structure (Coyle 2005: 29).

However within a few years the ‘separate system’ gained more popularity over the ‘silent system’ as it proved to be extremely difficult to enforce complete silence on prisoners who worked side by side each day. Similarly, making them wear hoods while they exercised together in yards could not prevent communication between them, even in the face of draconian punishments. It was also impossible to get prisoners to produce work of a high enough standard to defray the expense incurred. The separate system was easier to enforce, since it was premised on not allowing prisoners

to come into contact with each other, but this virtual segregation affected the mental state of many prisoners. The high moment of the separate system was probably in 1837 when the governor of Millbank penitentiary resigned in protest against the strict way that he had to enforce it. The Home Secretary filled the resulting vacancy by appointing the chaplain, who was a fervent supporter of the system, as governor. Within a few years concern was being expressed about the strict religious regulations which were being applied and about the number of prisoners who were being driven mad because of the extended periods of total separation. Shortly after the opening of the new model prison at Pentonville in 1842, Millbank, the symbol of the separate system, ceased to be used as a penitentiary. Although the principle of total separation became discredited and ceased to be applied indiscriminately, it remained on statute until new Prison Rules were enacted in 1930 (Coyle 2005:29-30).

After the acceptance of the 'separate system' in the Pentonville, the Progressive Stage System was introduced by regulations passed in the Act of 1857. This prescribed, a nine month period in separate confinement, and the remaining term of the sentence was to be divided into three stages of discipline, representing three equal proportions of the residue of the sentence. On passing from first stage to the second, prisoners were rewarded in the way of extra gratuities, badges etc. at the third stage, there was a further increase of privileges of the same nature. The object was to (instead of transportation which was abolished in 1857) develop a useful system of progressive reformatory discipline, based upon a good adjustment of hope and repression, but subject to the primary object to punish along with not neglecting an effort to reform (Ruggles-Brise 1921: 32).

In 1860s due to the increase in serious crime, another Commission was appointed which held that the regulations made under the act of 1857 did not indicate to the convicts with sufficient clarity that remission could be only earned as a reward for industry and conduct. Mere abstaining from misconduct could not be a just claim for reward. They advocated the adoption of Mark System as introduced into Australia by Captain Maconochie, and, subject to a considerable remission of punishment earned under this system, they were in favour of longer sentences.

In 1863, a Royal Commission was appointed to consider the whole subject of transportation and penal servitude. The purpose of the Commission was to serve as an authoritative statement, for uniform application, of the object and methods of imprisonment as a legal punishment. The report

favoured a punitive regime based on 'hard labour, hard fare, and a hard bed', directed solely towards deterrence. It also stated that to the extent moral reformation of the offender was an aim, it should be achieved primarily through discipline. They relied mainly on separate confinement and punitive 'hard labour': the first required complete isolation of the prisoner at all time—in his cell, at work, in chapel and at exercise; the second required his employment on machines such as the treadmill and the crank and picking oakum, of which the deliberate intention was to be irksome, fatiguing, and totally unproductive-degrading.²⁴

Every convict during his sentence was to pass through four classes called the probation, the 1st, 2nd and 3rd class, and certain selected prisoners were also placed during the last year of their sentences in a special class. The probation class lasted for one year, nine months of which were supposed to be passed in a close prison and the other three months were to be passed on Public Works. The second and third class lasted each for one year at least, and the remainder of the sentence could be passed in the first class, unless a prisoner is promoted during his last year into the special class. Promotion into each of these classes was followed by certain privileges, and each class wore its own distinctive badges. These privileges are certainly very limited but yet they offered inducements which were much sought after.²⁵

There was a proposal to employ convicts on industrial labour to induce them into habits of industry and facilitate their entering honest industry outside. Their main objective through this was to make the prison self supporting. Penal labour had to achieve three objectives- deterrence, reformation and self sustenance. However as this was also a period when convict labour and its products were vehemently opposed by free labour and private producers. It was said:

As persons who are earning a livelihood while free are competing with somebody or other, so it is perfectly reasonable that they should work, and therefore compete equally after being put in prison. There is however some limit to this. This would involve spending from public funds for buying expensive plant and machinery, the value of work done by which would bear a great proportion to the value of the prisoner's labour, because in such a case it is not merely competition against prison labour, but against government capital. The circumstances of a prison render the profit a secondary transaction, and moreover it cannot be ensured that

²⁴ The Treatment of Offenders in Britain, Central Office of Information, London, 1960, p.4. Also see, Amy Edwards (1978), *The Prison System in England and Wales: 1878-1978*, Her Majesty's Stationery Office at HMSO Press, Scotland, 1978.

²⁵ Report by E F Du Cane, *An Account of the Manner in which Sentences of Penal Servitude are Carried Out In England*, London, 1872, p. 17.

in a government establishment the profit will always be so narrowly looked after as if it were private property, so that the profit which should be earned by the public money so expended is liable to be neglected or forgotten, and this would enable the goods made to be sold at a cheaper rate, and so to cause undue disadvantage to the free workmen. Many of the disadvantages which attend the system of making prisons into manufactories are avoided by performing in them work required by the government, either central or local, and certainly work of this kind should be preferred to any other.²⁶

Therefore he concluded that the best system ever devised for the employment of convicts is that of executing large public works by means of their labour. It furnished the prisoners with a means for acquiring a variety of trades which will be useful to them on their discharge and the prisoners do approve of it. Also important works could be sometimes executed by this, means, which the public might not always be willing to pay, because while only a comparatively few may quite understand its importance, everybody appreciates and is inclined to oppose a proposal to increase debt or taxation.²⁷

The advantages offered, to the convict labouring on Public Works consisted of the more frequent communications by visit or letter with their friends, in more freedom for exercise on Sundays, and in the earning of a higher gratuity of money to be paid on the prisoners discharge. The period which a prisoner passed in each class was measured not simply in time, but by days of hard work, on a plan which is explained in the system of marks. He was also offered the privilege of conditional release which a prisoners gain by promotion to higher class. The amount of remission which any prisoner could gain was one fourth of the whole period he passed on Public Works, and this remission was gained by industry alone, and not by good conduct. Ill conduct was followed by forfeiture of remission, degradation to a lower class, and the loss of privileges gained by industry, as well as by solitary confinement, reduction in diet, corporal punishment etc.²⁸

Further Du Cane reveals,

The plan by which we endeavour to bring before the prisoner, in a form easily intelligible to him, that as in ordinary life, the advantage held out to him as an encouragement to industry are directly proportioned to his industry; that he cannot be idle for a day without a corresponding loss; that good conduct is necessary as well as industry, because ill conduct will deprive him of the advantages he

²⁶ Report by E F Du Cane, *An Account of the Manner in which Sentences of Penal Servitude are Carried Out In England*, London, 1872, pp.29-32.

²⁷ *Ibid*, p.36.

²⁸ *Ibid*, p.18-19.

would gain by his industry- is by a system of recording industry by a system of marks. To everyman is assigned the duty of earning a number of marks proportioned to the length of his sentence.²⁹

At Great Portland Convict Prison, convict labour was employed in quarrying the stone for the construction of the Breakwater –a stone dam in the sea, nearly two miles in length, and running into fifty or sixty feet deep; they were also to a large extent engaged in the defence intended to prevent an enemy obtaining possession of the island. In executing these works, every variety of mechanics work necessary in building or engineering has was executed by convicts – quarrying, and dressing, and placing the stone, all sorts of carpentry, casting and forging and iron work etc. The large and extensive plant was also erected by the convicts and kept in repair including the construction of the large cranes and derricks in the quarries, and the laying of the rails of the quarry wagons, to run on their way to the place for delivery of the stone.³⁰

In Chatham and Portsmouth, extensive work was undertaken for the enlargement of the dockyards and was largely done by the convicts. The prisoners were employed in excavating basins, and building the seawalls and the dock-walls, besides a vast quantity of preliminary work, such as demolishing the old fortifications at Portsmouth , and draining St.Mary's island at Chatham. The bricks used in these works were made by the convicts and the Portland stone for them was raised and worked by the convicts at Portland prison. Work of a still higher pecuniary value was done for the convict department in the building of new prison accommodation. Prison accommodation in cells for 1889 prisoners was erected entirely by convict labour which had resulted in a gain of 75,000 pounds in a comparatively small department of their labour. In these works, the bricks, stone quarried and dressed, timbers sawn and wrought, iron cast and forging them from the raw state was all done by prisoners except for buying ready-made locks.³¹

Thus in stark contrast to the Indian experience, in England from the 1860s-70s, not only was hard and unproductive labour on the tread-mill and the crank were retained, but convicts were also engaged on public works and the English Government did not vote for productive intramural/industrial labour. In India, though there were constant challenges to the intramural

²⁹ Report by E F Du Cane, *An Account of the Manner in which Sentences of Penal Servitude are Carried Out In England*, London, 1872, p.22.

³⁰ *Ibid*, pp. 37-38.

³¹ *Ibid*, pp.38-39.

factory labour that was introduced since the 1860s, the colonial state determined to use convict labour products for its own departments, at a certain point did revert to extramural labour (1882)³², and as already seen neither did it completely give up, but by and large retained intramural factory labour as the principle mode of employment for the prisoners.

3.4 Inducing convicts to discipline and labour: System of remission, convict warder and gratuity

As stated earlier, in British Colonial India from the late 1870s there was a rethinking on the objective of the penal labour policy from the unproductive penal labour of the treadmill and the crank of the earlier decades to profitable and productive penal labour for which purpose machineries were to be set up in various prisons. This shift in objective apart from fulfilling the necessity of making punishment more deterrent and satisfying the increasing needs of the various public departments of the colonial state was mainly to discipline the prisoners and render the prison more easily manageable. In this context, several inducements to lure the prisoners to good conduct and encourage them to labour were introduced such as the system of remission, appointment of convicts as warders and payment of cash awards. If we saw in one of the previous sections, that machine production, a characteristic of capitalist mode of production aided the feasibility of imprisonment as punishment, this section will study how disciplinary and managerial techniques that characterised modern production percolates into the penal system.

The disciplinary and managerial strategies were also inspired by Bentham's ideas who believed in creating an artificial environment where, by a series of positive rewards, the prisoner would be induced to adopt a pattern of socially acceptable behaviour. If such behaviour was continually reinforced, the prisoner would eventually become habituated to it and thus reformed (Cooper 1981: 675-690). Apart from looking at such incentives simply as various means by which the state used to discipline its deviants and extract maximum labour, borrowing from Foucault, I will be looking at how these strategies which rendered prisoners in networks of power relations which in the name of incentives, made prisoners all the more docile and subservient to the state.

³² For more on this see Chapter IV

Works like that of David Arnold do talk about the changing nature of prison labour from extramural to intramural factory labour in detail. But the emphasis is more on prison labour as contributing to self-sustenance of the prison and in terms of producing for the colonial state and not so much on the mechanisms of exercising discipline. Though R N Datir (1978), C Venkatesan (1981) and Murali Karnam (2004) refer to these techniques, their studies to a large extent speak about the policy in detail but it is a worthwhile exercise to deal with them further and put them in a perspective. Satadru Sen, in the context of transportation to the penal colony of the Andaman, does talk about similar schemes. I will be looking at such schemes as practiced in the central prisons of India. There are certainly other ways of disciplining convicts especially through rationing of food, segregation, punishments within the prison and so on but the focus is largely on mechanisms which combined good conduct with labour- remission, convict warder and payment of gratuity.

3.5.1 System of Remission

The system of remission was introduced in 1868. Under this system entire period of sentence was graded in an ascending order and represented by marks for discipline, continuous labour and good behaviour. On any working day, every prisoner, who passively complies with prison regulations and does allotted work would automatically earn two marks per day. On Sunday, or day of hospitalization, the prisoner could only earn one mark, i.e. for good conduct. 24 marks earned by a prisoner would be converted into remission of one day sentence. A prisoner sentenced for two years, who earns 56 marks per month, could earn 1344 marks in two years and would be released 56 days in advance of the expiry of judicial sentence imposed by the court. On the basis of these calculations, at the time of convict admission, officials recorded earliest possible date of release against the period of judicial sentence with the expectation that would at least inspire the prisoner to comply with regulations and turn out more work to advance the freedom from prison as much as the remission system allows (Karnam 2004:59).

Every prisoner at an individual level earned the specified marks and corresponding remission. But if prisoners actively took part in activities, which had implications for the survival and sustenance of prison as an institution, they would be rewarded with special marks and remissions. For instance, if a prisoner assists the prison management in detecting or preventing breach of prison discipline or regulation, from protecting jail officers from attacks, suppressing jail mutiny or fire, succeed in

teaching handicrafts, economizing, shows special excellence in work he will be awarded 50 to 100 marks which advances the time of release. Similarly, the marks earned and prospective marks earned in future by the prisoner would be withdrawn for prison offences that range for disobedience to officials to escape or attempt to escape from custody or not cooperating with officials in quelling any rioting . The punishment imposed by withdrawing the remission prevents prisoner only from early release, but does not extend the confinement beyond the judicial sentence. But this fact does not show any impact on the prisoners, as the anxiety for possible early release, which seems to be in their own hands, forces them to comply with the prison order (Venkatesan 1981: 280; Karnam 2004:59-60).

The system of remission plays a major role in forcing the prisoners to comply with prison regulations. Also it was popular to the extent that when convicts had the option to choose between remission and gratuity, almost everyone preferred the former. In Madras Presidency for instance, in the year 1921-22, the extra remission for works turned out over and above the prescribed limit was earned by 648 prisoners, whereas 10 prisoners earned a gratuity in lieu of remission (Karnam 2004: 121). Also, the number of prisoners released under ordinary remission had increased from 2,671 in 1919 to 10,701 in 1939 in Madras Presidency. This increase was mainly because in 1924 the benefit of remission was extended to sentences six months and above and in 1939 to those for three months and above (Venkatesan 1981: 280-281).

The popularity of the system of remission reflects how prisoners are caught in a grid of power, and it tells us how the flow of such power need not necessarily be from top to down, but it is diffused. Remission acts as an excellent strategy to exercise abstract power upon the prisoner. As Foucault says “power is not simply exercised as an obligation or an obligation on those who do not have it; it invests them, is transmitted by them and through them; it exerts pressure on them just as they themselves, in their thin struggle against it, resist the grip it has on them” (Foucault 1979: 26-27).

From a correspondence (8th April, 1871) submitted in December 1870 by the Resident at Hyderabad, with the draft rules for the regulation of extra-mural gangs, Mr. Lyall, the then Commissioner of West Berar, expressed a concern that the proposal to grant remissions of sentence on a system of marks would throw large powers into the hands of corrupt subordinates, and that a prisoners possessed of money would pay well for a good report, or to ward off a bad report , at the end of his twelve months work. Mr. Bayley, the then Secretary in the Department remarked that it was not

intended that marks would be awarded on one report made at the close of each year by a native subordinate, but that the arrangement would be regulated by a system of daily marks, checked weekly or at least monthly, by the European superintendent. He pointed out that in the rules proposed by the Resident, good conduct instead of work done was made the standard for allotting marks. Thus it was the performance of certain amount of work and the absence of complaints that constituted good conduct. Further he said that no reports of good behaviour ought to have any weight; for such reports would be made from corrupt motives. It was not easy to report work as done when it was not done.³³

Foucault's idea of subjugated knowledge is useful to understand such mechanisms of discipline through which power is exercised on the prisoners on the basis of knowledge of their day-to-day conduct. Such knowledges Foucault says, in stark contrast to traditional divisions of knowledge, reveal everyday struggles, and the relationship between truth and power. Foucault himself cites the example of the prison complex and says prison theorists are concerned with the motivations of criminals and how they can reform them to rid the world of criminality, while the actual day-to-day existence of prisoners and what happens in prisons is ignored (Foucault, 1980, p. 83).

Also it is worth noting and as will be studied in the following section, how, though the colonial regime wanted to continue to use the subordinate establishment of convicts warders, over seers and guards from within the native prison population itself. Though some of the other subordinate staff which was recruited from free native population, it generalised the whole of subordinate population as being corrupt and against such a prejudice it retained elements that it thought were crucial in running the prison with itself.

The system of remission in the initial stages was applicable to all the prisoners under sentence for more than two years only. Under the system, which was standardized all over India in 1889, prisoner's life in prison is measured in terms of marks. The 'good conduct' and completion of task work allotted one mark each for one day. Prisoners sentenced for simple imprisonment could also earn marks, if they voluntarily undertook prison labour. For the extra work done, one more mark could be obtained. Though in the beginning it was applied only to prisoners other than sentenced for

³³ Home Judicial, June 10th 1871, No.1-3, Rules regarding regulation of convicts engaged in extra mural labour in Hyderabad, NAI.

life but it was gradually extended to prisoners sentenced for life also. However, this was seriously contested at the state was extremely reluctant to interfere into judicial sentence, as the application of remission to life prisoners violates it. At the same time it was difficult to manage the prison without the cooperation of the life prisoners, deprived of all hopes of early release, as they are the ones who stay longest time to all the other prisoners, sentenced for a term. As the principle of inviolability of judicial sentence was already broken when the system of remission was applied to prisoners sentenced for a term, it did not become difficult to remission even to life prisoners. That was the first time when the term of prisoner sentenced for life was fixed at 20 years for the purpose of calculation of remission (Karnam 2004:59-60).

Foucault points out that the legal authorities can have no immediate control over all such procedures as pointed above that rectify the penalty as it proceeds. It is a question, in effect, of measures, which by definition can intervene only after the sentence is completed, and can bear only on something other than the offences. Thus for him the system of dealing with offender is not so much punitive as corrective, more intent upon producing normal, conforming individuals than upon dispensing punishments. Also, he says that those who administer detention must therefore have an indispensable autonomy. As when it comes to the question of individualizing and varying the application of the penalty: supervisors, a prison governor, a chaplain or an instructor are more capable of exercising this corrective function than those who hold the penal power. It is their judgement and not a verdict in the form of an attribution of guilt, which serves as a support for this internal modulation of the penalty- for its mitigation or even for its interruption (Foucault 1979: 136 and 246).

In 1908, to reduce the enormous clerical work involved in calculating the marks and converting them into days of remission the amount of ordinary remission was fixed at one day for good conduct per month and two days for work and a special remission was designed for continuous good conduct throughout the year without a single prison offence (Karnam 2004: 60). Remission is an excellent example where by the punishment diminishes as it produces its effects. Good conduct is combined with labour to produce a certain kind of discipline which not only economizes the exercise of power but does it so very efficiently and effectively.

3.5.2 Convict officers

The practice of using prisoners themselves to run the jails began in Malaya in early nineteenth century, and, because it was economical rather than because it was efficient, soon spread to Bengal and the rest of India. This system was also introduced because there were difficulties experienced in obtaining a sufficient supply of paid warders. Convict officers served as overseers on work gangs or in jail workshops and as night watchmen in the prison wards or barracks. They were rewarded with special privileges such as, better food, lighter form of labour and some were allowed to smoke when possession of tobacco was forbidden to other inmates. Some others even received small monthly payments. As a result of these experiments, the Indian Jails Committee of 1864 formalized the system (Arnold 1994: 154 ; Karnam 2004:55).

One can draw parallels between such supervisory schemes introduced in the prisons with that of the factory. The shift in production from the cottage industry, to the factory as we know, was not only the result of developments in technological innovation but also an attempt by reduce costs by employers by employers gaining greater control over production through more effective means of discipline and supervision. Marx says, “He [the capitalist] hands over the work of direct and constant supervision of the individual workers and groups of workers to a special kind of wage-labourer. An industrial army of workers under the command of a capitalist requires, like a real army, officers (managers) and N.C.Os (foremen, overseers), who command during the labour process in the name of capital. The work of supervision becomes their established and exclusive function (Marx 1977: 450).” If in the factory, manager plays a crucial role in the increase of profit for the capitalist, in the prison, the convict officer not only represents state authority but works towards achieving the goals of punishment which is to punish effectively by incurring minimum costs.

Under the system three types of convict servants were created: 1) Work overseer 2) Ward master 3) Guard. These three classes of work were ranked as medium labour and therefore could be prescribed to convicts only after finishing their sentences of hard labour. It was also held that convict official should never exceed 10% of convicts in any one jail. This system not only economized the running of the prison but it also operated as a symbol of loyalty to the authority. With introduction of system of remission in 1868 the system of convict servants was firmly grounded into its methods of operation. As already mentioned, under this system entire period of sentence was graded in an

ascending order and represented by marks for discipline, continuous labour and good behaviour. The initial period was called period of probation, during which no marks are awarded. In the ascending order, prisoners were promoted to the position of convict maistry, convict warder and work overseer. At every stage of these positions, relaxation of severity of punishments like writing letter and seeing relatives and remission of one month sentence for every year was offered as reward to induce prisoners into more work (Datir 1978: 214-216; Karnam 2004: 55-56). Such schemes of rewards confirm to utilitarian principles of Bentham who as stated earlier held, forced labour was not only not popular as it was too easily confounded in the public mind with slavery but for his Panopticon, Bentham devised similar schemes that would ensure that prisoners would be inspired by the promise of reward, and could thus be enthused with 'energy of soul' (Semple 1993: 27-28).

This system was experimented even in England, but at the end of 19th century it was rejected for several reasons. It was considered that it was contrary in principle to place one prisoner, while still undergoing punishment, in a position of authority over his fellow prisoners. The convict officer, however, well behaved, was a criminal, a man whose actions have proved that he requires reformation. It was thought that it was not likely that such a man was able to exercise good influence on those around him and it was not in consonance with the ideal that the whole staff should be able to exercise a salutary influence on the prisoners under their control. It was argued that it was not fair to expose the ordinary prisoners to the influence of convict officers just to benefit the later in the name of training (Karnam 2004: 56).

The defenders of the convict officer system in India argued that it was the only powerful reformatory influence in India and that "the system of gradual promotion by which long-term non-habitual prisoners, many of whom are not a criminal type, may hope to rise by their own exertions and good conduct from one grade to another until they reach the highest, is a valuable incentive to improvement and an unequalled training of character". They went to the extent of arguing that in many cases the convict officers were mentally, morally and physically superior to the class of warders then obtained from natives. It was also argued that the responsible duties thus bestowed on prisoners gave them a sense of self-respect and made them fit for returning to free life to a much greater extent than any industrial occupation could do, and the existence of this system saved the Indian prison from exercising the deadening influence, which was the general effect of prison life in other countries. Not only that it was also that the general character of the Indian jail population

differs from that of the jail population of England in respect of comparative absence of professional criminals in India. The vast majority of the prison population in India was free from vices of habitual offenders and therefore cellular system was not required in India. Since majority of prisoners are not confined in cellular system, it required large staff for the management of prisons but the government was not capable of offering exceptional rate of pay, which renders the jail services attractive for free population. The Governor General in Council finally approved the system of convict officers on the administrative and financial grounds (Datir 1978: 305; Karnam 2004: 56-57).

This correspondence reveals as to how discipline was achieved in the prisons of England. Foucault (1979) uses the term 'panopticism' to refer to the system of surveillance introduced into prisons since the nineteenth century. It is based on Jeremy Bentham's panopticon. Since prisoners are under constant surveillance, but are not aware whether they are being observed or not, the prisoners incorporate a system of self-surveillance, restricting their actions as if they were being observed. In focusing on the panopticon, Foucault adopts it as a symbol of his whole argument. The theory of discipline in which everyone is observed and analyzed is embodied in a building that makes these operations easier to perform (Foucault 1979). It is worth noting that in India the characteristics of panopticism are not necessarily made operative through the architectural features of the prison building, but 'panopticism' operates through vigilant prisoners (convict officers) themselves. Convict officers are like managers in factories who direct prisoners towards activities exclusively and continuously toward achieving an organization's goals. As a result, obedience is achieved through the direct and immediate disciplinary effects of surveillance rather than the application of abstract and formal rules. The impact of surveillance in the prison results in the internalization of discipline by the prisoners to such an extent that they become self-disciplining and compliant subjects of their own conduct as well as that of their fellow workers.

The convict officers, since they received the remuneration in the shape of the gratuity or remission of sentence, were and in fact considered as public servants within the meaning of the Indian Penal Code. And therefore they were liable to be tried by a criminal court for the neglect of duty leading to escape of prisoners. Their basic duties were to assist the prison administration in maintaining discipline, securing the safe custody of prisoners and exacting task work. This was also the period in prison administration where there was an attempt to abolish the system of fetters, cross-chains and

bel-chains by making convict officers personally responsible for the escape of any prisoner. There was a qualitative change in the system of control: in the place of inanimate means of control, vigilant human beings were arranged to guard the prisoners. However no prisoner who does not have a fixed abode or whose antecedents could not be enquired into, could not be appointed as convict warder. He was to be always called the 'convict warder' in order to distinguish him from paid warder selected from free population. This grade is specially instituted to supply vacancies in the paid staff caused by sickness or absence on the privilege leave. The duties exacted from the convict warders were exactly those of paid ward guard, except that he should be limited to the area within the jail walls. He was supplied with warders baton, the symbol of power that distinguishes him from ordinary prisoner. He was allowed to smoke and given uncooked ration to cook his own food as a privilege. He received special gratuity and slept separately from ordinary prisoners. He neither belonged to jail establishment or to the prisoners' community, but worked as a channel of communication between both. He represented middle space necessary for the smooth functioning of the prison (Karnam 2004:57). Therefore we find managerial and economic concerns affecting the policy of prison labour.

The colonial enterprise is no doubt based on the superiority of race and power, and on the other hand, when it came to economizing and disciplining of the native subject, conveniently a slightly different story was narrated. The prisoners were under the supervision of their own class and were placed in opposition to one another. But at the same time the subordinate prisoner constantly hoped to become a supervisor so that he could earn similar rewards. This strategy not only succeeded in quelling any kinds of major revolt against the authority, but it placed the subjects in a constant network of power relations continuing his subjection, but at the same time comforting him with a feeling that he would be better off. Referring to a similar system as practiced in the penal colony of the Andaman Island Satadru Sen says work was both, the instrument and symptom of reform, the idea being that the prisoner must be forced to work until he worked willingly, and then excused from having to work anymore. Punishment in Andamans stressed rehabilitation through work because in spite of the practical separation of punitive and rehabilitative labour, the separation at the broader ideological level was between work and idleness, with the former aligned with morality, civilization and law, and the latter with barbarism and vice. Putting this idle population to work was therefore seen both by professionals and reformers alike as basic to the reform of the individual criminal and the criminal society, both within and without the prison (Sen 2000: 86-89).

3.5.3 Payment of cash for work

Since prison labour is an essential part of the legal punishment, which implies deprivation of liberty, it is by law forced labour, and is as a rule, work assigned, than voluntarily undertaken. From this presupposition the conclusion was drawn that the produce of the work undertaken by prisoners is entirely the property of the state. Thus the question of wages was caught between the need for an incentive for efficient work on the one hand and prison labour constituting the essential part of the legal punishment on the other (Datir 1978: 313).

With the emergence of the modern prison system in India, when deterrence was the primary objective of punishment, the notion was that prisoners should not be paid any wages for their labour. A Bettington, the Inspector General of the Bombay Presidency in the year 1854-55 states, "It would be most impolitic as regards the interest of the State, if the prisoners were allowed to return home with a sum of money earned in prison. There would be a possible tangible advantage, which would materially lessen to others, the fear of punishment."³⁴ However with regard to European prisoners it was held, "Policy and humanity require that liberal share of his earnings should be given to the European, to make it possible for him to subsist himself, and to prevent his being forced to crime from actual want."³⁵

The system of paying cash to prisoners for extra work turned out was formally introduced all over India with the IJC, 1920. For the extra work done one and half anna was paid per month.³⁶ However in Madras Presidency, through the Government Order No. 57 dated 10th January 1913, the Inspector General made in the Central Jail Vellore a money grant for an *anna* to every prisoner for every extra pair of sandals that he had produced. Under the system, the prisoners were allowed to exchange their earning for remission of sentence, the exchange being at the rate of one day remission for every half rupee earned (This also meant, a prisoner who earned one rupee in a month would get two days

³⁴ As quoted in R N Datir (1978: 313-314).

³⁵ Ibid.

³⁶ During the 1920s the British prisoners in England, sentenced for long term were allowed to receive, by a special industry combined with good conduct, a similar kind of gratuity. But that did not constitute a regular wage or even a percentage on the out turn of the work by the prisoners. During the same time, the prisoner in America were earning as much as 30\$ a month. There was an indication of a growing opinion in America in favour of giving prisoners substantial remuneration for their work. IJC, 1920, p.146.

remission in exchange). Since, the payment was made to the work done over and above the stipulated regular work to be done, it could not be considered as wage (Venkatesan 1981: 289).

The Indian Jails Committee 1919-20 held:

We are not prepared to accept the opinion of those persons who contend that a prisoner in jail has a right or claim to be paid for his labour. This appears to us to overlook the fact that the convict is under a period of punishment for acts done against the state and that during that period he has forfeited the ordinary rights of a free man and must do what is told. But, though repudiating all claim or right on the part of the convict, it must be still wise to furnish him with some motive for industry more effective than the fear of punishment and more immediately operative than the hope of expediting his release through remission. It is generally agreed that the greater reliance can be placed on rewards than on punishment and that punishments are particularly inefficient in stimulating industry. On the other hand it is in the interest of the state that is of the taxpayer to secure the largest and best return from the prisoners' labour.³⁷

Therefore the system of payment to prisoners was introduced not in the recognition of their rights but as an immediately operative, tangible and concrete stimulus for their hard work. But in fact the prisoners produced more than the prescribed task not because they wanted to earn gratuity but as noted earlier they wanted to earn more remission by exchanging the whole or part of their gratuity. It was so popular that when convicts had the option to choose between remission and gratuity, almost every one preferred the former (Venkatesan 1981:288). For instance, as sighted earlier, in the year 1921-22, in Madras Presidency Jails, the extra remission for works turned out over and above the prescribed was earned by 648 prisoners, whereas 10 prisoners earned a gratuity in lieu of remission (Karnam 2004: 121). This serves an excellent example where, the objectives of modern power are achieved with the minimal amount of external force. The institutional commands are internalized, producing an individual who habitually does what is required.

Since the system of punishment for non-accomplishment of the prescribed task work was kept intact, it is clear that the introduction of gratuity for extra work done was intended only to extract more work from the prisoners rather than to reward the prisoner. The realization of the fact by the state that the punishment as a means of extracting more labour was inadequate, forced it to introduce the system of gratuity, but not in recognition of the dignity and rights of prisoners. Here it is very clear that the gratuity, which later symbolized the recognition of the rights of prisoners, was introduced in addition to punishment, as a means of extracting more labour. It is important to note

³⁷ IJC, 1920, p. 147.

that the system of paying gratuity to prisoners is happening under the influence of the Indian Jails Committee, 1919-1920 which for the first time in the history of Indian prisoners stressed on the reformatory ideology. Even when it came to imparting of elementary education, it was thought to be done after the completion of hours at labour and therefore was a means of completing the plan of never leaving the convict to himself, which was thought for the unreclaimed class one of the most punitive element of a strict system.³⁸ Therefore the shift from penal theories of deterrence to reformation, does not actually signify a marked shift in the treatment of convicts, but instead it suggest how the state has devised more and more effective means of controlling convicts and make them labour.

In England the idea of wages for convict labour was opposed on the grounds of productive prison labour in general, and placing convict labour on the same level as free labour. The work performed by prisoners used to be incorporated into the stage system, creating the possibility of shortening the judicial sentence. A report of the prison commissioner in 1929 indicated that this system merely operated as a negative check on misconduct and idleness, and concluded that some form of wage was necessary to induce the inmates to take that the step from the minimum amount of work necessary to escape the black mark for idleness to the maximum possible productivity. A system of pay was then introduced (Rusche and Kirchheimer 2003: 153).

In variance with the Marxian kind of analysis by Rusche and Kirchheimer as stated above and before too, Foucault says that although the principle of the penalty is a legal decision, its administration, its quality and its rigour must belong to an autonomous mechanism which supervises the effects of punishment within the very apparatus that produces them. Thus a whole regime of punishments and rewards is introduced which was a way not simply of gaining respect for the prison regulations, but of making the action of the prison on the inmates effective. The legal authority itself accepted this and Foucault quotes:

One should not be surprised, said the Supreme court of appeal, when consulted on the subject of a bill concerning the prisons, at the idea of granting rewards, which might consist either for the most part in money, or in a better diet, or even in a reduction of the duration of penalty. If anything can awaken in the minds of convicts the notions of good and evil, bring

³⁸ IJC 1920, p. 31.

them to moral reflections and raise them to some extent in their own eyes, it is the possibility of obtaining some reward' (Foucault 1979:249).

For our analysis, of the various disciplinary mechanisms including payment of gratuity, one can safely say that in the colonial context, though the Foucauldian perspective provides interesting perspectives on the way these mechanisms operate, one can clearly establish from this chapter and as well as the following couple of them, that such mechanisms clearly originated in particular historical context which furthered the political and economic imperatives of the colonial regime, and therefore it becomes all the more difficult to disassociate them from such interests and look at them as operating autonomously.

Referring to similar systems as practiced in the penal colony of the Andaman Island, Satadru Sen says, work acted as both, the instrument and symptom of reform. The idea being that the prisoner must be forced to work until he worked willingly, and then excused from having to work anymore. Putting the idle population to work was therefore seen both by professionals and reformers alike as basic to the reform of the individual criminal and the criminal society, both within and without the prison (Sen 2000: 86-89). Therefore one can also see how through such a prison labour policy, a native subject is but forced to respond to the modern ideas of punishment through labour and discipline. The goal was not only to punish but to introduce in the colony modern forms of both, punishment and (factory) labour.

3.6 Caste and Intramural Labour

How does a major shift in the governmental rationality and from that of extramural to intramural affect the issue of caste vis-à-vis convict labour? In the previous chapter we saw how machinery was thought of as aiding in dissolving such distinctions in the imposition of convict labour. But does introduction of intramural machine labour actually erase caste distinctions?

For Dirks (2001), the takeover by the Crown in 1857 had eventually resulted in identifying caste as the primary social base of this country. The British interest in the institution of caste had intensified in new ways with District level manuals and gazetteers devoting whole chapters to the ethnography of caste and custom. The imperial surveys had made caste into a central object of investigation, and by the time of the first census of 1872, caste had become the primary subject of social classification

and knowledge. Although the village continued to be seen as the dominant site of Indian social life, it became understood as more a setting for caste relation than the primary block of Indian society (Dirks 2001: 15). Thus noting down the caste identity of every prison entrant, now is firmly grounded into the overall intensification of caste by the colonial regime.

The above paragraph speaks about how the colonial institution was responding on caste. However even in the context of free labour, scholars like Dipesh Chakarabarty (1989), Chitra Joshi (2003) and Tirthankar Roy (2006) have shown how capitalism did not necessarily dissolve the existing forms of social relations and institutions. But it instead developed through the existing social institutions by subordinating, restructuring and integrating them to suit its own needs.

In the context of intramural convict labour, it is important to note that the Utilitarian theory around which the modern prison system is based, is also based on individualism. But as this theory legitimises extraction of labour on the basis of previously acquired skills by the convict, the Superintendent in the Indian prisons granted tasks to prisoners based on the same, which invariably resulted in bringing in caste based distinctions in allotting labour. For instance, in Madras Presidency there was a provision for castes of convicts to be kept in view in allotting labour. It was clearly stated that Brahmins and caste Hindus should not be employed in cobbler's work. In other direct instances, all the menial and the other duties of the prison which could properly be delegated to prisoners were assigned, at the discretion of the officer in-charge of the prison, to labouring convicts, in which attention was paid to fact that no such work was assigned to or extracted from a Hindu prisoner to whom it may really be objectionable on the ground of caste. Equal care was observed to see that no prisoner on a false plea of caste was permitted to evade any which he may consider to be onerous or disagreeable (Venkatesan 1981: 152).

Thus one can conclude that though the introduction of machine labour stood a chance to erase caste considerations in punishment through labour, caste never-the-less survives. This is not only because of the prison officials prejudices on the question of caste, but also because the room within Utilitarian theory which legalises appropriating labour from convicts on their previously acquired skills, which indirectly brings in the caste based distinctions in allotting certain kind of labour to convicts.

3.7 Summary

With the birth of the modern prison in the second half of nineteenth century, there is a shift in convict labour policy from that of extramural to intramural factory labour which reflected the post mercantilist governmentality that was being introduced. The most important conclusion to draw is also that in colonial India, the birth of modern prison did not signify the shift in the penal ideology from deterrence to reformation. Therefore, convict labour performed both a deterrent as well as an extractive function. Therefore one can also see how the convict labour policy in India differed from the one that was practiced in England which stress on hard labour on the tread-mill and the crank. Also with the introduction of intramural labour, the notion of labour had changed from merely producing a deterring effect to a principle means of enforcing discipline. More importantly given the fact that there were only few modern industries with latest machinery in India, the prison can also be seen as an initiator in introducing modern forms of wage labour of course sans wages and sans the “choice” of labour.

This chapter has also looked at how through the system of remission, appointment of convicts as warders, and payments of gratuity to prisoners for good conduct and labour were increasingly made self-rewarding and self-perpetuating. Since in India association of prisoners was followed then placing them in single cells, it is important to survey such systems which one can say acted fulfilled the objects of the panopticon by other means. As these forces are embedded in wider disciplinary practices, their influence on prison labour is overwhelming but as we are referring to the prison in the colonial context, other forces especially the larger economic imperatives of the colonial masters played an important role. More importantly, the chapter has also tried to study how, machine labour which signified a certain shift in the modes of production, further made the punishment of imprisonment through factory labour and discipline, feasible. Thus for such a policy analysis, political economy analysis along with Foucauldian perspective on punishment has proved to be useful.

Chapter 4

Contestation to Intramural Convict Labour: Prison and Private Industry

The last chapter presented the major shift from extramural to intramural convict labour in the later decades of the 19th century for which purpose modern machineries were being installed in the prisons. This chapter will study in detail the contestation to such labour by the private industries. It will examine how such a contestation affected the nature of convict labour policy.

The issue of installing modern machinery in the Indian prisons was however contested from the very beginning. For instance, while installing imported machinery from England in the Bhagalpore Jail in 1875, for which an outlay of Rupees 1.5 lakh was required, one group held a view that it was beneficial not simply because of profits and saving of establishment but for enforcing penal discipline and for several other advantages that were characterized with machine labour. Also, considering the magnitude of the concern which embraced all the affairs of a central jail for 1000 prisoners, the outlay was held not to be excessive. However, the other group pointed out that this huge investment which was mainly intended to furnish jail clothing and the rest was intended to supply the commissariat with stores, was until then, obtained in the open market. Therefore it would result in competition with outside labour and capital. Even then if it was admitted, it could result in similar manufactories of all sorts of articles in the other provinces, and to the establishment of such Government factories it was held that objection would be taken, and justly taken, by the public.¹

The shift from extramural to intramural labour was not simply contested at policy level, but it was constantly challenged by the free entrepreneurs who produced similar products, and to a large extent shifts in prison labour policy reflected such questioning by free entrepreneurs. This chapter, by studying the influence of such contestation by the private industry on convict labour policy in greater detail, will explore the subtle linkages and correlations between the nature of economy and nature of punishment. Imprisonment, as it not only succeeds in isolating the criminal from the normalised society, but as it also generates conditions of engaging convict labour in productive activity, effectively aids the economy. This chapter, in the process of

¹ Home Jails-A, August 1881, No.162, Prison manufactures vs private industry, NAI.

narration of the prison and industry relationship, will also deal with the various conditions that necessitated different kinds of engagement of convicts in colonial India.

The Modern western institutions, argues Sudipta Kaviraj (Kaviraj 2000: 137 and 143), were introduced in British colonial India piecemeal, suggesting a certain variance in the order of their establishment from that in Europe. With regard to prison and especially prison industry Arnold says, “If elsewhere in the industrial age the factory often resembled the prison, in India the prison largely anticipated the factory” (Arnold 1994: 100). As a result of such anticipation there was a lengthy correspondence between the prison authorities and these entrepreneurs lasting for more than half-a- century and which led to several negotiations and policy strategies for managing convict labour which reveal interesting correlations between the nature of punishment and the economy. It seems important to explore these correlations as unravelled in this exceptional colonial context, since they may often stand in sharp contrast to the experiences of metropolitan modernity which witnessed a concurrence of modern institutions. This chapter will also study how, beginning from the later decades of the nineteenth century, convict labour policy worked towards simultaneously maximising and restricting its appropriation as necessitated by the changing political and economic rationale of the colonial regime. This will further enhance our understanding of the colonial governmentality that was being introduced in this period.

For David Arnold (1994), the growth of jail industries in the 20th century suggested a rather remarkable development for a regime which was formally committed to laissez-faire and which otherwise denied aid to industry. Also this was an indication for him of the higher priority colonialism gave to prison as a 'school of industry' than as a 'house of correction' (Arnold 1994:178). This chapter, apart from probing the possible reasons for the growth of jail industries will also examine in detail the higher priority given to the 'school of industry' idea. It will show how though initially the colonial regime developed prison industries oblivious of the private – and in fact that is what distinctly marks its political rationality as colonial – very soon it started developing strategies of accommodating the prison industry with the private, under pressure from its own private industry. What is more interesting is that the underlying links between convict labour and industry largely remain unaltered even after the Indian Jail Committee of 1919-1920, when the official subscription to the ideas of reform and rehabilitation, with which the idea of prison as a 'house of correction' can be said to have begun.

4.1 The prison industry and its right to compete in the open market

The Prison Conference of 1877 for the first time clearly stated that the Central Jails where most of the long-term prisoners were located should be the seat of profitable industries. The rationale given for the same was that this was in the interest of the Indian tax payer. At the conference, Mr. Beverley, the Inspector General of Jails Bengal whose ideas were incorporated in the proceedings said, “The Indian tax-payer has a right to demand that our prisons shall be, as far as possible self-supporting.”² Further on the objection that was often put forward that the state had no right to employ its capital and convict labour in competition with private capital and free labour, he responded thus:

...the question often seems to me to be discussed on the most fallacious premises. It is assumed, for instance that prison labour is cheaper than free labour- a very doubtful point indeed. It is further assumed that the Government seeks to undersell the private manufacturer, the fact being that the price of jail manufactures is regulated by their market value without reference to the cost of production. Of course, so far as the price falls in consequence of the increased supply, the jail department is open to the charge of depreciating the market; but in this kind of argument I would simply say that the free manufacturer might with equal reason object to any other person following the same branch of industry as himself. Even regarding the Government in the light of a private individual, there is no reason why it should not enter the market with private capitalists. If we view it as the embodiment of the society and the representative of the general body of tax payers, there is every reason why it should not allow itself to be coerced by a limited clique of interested manufacturers. The doctrines of free trade are as applicable to Government as to individuals; even a fall in prices, though injurious to a few, may be good for the county at large. I maintain, therefore, that the prison department has an equal right with any private individual to manufacture articles for sale in the open market. But even should the case be otherwise, there can be no possible objection to the manufacture of articles required for use by the great department of the State.³

Thus the 1877 Conference clearly asserted that the Prison Department had an equal right with any private individual to manufacture articles for sale in the open market and employ state capital and convict labour in free competition with private capital and free labour. Even

² Home Judicial, October 1882, 121-152, *Precis on the manufactures carried on in Jails of British India*, NAI.

³ Ibid.

otherwise, it said that there could be no objection to the manufacture of articles required for use by the consuming departments of the State.⁴

The other recommendations of the Conference were that multifarious manufactures should be discouraged everywhere and that Jail Superintendents should look for profit in one or two industries carried on a large scale. These recommendations of the Conference were approved in the Resolution of the Government of India dated 30th April 1878, and subsequently the Military and Police Departments were directed to give jail manufactures preference over goods manufactured outside with the condition that the quality and price was on par with similar goods available in the market.⁵

What is certainly striking about the 1877 Report is the clear assertion of the prison industry to compete in the open market and this is what distinctly marks the political rationality of the state as colonial. However, one should be rather cautious in making an assessment of this rationality which at first sight seems to be going absolutely contrary to its commitment to *laissez faire*. Although the colonial rule here seems to be asserting and voicing its right to compete with the private quite forcefully, it never-the-less tones down its excitement in the same breadth when it settles with an age old pro-free enterprise mechanism of prison labour policy which is that of manufacturing goods for the government departments and thereby minimising its presence in the open market. Therefore, Arnold's argument cited above about the emphasis of prison labour policy being on the 'school of industry' (Arnold 1994: 178) is no doubt valid, but it is also important to note that such a policy cannot be understood as completely going against the colonial ideological commitment to *laissez faire*. It is important to underline that whether the colonial regime liked it or not, it could not totally wish away the limitations set by the kind of governmentality it was trying to establish. If machinery as seen in the previous chapters was assisting in making imprisonment a viable punishment, it was the development of such managerial techniques which further sustained its practicality. Such a policy of prison producing for the government as will be subsequently seen was itself developed in England in response to the complaints filed by the private entrepreneurs there.

⁴ Government of Madras -Judicial, Government Order (GO), 21st October 1882, 1643, Tamil Nadu State Archives (henceforth TNSA).

⁵ Ibid.

Opposition to prison industry can come from another front as well. As pointed out by Rusche and Kirchheimer (2003) in the United States of America, where there was a shortage of labour in the North (Auburn) prisons, prisoners were put to work on manufacturing goods or contracted to private employers or on public works. However, this was curtailed at the end of the 19th century because free workers and their unions began to object as it led to a fall in their wages and then prisons started producing goods for prison or governmental use rather than for the free market. This led the authors to conclude that punishment is determined by fiscal forces, indirect economic forces rather than by immediate productive concerns (Rusche and Kirchheimer 111: 2003). In the Indian case as we will soon see, even though the Government itself was, in principle, trying to restrain the prison industry from its greater visibility in the market (but nevertheless continued with production for its own consumption), opposition to it soon started coming from the few European industries which it had encouraged to start production in India.

In fact Marx himself in his Critique of the Gotha Programme objected to the Programme's intention to protect the working class by opposing prison labour in order to cope with the competition to which free labourers were exposed when prison labour was made available to manufacturers at low cost. Instead, Marx who also identifies productive labour as the only means for the betterment of the criminals says that the socialists must clearly state that they did not oppose humane treatment of prisoners, including the right to engage in productive labour- an activity that might help to rejoin the working class in a lawful occupation after their release (Greenberg: 1991, 38-43).

Foucault identifies such hostile contestation to penal labour from free labour as itself orchestrated in favour of the capitalist system as the bourgeoisie was worried of the kind of amiable, tolerated illegality that was known in the eighteenth century (Foucault 1977:39-42). He also says that the opposition between the workers and prison workshops and the response of the government and administration did not affect much change as for him the final objective of prison labour was “not profit; nor even the formation of useful skill; but the constitution of a power relation, an empty economic form, a schema of individual submission and of adjustment to a production apparatus (Foucault 1979: 242-243)”. Thus if Marx advocates accommodating prison labour, he does so as he identifies engagement in productive labour as the means of

improvement of ‘criminals’, but for Foucault such opposition does not mean much but an adjustment to the economic process.

4.3 The tension between intramural labour and extramural labour

The colonial Indian state soon realized the problems with its policy on prison industry since the orders of 1878 especially with its open assertion as a rightful competitor in the market (though limited), and once again in 1882 revisited it.⁶ This time, the Governor General in Council drew attention to the policy of Government of removing all obstacles to the spontaneous development of manufacturing industries in India and therefore it was thought necessary to reconsider the whole question of jail manufactures.

It was clearly recognised that the greatest economic want of India was the creation of industrial pursuits. Attention was directed towards the Famine Commission’s Report which said:

At the root of much of poverty of the people in India, and of the risks which they are exposed in seasons of scarcity lies the unfortunate circumstance that agriculture forms almost the sole occupation of the mass of the population and no remedy for present evils can be complete which does not include the introduction of a diversity of occupations, through which the

⁶ However even before the 1882 Resolution there were detailed discussions on the same and several contradictory views were put forward. For example, Mr. F Hill, the Finance Member spoke of the state as a “large co-operative society” and was of the view that prison manufactures could be legitimately used to keep the prices low. Another prison officer, Dr Mouat thought that prison labour rightfully could compete with free labour as, “the interest of the community at large being superior to those of sections or individual members of that community.” Mr Beverly, the Inspector General of Jails, Bengal, held “..even regarding the Government in the light of a private individual there should be no reason why it should not enter the market with private capitalists. If we view it as an embodiment of society and the representative of the general body of tax payers, there is every reason why it should not allow itself to be coerced by a limited clique of interested manufacturers. The doctrines of free trade are as applicable to Government as to individuals; even a fall in prices, though injurious to a few, may be good for the country at large”. Such opinions were condemned by the Governor General in Councils office as radically unsound for the functioning of the Government and could lead to social and economic disaster. Further it was said “...the fact that such opinions are not unfrequently held in India by our own officials should be ever present to the minds of the members of the Supreme Government. We should endeavour to guide the thoughts of our officers into a more healthy groove. It is to be borne in mind that socialist principles may, in the end, produce as bad economic results when advocated by well-intentioned but insufficiently instructed English Officers, as when they are put forward by revolutionists at Paris or St. Petersburg.” Home Judicial, October 1882, 121-152, *Precis on the manufactures carried on in Jails of British India*, NAI.

surplus population may be drawn from agricultural pursuits, and led to find the means of subsistence in manufactures or some such employments.⁷

Therefore, introduction of a diversity of occupations including industry was held necessary. And as the direct action of Government could not do much towards this purpose, it was held that it was distinctly the duty of the state to do nothing to hinder their spontaneous growth and as far as it legitimately can, to stimulate and assist their development. However it was also said, "...the jails could very properly be employed in making experiments upon new industries. This is quite in harmony with the recommendation of the Famine Commission (Report, Part II, p.176), that the jails should be used, not to interfere with the private trade, but to guide and educate it."⁸

To support its altered stance, the colonial Government this time presents yet another set of rationalities on why and how prison industry should be curtailed. Counter explanations were given to the earlier justification of saving tax payers' money by making prisoners engage in profitable industry by saying that there would not be a practical check on this once the Government itself becomes a manufacturer. Also it was said, "...if Government hinders the productive employment of capital and therefore the accumulation of wealth it must invariably by so much, render the taxpaying community less capable of bearing any burdens which may be imposed upon it."⁹

Another argument was that if the Government competed, the effect produced was altogether disproportionate to the actual turnout of the Government manufactory, as what the private traders fear was not only what Government did, but to what it could do especially when the Government was possessed with unlimited amount of capital. Also as there were several jails in the province and the gain at one jail could be compensated with the loss of another the private traders did not have any such advantage. Therefore it was held that in this context Government competition had to be regarded from a wholly different point of view. It was also said:

The stages of industrial advance in the two countries are very different. Indian industries are, for the most part, only in their infancy. A degree of Government competition, which in

⁷ Home Judicial, October 1882, 121-152, *Precis on the manufactures carried on in Jails of British India*, NAI.

⁸ This quotation further validates the point Arnold was making on how the prisons in India anticipated modern industries (See page no. 2 in the same chapter). *Ibid*.

⁹ *Ibid*.

England may be comparatively harmless, might in India do a great deal of harm.....Therefore it is not the duty of Government in India or elsewhere, to foster the artificial growth of indigenous industries by the adoption of methods,-such, for instance, as a high protective tariff,- which are opposed to sound economic doctrine. But it is the duty of Government in India, even more than elsewhere, to carefully remove all hindrances to the spontaneous development of those industries.¹⁰

Thus it was thought that in India unlike in England, where industries were in a stage of infancy, developing prison industry on modern lines could prove to be all the more harmful and therefore it was the duty of the Government to remove all hindrances. In England where there were many manufacturing industries prison industry competition could not exercise very appreciable effect even when faced by a great deal of opposition. More importantly it was held that such policies went against sound economic doctrine.

To probe the argument of curtailing prison industry to support Indian industries in a little more detail, S Ambirajan (1978) points out that though it was true that the Famine Commission of 1880 gave prominence to diversification of occupations, much of the official opinion did not take much notice of it. If anything, he says, the famines had strengthened the policy makers' resolve to promote agricultural development. The Governor General in Council had in fact written to the Secretary of State that he could hardly hope that India could become a great manufacturing country especially when the conditions there were quite conducive to agriculture. It is striking to see how the prison manufactories were seen as harming the growth of native industries, for when actually the question of encouraging sectors of the Indian economy that would have damaged certain sectors of the British economy was raised, the government observed strict neutrality. In fact on the question of protection to the infant cotton textile industry, the tariff on imported textiles levied for revenue reasons was abolished on the ground that it had a protective effect. In the 19th century, protection for infant Indian industries was never favoured in spite of the support it received among Indian economists and a small section of British public opinion. The neutrality expressed was itself sufficient to foster British interests (Ambirajan 1978, 220-228).

Further Bose and Jalal highlight how in this period the colonial state was coming under increasing pressure from the metropolis designing to institute fiscal policies designed to maintain India as the most important outlet for British manufactured goods. Despite facing a financial

¹⁰ Home Judicial, October 1882, 121-152, *Precis on the manufactures carried on in Jails of British India*, NAI.

crisis during the Afghan war of the later 1870s, the Government of India was prevented from raising custom duties by the Lancashire lobby in Britain. These duties were totally abolished in 1882. When dire financial need compelled the colonial state to reintroduce custom duties on British textiles in the 1890s, they say that Great Britain made sure that a countervailing excise duty was slapped on Indian manufactured textiles. This meant that the infant textile industry in Bombay and Ahmedabad, the only region where indigenous capital had moved away from petty commerce to industry, was deprived of any protective tariffs. This stunted the industrialization process in India and prevented the rise of a factory-based textile industry at a time when the artisanal industry had suffered serious setbacks (Bose and Jalal 2004:82).

This policy reconsideration should also be seen in the light of the rapid expansion of the modern steam-powered cotton textile industry in India mainly triggered by the American Civil War boom in the 1870s. Between 1872- 1878, Morris D Morris (1982) points out, 32 new mills were erected. But the cost of the capital was high as equipments and inventories had to come entirely from abroad and labour had to be trained to do every part of the work. At no time did European capital, combining rupee and sterling investments, amount to 10-20% of the total capital invested in the country. Also, it was not until 1874, after 17 Indian promoted mills had gone into operation that the first English project had started working. The British mills tended to specialize in spinning yarn or weaving cloth, but did not do both. Indian mills were mostly composite. The combination of spinning and weaving mills in India, which did not exist in the British textile industry, provided the Indian mills with more flexibility in times of crisis, when the demand for yarn receded. A large British firm in Bombay, Greaves Cotton and Co., which operated only spinning mills, had to close them down in due course as they proved to be unprofitable (Morris 1982, 572-580). Does this mean that the colonial regime by curtailing the prison industry was trying to protect the British industries in India and home, on the pretext of encouraging our industries? I will probe this aspect in some detail later.

On the question whether jail labour should be productive the 1882 Resolution held, “....although the requirements of prison management necessitate the employment of prisoners on productive labour, yet at the same time that that labour should not be made as productive as possible, and

that every endeavour should be made to turn it into channels which may, as little as possible, hinder the spontaneous growth of native industries.”¹¹

An example was also cited to explain the same. Sawing timber was productive whereas using a saw mill would make it as productive as possible. Sawing by hand was what was required by the prison management and sawing by machinery not necessary from the view of prison management and objectionable from economic point of view. Therefore the principle followed had to be that of productive labour, but care had to be taken to not make it as productive as possible and thus remove hindrances to native industries.¹²

It was also said that multifarious employments should be discouraged and wherever inevitable, their penal character had to be kept in mind. The weaving of coarse cotton or woollen fabrics by means of ordinary hand-loom, the making of coarse-matting, brick and tile making, hand-sawing of timber, oil-pressing, stone breaking etc., were the forms to which indoor prison labour should be limited to. The weaving of fine-cloth, table-cloth, towels, curtains etc., should not be permitted as private enterprise could already supply these and such occupations were not penal. Carpet and rug-making would be allowed where the trade was already a jail speciality and until private enterprise showed itself ready to supply the demand. Printing and lithography would be limited to hand printing and most of the Government work done in jails could be made over contracts to outside presses, and the local Governments should be prepared to close their jail presses whenever satisfactory arrangements of this kind are offered. There ought to be no obligation imposed on Government departments to give a preference to jail manufactures over the private. Sales to outside public had to be discouraged. In this way the interference with private industry would be reduced to minimum.¹³

It is important to take note of how the prison labour policy, through several subtle mechanisms like the ones just cited, is constantly being tuned to the conditions of the economy. It looks for ways and means where the requirement of punishment can be achieved within the constricted

¹¹ Home Judicial, October 1882, 121-152, *Precis on the manufactures carried on in Jails of British India*, NAI.

¹² Ibid.

¹³ Ibid.

space so as to minimise its interference with the market. Though imprisonment as punishment, as Bentham says and Foucault also agrees, does not eliminate a body but lets the state appropriate it whereby its labour is at its disposal (Foucault 1979, 109), this study shows that punishment also depicts the authority to determine the productivity of labour or to undermine it. If one looks at the stance on making convict labour productive (but not as productive as possible) one can easily correlate with Rusche and Kirchheimer's argument that penal labour in order to function as a coercive ancillary to the labour market, adopts Benthamite strategies of 'less eligibility' and relative standards of living, whereby prison life is made markedly more unpleasant than the conditions of life experienced by the lowest strata living in free society. It ensures that all efforts to reform the punishment are inevitably limited by the situation of the lowest socially significant proletarian class (Garland 1990, 94-95).

Regarding pricing of jail manufactures it was held that they must include:

- a) The price of the raw material;
- b) The wages of jail labour rated according to the wages of free labour of the same class in the neighbourhood,
- c) A percentage of wear and tear of plant
- d) A percentage on account of profits.

In case of articles supplied to Government or to wholesale dealers, the percentage could be fixed at 10%, for sale to retail dealers at 15% and to private consumers at 25%.¹⁴ It is not difficult to guess that this type of pricing policy apart from helping it come close to the prices in the market, even when it is aided by cheap labour and state capital, is mainly to deter the prison from directly selling articles to the private consumers and thereby preventing its stark visibility in the market. Also it was declared that the reforms in this Resolution would come into effect from 1st April, 1883.¹⁵

Finally and more importantly, and what came as the greatest blow to the prison manufactures was the decision to make labour on public works/extramural labour the principal mode of

¹⁴ Home Judicial, October 1882, 121-152, *Precis on the manufactures carried on in Jails of British India*, NAI.

¹⁵ *Ibid.*

employing long term prisoners throughout British India. It was stated, “The best system ever devised for the employment of convicts is that of executing large public works by means of their labour. Use of steam machinery was to be stopped altogether and the jails in which it was established had to be disposed off to private purchasers at a fair evaluation at a very early date.”¹⁶

Apart from the reversal of the resolution of 1877 where the military department was asked to purchase from the jail, it is striking that in an effort to suite the political rationality of the Government, the colonial state set out towards a complete reversal of the prison labour policy of promoting intramural labour against extramural which had taken decades to form and implement.

It is a worthwhile exercise to look at the status of prison manufactories in some of the prisons once the Resolution of 1882 was implemented. In fact the Government itself had asked for all the local governments to report on the implementation of the 1882 Resolution. The Government of Madras reported that there was no steam-power or improved machinery in any of its prisons. Also fine cotton weaving was curtailed to coarse cotton so that it could be used by the government departments and not compete in the open market. The Bengal authorities stated that they do not think that a single industry existed in Bengal with which prison labour competed injuriously, while, on the other hand, prison manufactures had initiated many industries for private individuals to take up and carry on with free labour.¹⁷

The North Western Provinces, reported that prison manufactures had not, in any appreciable degree, checked the native industry. Prison factories in fact had contributed towards introducing new industries and supplying trained workmen to private factories, and the woollen and weaving industries in those provinces in some degree owed their origin to the experiments successfully conducted in the Agra Central Jail. Carpet weavers and other artisans, all taught in prison, were to be found earning their livelihood in the private factories and offices in occupations comparatively little known and practised, for which the supply of trained workmen in the open

¹⁶ Home Judicial A, January 1884, Nos. 219-234, Précis of the Correspondence Between the Government of India and Local Governments and Administration Subsequent to Home Department Resolution, Dated 22nd September 1882, on the Subject of Jail Manufactures, NAI.

¹⁷ Ibid.

market was small and deficient. It was also pointed out that though the census of 1881 had proved that the workers in textile fabrics had largely increased since the previous census as large factory mills were established with considerable profit, the number of prisoners working at manufactures amounted to about two per thousand only of the artisan class of the free population, while the profits of their labour in prison did not exceed one-half percent of the profits earned by the free artisans. Of the articles manufactured in the jails not more than about 1/10th were being sold to natives, the remaining 9/10th were sold to Europeans and to the Government, the reason being that the articles were either specialities for European use, or goods of a superior quality and of a higher price than those sold in the open market.¹⁸

The Government of Punjab and Bombay also reported that their manufactures did not in any way compete with private entrepreneurship.¹⁹ Thus if on the one hand, in Madras the use of machinery was curtailed so as to not compete, the prisons of Bengal and North-Western Provinces in fact reported how the prison was actually contributing towards setting up of similar private industries. David Arnold points out that with disciplined labour combined with a principle of profit, several major Indian industries sprang up behind prison walls—gunny bags in Calcutta, woollen goods at Agra, blankets at Bhagalpur, carpets at Hazaribagh to state a few (Arnold 1994, 176-177).

So far we have seen as to how the convict labour policy in relation to private industry shifted from one extreme, of heightened self assertion of being a competitor in the market in 1877, to yet another extreme, of a total withdrawal from the market by reverting to the policy of extramural labour in 1882. The rationales behind these shifts have in more ways than one revealed how the different purposes associated with convict labour by the colonial regime – of effectively punishing, of that of producing for it, and at the same time not intervening with the market, are attempted to be achieved simultaneously. But it was the peculiar context which made either of the extreme positions taken by the colonial regime possible, and we will soon see that none of these extreme positions could be sustained for long as they ran counter to the kind of governmentality that the colonial regime was never-the-less trying to introduce.

¹⁸ Home Judicial, October 1882, 121-152, *Precis on the manufactures carried on in Jails of British India*, NAI.

¹⁹ *Ibid.*

4.3 Restoration of intramural labour with new regulations

The discussions with regard to the competition of the jail products in the open market continued between 1882 and 1886, and the principles then adopted were embodied in Resolution no. 10-605-18, dated 7th May 1886. By this time a large number of prisons had reported the difficulties involved with extramural labour where it was extremely hard to maintain discipline, to find work in places near the prison and so on.²⁰ In fact, if one goes back to the recommendations of the Prison Discipline Committee report of 1838 on convict labour, the committee was strongly against extramural labour as it rendered the mixture of prisoners in large gangs necessary and communication between them could not be avoided. It afforded facilities to convicts with money for procuring means of rendering their punishment little more than nominal, and thus it made a poor prisoner think that whatever renders his punishment severe is the consequence not of his offence, but of his property. There were other difficulties such as transporting the convicts from the prison to the workplace, housing convicts at the workplace, problems of sanitation, diseases, mortality and so on. Therefore attention was once again directed towards intramural labour which was seen as free of many of these disadvantages.

The 1886 Resolution reiterated that extramural labour could not be continued as the principal mode of employment and prisoners therefore must be employed in intramural labour. For this, it was thought that in central prisons there must be well regulated forms of industrial employment on a large scale. Though it was not necessary that a jail should purposely handicap itself by the use of obsolete or inferior machinery and it could adopt steam machinery, but whenever a steam machinery was being laid in any jail for the first time, it had to have the sanction of the Government of India which meant that the objects being installed and the possibility of it interfering with private enterprise would be thoroughly examined. Also attention was to be paid to see that they do not include multifarious employment and most of the articles produced should be consumed by the Government Departments.²¹ Apart from the Government's realization of the difficulties involved in extramural labour, this Resolution reveals that the Government wanted

²⁰ Home Jails A, August 1906, Nos. 11-14, Industries which are carried on in Jails in India, with reference to their competition with similar industries carried on by Private Enterprises, NAI.

²¹ Home Jails A, August 1906, Nos. 11-14, Industries which are carried on in Jails in India, with reference to their competition with similar industries carried on by Private Enterprises, NAI.

the prisons to aid its own departments and the articles required by these departments had to be of a certain standard which could not be produced without the introduction of modern machinery in prisons, and therefore instead of stalling the installation of machinery it decided to scrutinize such installation. Also, important was the issue of maintaining discipline which was hard to establish in extramural labour. Moreover, this instance also tells us how it becomes extremely difficult to switch over to past techniques after particular improvisations over the earlier techniques of penalising through labour as such techniques are embedded in several different improvisations in other disciplines and in the overall rationality of the government.

As there was less interference with private enterprises when the government itself was the consumer, it was regarded as axiomatic that the jails could legitimately supply the consuming departments of the Government. Though it was thought that some competition was inevitable even when goods were supplied to the government, but to some extent it was thought to be legitimate. However, the Government of India was aware of the difficulty of providing satisfactory general definition of the term “injurious” competition and therefore it felt it necessary to periodically review the jail industries of India and to decide to what extent their competition was seriously injurious to private enterprise. The decision on whether competition was serious or not, would be based on reference to the manufacture of articles for the government, as also on the articles put up for sale to the public. The articles for sale in the public were of two kinds – articles not required for government but manufactured for the sake of providing employment to prisoners and partly for local sale and secondly articles that were manufactured in excess of the requirements of the government. It was observed that though the sale of a few dozen dusters might not materially affect the trade interests of private dealers, the large-scale manufacture of furniture, for example, might seriously injure the trade of the local dealers as well as the small native furniture-makers. It was held that injury to private enterprise had to be examined in the light of these remarks.²²

To prohibit sale to the public of any article which was manufactured to a considerable extent would involve considerable changes in the existing jail industries and therefore the Government opted for its phase wise discontinuation. Regarding the disposal of surplus stocks or limiting

²² Home Jails A, August 1906, Nos. 11-14, Industries which are carried on in Jails in India, with reference to their competition with similar industries carried on by Private Enterprises, NAI.

their outturn so as not to exceed the requirements of government, the practical difficulties in doing so were highlighted, especially when the discipline and penal character of a jail had to be kept in mind. If the sale to the public was not prohibited then it was thought advisable to impose certain restrictions which did not exist in jails, for the purpose of making a profit but it could not be made a test of their efficiency. Advertising of jail made wares and the maintenance of catalogues or price lists was to be prohibited. Jails could not sell directly to the public but could dispose of their surplus stock to wholesale dealers by calling for public tenders. Depots for the sale of jail manufactures, again, were to be prohibited. Municipalities and district or local boards were not considered to be the departments of the government and therefore were not required to purchase jail manufactures, but direct sale to such bodies could be permitted. When it came to pricing, the existing rules were followed, except that an excise duty of 3.5% was to be charged in the case of cotton goods.²³

On the methods of marketing the manufactures, it was expressed that the consuming departments revert to the principles laid down in 1882, and ask the Jail Department to tender in the first instance. Tenders would then be called for in the open market and the contract would be given to the jail only if the price quoted by it was lower than all other tenders or equal to the lowest. Objection was raised to this procedure as it could result in jail being unable to dispose all of the articles produced by it and would be forced to adopt some other form of industry. This, it was said, was not necessarily a disadvantage, because there was no reason why government should maintain an unprofitable prison industry, when the articles could be obtained at a cheaper price from the manufacturers. In some cases there could be the danger that when jails have been driven out of the field, the price might be put up against government and the cost of changing one form of industry to another would also in some cases be considerable.²⁴

Also, convicts had to be employed on some form of productive industry and that the articles produced must be disposed off in some way. It followed that the consuming departments of government had to take the produce of jails whether the manufacturers could produce similar

²³ Home Jails A, August 1906, Nos. 11-14, Industries which are carried on in Jails in India, with reference to their competition with similar industries carried on by Private Enterprises, NAI.

²⁴ Ibid.

articles more cheaply or not. Government would be bound to take the jail manufacturers whenever the quality was suitable, and the fixation of the price to be put upon the articles would be comparatively of minor importance. The objection was raised that it would tend to drive private enterprise out of the field of government contracts altogether and might result in increased expenditure. It would also be very unpopular with the commercial community, who would complain, with some justice, that government was not giving private enterprise a fair chance, by asking the jail department to tender first and then calling tenders in the open market. However it was decided that if the jail tenders were the lowest, it would receive the whole contract and if not, the contract would be divided, part being given to private contractors and part to the jail. If it were found, during a reasonably long period, that the jails could not produce at so low a price as private contractors, the jails would have to turn to other forms of industry.²⁵ Thus, the Government is seen here as trying to function as a penal agency with causing minimum harm to private industry. For doing this, it chooses a middle path – that of regulating prison industries through measures like scrutinizing before any new installation of machinery, prohibiting advertising for jail made goods, calling for public tenders to dispose stock and extending the sale of jail made goods to district or local boards, by accepting to purchase at a little higher price from that of the market goods produced in the prisons and so on.

Thus far I have presented three distinct shifts in colonial prison labour policy *vis-a-vis* private industry – 1877 (of open assertion of the prison industry as being a rightful competitor in the market), 1882 (of a total withdrawal from production by switching on to extramural labour) and 1886 (of having a well regulated prison industry and which largely remained unaltered thereafter). These shifts reflect interesting strategies adopted by the colonial regime to effectively manage the prison industry. If the first two positions were unsustainable, not simply because of particular problems of impracticality but also because they did not fit in with the new kind of rationality that was being introduced, the position taken in 1886 too did not go unchallenged. In the context of a lack of development of private industries and existence of a market for the consumption of the products produced by these industries, the few European private industries existing then which saw great hope in consuming departments of the state were extremely

²⁵ Home Jails A, August 1906, Nos. 11-14, Industries which are carried on in Jails in India, with reference to their competition with similar industries carried on by Private Enterprises, NAI.

disappointed with the development of prison industry which acted as a substitute to their anticipated market and were unhappy even with the restricted form of prison industry as proposed in 1886. Not surprisingly then, there is evidence from as early as 1875, going right up to a few decades before the mid twentieth century, of European entrepreneurs constantly appealing to colonial authorities against the prison industry.²⁶ All the three strategies therefore are not simply to be seen as a product of the rationality of the colonial authority by itself, but as a response to these complaints as well. I will now move on to present a few interesting cases of direct confrontation between the colonial authority and private entrepreneurs and their response to the same.

But before doing that, I will briefly present the case of United States of America on the similar question raised against the prison. Here the contestation to the convict labour policy emerged from the free workers. In America, where productive prison industries and, especially the contract system of convict labour which grew to maturity in the 1830s and 1840s resulted in free workers protest which intensified in the later decades of the 19th century till the successful abolition of contract convict labour in the 1880s and 1890s. Also, non-political solutions such as an economic boycott of prison made goods and a refusal to work with ex-convicts on the jobs were in practice. By 1890s American workers had succeeded in either abolishing or severely curtailing the contract and production for the private sector in most northern industrial states. This resulted in the increasing adoption of either or both, the state use system and the public works and ways system which acted as better alternatives (Gildemeister 1987: 128-129 and 163). The following table is representative of the different systems of labour practised in the US and the steady shift towards state use system.

²⁶ Home Jails A, August 1906, Nos. 11-14, Industries which are carried on in Jails in India, with reference to their competition with similar industries carried on by Private Enterprises, NAI.

Convicts employed under various systems from 1885 to 1915²⁷

System of work	1885	1903-1904	1914-1915
<u>Lease</u> : In this system the state disposes of its convicts to private leasees who agree to take care of the convicts according to the rules of the state, provide steady employment for the convicts and pay to the state an agreed amount	20.1 %	8.4	1.4
<u>Contract</u> : In this system the state sells the labour of the convicts but does not relinquish its care or control. The state maintains the institution and guards, feeds, clothes and houses the convicts, and provides medical attention, while the contractor supplies the raw material, superintends the work, and pays a stipulated amount per capita for the labour. As the contractor assumes the responsibility for profit and loss, the state is assured a definite income, and the interests of the prisoners are safeguarded by the prison officials.	34.6	34.7	10.6
<u>Piece price</u> : In this system the contractor instead of paying for the labour of the convicts, pays an agreed amount for each piece or article manufactured. It depends on the understanding whether the state or the contractor supervises the work.	12.5	5.7	1.8
<u>Public account</u> : Under this system the private contractor is eliminated entirely, as the State conducts all the industries in which convict labour is utilized and maintain its own selling organization to dispose of the products through the open market.	32.8	17.6	18.0
<u>State use</u> : In this system the products produced are limited to the use of state institutions.	-	20.6	51.4
<u>Public works and ways</u> : This system uses convict labour in repair and construction of public buildings. Under this system there is less competition with free labour and none with manufactures but on the contrary, through the creation of public utilities the level of general employment for free labour is increased.	-	13.0	16.8

4.4 Complaints by the private entrepreneurs

As stated earlier, there were several complaints being filed by the private entrepreneurs (basically European) to the colonial authority expressing their displeasure at the government's policy of developing prison industries. This section will present a sample of such complaints

²⁷ U. S. Department of Agriculture, Department Bulletins, Nos. 401-425, Government Printing Office, Washington, 1919. Convict Labour for Road Work, Bulletin No 414, Dec 15th 1916, p. 5.

which explain in detail the points of contestation between the prison and private industry. The Manager of the Cawnpore Woollen Mills complained:

The Commissary of Ordnance Bombay invited tenders by public advertisement for the supply for one year of horse blankets and jhools required by this department in which I and other two companies participated along with the Bengal jails. The tender of the Bengal jails was lowest and therefore it may obtain the contract. By doing so the Superintendent of Bengal Jails is exceeding his rights in competing for rights out of Bengal, but also I hesitatingly assert that the rates at which he tenders will entail a loss upon the Government of Bengal.

In referring to the first part of my protest, I need not remind you of the resolution of the Government of India which formally invited such companies as mine to occupy the field of enterprise that Government pledged itself altogether to relinquish; nor of the later resolution which sought to establish a modified system by which the private manufacturer should be permitted to live; the competition of the jails being minimised to the utmost in those particular parts of that field which he had already occupied. In the years which elapsed between the issue of Resolutions referred to, when, on more than one occasion, we sought information from the Home Department, as to the future intentions of the Government, we were assured that whatever might happen, the jails would only be allowed to compete hereafter at such rates as would include all the costs and charges to which the private manufacturer was subjected, with the addition of not less than 10% as a margin of profit.

The Bengal jails rates are not framed in view of these conditions, but that, if completely worked out, they will be found not to cover the cost of the blankets proposed to be supplied. Twice lately we have submitted in silence but it has come to this now that if no limit is to be placed upon this jail in occupying the field of competition, we and all private manufacturers with us must eventually be driven out of it. We are confident that the government does not wish so, the more so that this Company with others is at this moment making large and costly extensions with a view of producing other classes of woollen goods required for the use of the State, encouraged by the promises of the military administration.

All I ask is that the jails shall not be permitted to engage in those particular branches of the woollen industry in which this and other private Companies long ago laid themselves out to work.²⁸

In response to this complaint, the Chief Secretary to the Government of Bengal said:

There seems to be no doubt that under the order contained in paragraph 7 of Home Department Resolution dated 7th May 1886, the Bengal Jail was strictly within its rights in tendering for contracts outside the Bengal Presidency. These orders say that Local Governments and Administrations shall adapt their intramural industries as much as possible to the requirements of the public consuming departments, these departments being compelled to take articles of jail manufacture which they require as long as such articles can be supplied by the jails of the same quality and at the same price as they can be obtained in the open

²⁸ Home Jails A, August 1906, Nos. 11-14, Industries which are carried on in Jails in India, with reference to their competition with similar industries carried on by Private Enterprises, NAI.

market. Therefore competing for a contract with a public consuming department outside this province, does not appear to have acted against the orders of the Supreme Government.

The pricing was done appropriately contained in the Resolutions of the Government of India dated 22nd September 1882 and 7th May 1886 which include - the price of the raw-material, the wages of jail labour, a percentage of wear and tear of plant, and a percentage for profits(10%).

Regarding jhuls, the Cawnpore Mills offered some time ago to deliver jhuls in the Fort William and Allahabad Circles at almost exactly the same rate as the Bengal Jail Department has now done. This fact shows that the tender for jhuls was neither unfairly low nor made at rates that must have necessarily entailed a loss on the Government.²⁹

The Inspector General of Jails, Bengal wrote to the Chief Secretary to the Government of Bengal thus:

The real ground for all trouble and annoyance which is caused to the private mills is that no person in private business would dream of calling for tenders from the public for articles which he himself manufactured and had exceptional facilities for cheaply manufacturing and supplying. And it should also be remember that many private firms, which entirely admit the right of Government to supply itself from its own departments., made the strongest objection, when public tenders are called for, to the right of Government departments to underbid them.³⁰

The Secretary to the Government of India responded to the complaint by deciding that in future tenders would not be openly called for except for articles which the Jail Department could not supply.³¹

This discontent of the private manufacturer can also be seen against the encouragement by the Government to set up European woollen mills to supply uniforms and blankets to its military, police and railway requirement. Also in 1881, the Government of India had directed that wherever possible, cloth manufactured in India should be bought instead of European products, as the official, railway and private demand combined was not large enough to support the few existing factories. The two largest mills at that time were in Cawnpore and in Punjab, which were European financed and managed except for a couple of smaller enterprises established by

²⁹ Home Jails A, August 1906, Nos. 11-14, Industries which are carried on in Jails in India, with reference to their competition with similar industries carried on by Private Enterprises, NAI.

³⁰ Ibid.

³¹ Home Jails A, August 1881, No. 162, Prison manufactures vs private industry. This file presents a review of the prison and private industry confrontation right from 1875, NAI. Also see Home Judicial, July 1910, GO 1097, Industries in Jails, complaint by Binny and co. regarding competition, TNSA

Indians in the Bombay Presidency (Morris 1982: 593). Therefore, what we see here is that, the Government was trying to put in place its own free industry (apart from the prison), in order to satisfy its own needs. Thus, the colonial state was trying to cope with different kinds of institutions, both of which were essential to support its political rationality.

In another complaint filed in 1901, the Secretary to the Calcutta Trades Association had wrote to the Chief Secretary to the Government of Bengal, regarding the Superintendent of Benares Jail, who had offered for sale, in the columns of *The Pioneer*, matting, durries, Burmese carved frames, tables, over-mantels, teak-wood furniture, coir trays, lawn tennis and badminton nets etc. He wanted to find out whether in manufacturing all these articles, the Jail was not contravening the orders of the Government of India enjoining the avoidance of multifarious employments in the same Jail. He refers to the Resolution of the Government of India in the Home Department, No. 20, dated 23rd September 1882, which directed, "...the making of such things as tablecloths, towels, curtains, and the like should nowhere be permitted; private enterprises can already supply such articles, and the occupation in any case is not sufficiently penal."³² He also pointed to the Government of India direction, in the matter of jail manufactures, that "sales to consumers among the outside public ought be discouraged" and that Jails should, as a rule, deal "only with traders wholesale and retail" and "in this way reduce the interference with private enterprise to a minimum."³³ If advertising was resorted to and price lists issued, the undue competition with private enterprise which the Government of India desired to avoid, could necessarily follow. In response, the Government of India advised the Superintendent not to advertise or issue price lists. As there wasn't adequate machinery in the Benares Prison, he was asked to immediately stop multifarious occupation once the machinery would be installed.³⁴

In 1906 when the machinery at Coimbatore Central Jail was upgraded just to enable the jail to take government orders, Messrs. Binny and Co. (textile industry originally established in Madras by John Binny from England in 1814) complained about the same. To that complaint, the Acting

³² Home Jails A, June 1901, Nos.11-12, Representation of the Rangoon Trades Association against Jail Competition with Private Enterprise, NAI.

³³ Ibid.

³⁴ Ibid.

Chief Secretary to the Government of Madras replied to the Secretary to the Government of India, Home Department thus:

The weaving machinery of the Coimbatore jail has been improved in recent years as a principle laid down in Government of India, Home Department, Resolution no. 10-605-18 dated 7th May 1886, in regard to jail manufactures require that the intramural industries of jails should be adopted as much as possible to the requirements of the public consuming departments. The staple industry of this jail is the weaving of cotton goods and the old and obsolete weaving plant in the jail has been replaced by modern machinery with the express object of enabling the jail to take up government department orders.

The first request of Binny and Co. relates to the prohibition of the sale in the open market of cloth manufactured in jails when such goods compete with the private manufacturers. It is not possible for a jail to obtain contracts from public departments which will exactly find work for all the looms for 12 months. Sometimes there are not sufficient orders from the Government to keep all the looms employed and at such times certain articles are manufactured for private sale.

When one contract is completed the jail should continue manufacturing the same material for the next year's contract. But a contract may not be renewed and "samples" may be changed in either of these eventualities a large stock of finished material will remain on hand for which it may be impossible to find a market.

The check looms mentioned in Binny and Co.'s letter were specially obtained to meet the demands of the Ordnance Department for check dusters, the contract for which has been placed with the jail for several years. For some reason the contract for the last year was not placed with the jail. Notwithstanding this, no check cloth was made last year, but the looms were employed throughout the year in making drill for the police and military departments. It may be asserted that the outturn of miscellaneous cloths, which is obtained from the looms during the time they are not employed on work for Government Departments is so trifling that it cannot be regarded as injuriously affecting Binny and Co. or any other private firm. Their real grievance appears to be that the jail has taken up large orders from Government Departments which at one time used to be placed with their firm.³⁵

As said earlier, it is interesting to see how the colonial authorities had to deal with this particular problem of keeping prisoners employed, which is a part of their sentence, with causing least harm to free enterprise. This complaint can again be located in the already cited context of the rapid expansion of the modern steam-powered cotton textile industry in India, mainly triggered by the American Civil War boom in the 1870s. Chaudhary also notes that the flourishing Indian mills had resulted in the British expressing fears that they would be losing to the local manufactures and worse, they would be undersold in Manchester as well by goods imported

³⁵ Home Jails A, August 1906, Nos. 11-14, Industries which are carried on in Jails in India, with reference to their competition with similar industries carried on by Private Enterprises, NAI. Also see Home Judicial, October 1907, G O 1308, Industries in jails and their competition with the private, TNSA.

from the East (Chaudhary 1969, 309-310). Therefore one can at this point say with confidence that the Government was modifying the convict labour policy to see that it causes minimum harm to the interests of European investments and mills and not for preserving the value of free enterprise per se.

Once again in 1912, triggered by several similar complaints filed, all local Governments were asked to report on the same. Most of the prisons however denied that jail manufactures were proving injurious to private trade. The Madras Government reported that the printing work done for the Public Departments by the Cannanore Central Prison was the cause of complaint and formed the subject of an interpellation in the Madras Legislative Council though there was no private press in the neighbourhood. Therefore, orders had been issued prohibiting private work from being undertaken. The only other jail that made articles for private sale to a considerable extent was Coimbatore Jail. The rates charged were higher and the articles decidedly superior to the market and in the case of several articles there did not appear to be any private manufacturer. However it was held that if it was proved that it was competing injuriously with the private market or preventing the springing up of private manufactures, the Government of Madras was prepared to order the closing of the industry or the reduction of the overturn. Complaints were made by Messrs. Binny and Co. and by the Elgin Mill that they had been deprived of contracts for Government Departments but as the Government of India had decided that this competition was legitimate further examination of the complaints was not felt necessary.³⁶

The United Provinces Government reported that there wasn't any competition with the private industries. Instead it pointed out that jail was acting as a stimulant to private production because the jail set a standard to which private trade was bound to conform since, though the prices of the former were higher, the public preferred to pay them and obtain reliable goods. The Government of Bengal reported that the Alipore, Buxar and Bhagalpore jails were the only ones in which steam power was being used. If competition with private enterprise had to be considered, the labour force employed and the total outturn was negligible compared to the total demand of the consuming departments. Therefore there was still room for private traders to gain Government contracts. The Government of Bombay reported that there were no complaints from private

³⁶ H Jails-A, May 1912, 26-51, Reconsideration of the principles which should govern the supply of jail manufactures to Government Departments and their sale to the public, NAI.

traders. The Inspector General of Prisons remarked that Government contracts could not be undertaken by the jails of the Bombay Presidency as the prices were high and the articles were usually of a better quality than available in the market and to the impossibility of meeting sudden and urgent demands as there was no machinery employed in the jails of that presidency. Owing to the want of machinery the outturn was small and did not therefore seriously injure private enterprise in respect of articles for sale to the public.³⁷ It will be interesting to ask why as late as 1912, there was no installation of machinery in other central prisons in the case of Bengal and why, in the case of Bombay, the Government had totally abstained from establishing machinery in the prisons. As pointed out earlier, it is worth noting how the prison helped introduce the notions of modern industry and with it the modern ideas of factory labour to the colonial subjects.

Such complaints continued to be filed and the Government felt compelled to respond to them. This continuation of expression of discontentment by the European industrialists once again exposes the colonial character of the political rationality that was being imposed. Like in England, it was not possible for them to resolve the contention at once, through legislation. At the same time it was not possible to make any major compromises with the prison industry. As stated earlier, as the Government itself was the largest consumer for both these producers, it aggravated the tension. The Government had to constantly take the private industry into confidence without causing much harm to prison industry. Also, it is important to underline how convict labour, or broadly speaking punishment itself, operates through constant negotiation with the requirements of the economy and shapes itself accordingly. If in the experiences of metropolitan modernity, the emergence of biopolitics was a rather smooth process, our case presents a good example of how because of the segmented introduction of modernity by a foreign agency operating within the logic of imperialism, it became highly contested. In the final section of this study, I will present a brief review of the relationship between the prison and private industry, after the reformation policy of 1920.

³⁷ H Jails-A, May 1912, 26-51, Reconsideration of the principles which should govern the supply of jail manufactures to Government Departments and their sale to the public, NAI.

4.5 Policy of reformation and the relation between prison and private industry

The Indian Jails Committee of 1920 (henceforth IJC 1920) was the first prison committee of India to state that reformation of the prisoners. It said:

It is the duty of the State to endeavour to reclaim and reform the prisoner in its hands by giving him the class of labour best calculated to interest and instruct him, to awaken his intelligence, to train him to habits of industry and application and so to fit him for free life. With the performance of this duty, no private interests should be allowed to interfere and if machinery furnishes, as we believe it does, the best and most reformatory method of employing prisoners, then the use of machinery is justified, and no objection from interested classes or individuals should be permitted to stand in the way. On the hand it should be thoroughly recognised that the task of finding employment for prisoners must be so conducted so as to do the least possible injury to private enterprise. Jail manufactures should, we think be carefully chosen so as to avoid competition with weak and unorganised trades or with budding industries; it is wrong for the state to enter into direct competition with the struggling hand-loom weaver or artisan; it would equally be wrong to start a factory in competition with some new private industrial enterprise, such as chemical industries or the production of nitrates.³⁸

It is worth noting how the Home Department itself had directed the Committee members to deal with the remarks of the Indian Industrial Commission on the subject of jail manufactures, their competition with the products of free labour and the use of power driven machinery in Indian Jails.

The Commission after admitting that jail industries are justifiable in order to recover, as far as possible, the cost of the upkeep of the jails, to keep the prisoners employed and to teach them a trade that will be useful to them after release, had suggested that only manual labour should be allowed to be used in jails, and the extensive use of machinery was undesirable. While it suggested that jails could supply the needs of Government to a much greater extent than present, it proposed to deprive of the jails of efficient and up-to-date means of manufactures, without which this result cannot be obtained. Finally it condemns the manual industries which exist in jails as likely to compete with free cottage industries. On this point we agree with the Commission, but we are left with some perplexity as to what sort of labour the Commission would recommend in order to achieve the admittedly desirable objects of recovering , as far as possible, the cost of the upkeep of jails by the sale of the products of jail labour and of training the prisoner.³⁹

However, the IJC 1920 in the context of increased necessity of production, as against the interest of the Industrial Commission, justified the use of machinery and instruction in up-to-date methods of labour as machinery furnished the best and most reformatory method of employing

³⁸ IJC, 1920, pp.119-23.

³⁹ IJC, 1920, p.32.

prisoners. It was also said that this would enable the prisoner to command a living wage on his release from prison. But having said so, it remained committed to the task of finding employment for prisoners while inflicting minimum possible injury to private enterprise. Labour had to be carefully chosen so as to avoid competition with weak and unorganised trades or with budding industries.⁴⁰ Such rationality expressed by the colonial state in the context of reformatory penal ideology further validates Rusche and Kirchheimer's (1939) argument. They say, "The criminologists of the modern reform school have retained the older notion that the standard of living within the prison must be below the minimum standard outside. This did allow for a certain improvement in prison conditions without destroying the line of demarcation from life outside. But the insistence on retaining the line of demarcation set narrow limits to the possibilities of reform and surrendered it to the mercy of every crisis in the market (Rusche and Kirchheimer 1939: 151).

This major shift in the history of prison reforms in India from deterrence to reformation, therefore, did not in any major way, alter the policy of penal labour in relation to private enterprise. Instead, as referred earlier, the contestation between the prison and private industry continued to draw attention, though this time the concerns were not necessarily raised by European industrialists themselves, but the bodies that represented industries in general. Also prison and private industry continued to be debated in most of the prison Committees appointed thereafter. For example, the Punjab Jail Enquiry Committee of 1925, while discussing this issue, pointed out at the Washington Congress of 1910, where it was held that the out-cry that the jail products would constitute unfair competition and injure private enterprise was unreasonable for the following reasons:

- a) That the amount of competition by prison labour was so small as to be hardly appreciable
- b) That all productivity from any source was a gain to the community (Not to forget that it was the context of the post World War I situation)
- c) That the product of prison labour relieved the cost of maintaining prisons and

⁴⁰ IJC, 1920, p.124.

- d) That the importance of reforming prisoners by labour outweighed all economic considerations.⁴¹

The United Provinces Jail Enquiry Committee 1929, apart from revealing that power-driven machinery was introduced to a limited extent in very few places, as it entailed care and repair which was very difficult and expensive, once again stated that there was a difficulty in denying the claims of certain firms that had already come into existence to supply some of the articles that the jails were producing. Taking the instance of boots, shoes and leather work generally, it was pointed out that the difficulty was that all leather work made in prisons would displace the same amount of leather work at present manufactured by certain firms in the province. These firms had reiterated that they had come into existence largely to supply Government Departments, and that it was inequitable to introduce competition with articles manufactured by prison labour.⁴²

In Cawnpore Jail, the United Provinces' Committee declared, tailoring industry had become a large business. There were 66 machines, 16 of which were operated by the electric power, and were making huge profits. Serious objections were taken by Cawnpore firms to the introduction of this industry. The Committee however did not consider that the activities of that prison should be reduced. There were no reasons to suppose that the prison was competing unfairly with private firms. There was no under-selling. There was no use of paid-labour to supplement prison labour. The work done was very good, and the effect on the convicts was so good that the Committee considered it to be a great misfortune if that particular industry would be discouraged. Although it could not be said that the Jail Department was depriving any firm of work to which it had a legitimate claim from a government department, the Committee considered that any advance in supplying Government Departments would be made very carefully and with due regard to the genuine claims of private firms. But undue weight would not be given to those objections. Provided the Prison competition was fair and reasonable, it was difficult to understand why the Jail Department should be hampered by restrictions to which a private individual would not submit. It was held that it was one thing to refrain from advertising;

⁴¹ Report of the Punjab Jail Enquiry Committee 1925, pp.12-13.

⁴² Report of the United Provinces Jail Enquiry Committee 1929, pp.141-44.

it was quite another to conceal the existence of an industry. It was one thing to push salesmanship; it was another to refrain from salesmanship. The Jail Department had been unduly restricted in the past on these points. With prison labour, it was difficult even to compete in the case of hand-made articles, for prison labour, though cheap, was not as cheap as it appeared on the surface. No convict did three-quarters of the task of a free-labour employed on the same work.⁴³

With regard to the supply of articles for sale to the public, where the articles were necessarily hand-made, such as the carpets and durries made in Agra Central Prison, which were of admirable workmanship and great artistic beauty, there was no question of competition with similar machine made articles. But other difficulties were present. The main difficulty was marketing. As there was a strong opposition to the Jail Department advertising their goods, or placing them in sales rooms in business quarters, there was no sale of jail articles to the public except in the jails themselves. Visitors to India might buy these articles more, but in the first place, the majority do not even come to know about their existence and therefore they may not be inclined to place an order when they would not obtain the delivery until they had left the country. Also as long as these were kept in the jail and not marked according to the business methods, it was difficult to produce them except on order. Though there was a decline in the manufacture of these articles, the Committee was of the opinion that the manufacturing should not be given up as the skill in carpet weaving was indigenous. The present restrictions in marketing and salesmanship had to be partially removed. There must be a depot where jail-made articles could be exhibited and sold. The Committee suggested that a portion of the premises in the School of Arts and Crafts, Lucknow, should be set aside for this purpose.⁴⁴

The Conference of the Inspector General of Prisons, held in 1930, also reported that the Government of India's policy had come under severe criticism by the Upper Indian Chamber of Commerce, as permitting unfair competition by the Jails with private industries. Therefore, once again, the purpose of all jail industries were restated: to keep every prisoner fully employed, to

⁴³ Report of the United Provinces Jail Enquiry Committee 1929, p.142.

⁴⁴ Ibid., pp. 143-44.

teach every prisoner who has not already a trade in hand when he enters jail, some profession to enable him to earn a honest living on release and, to make jail manufactures pay for themselves. This, it was said should not involve the making of large profits at the expense of the private traders. Inspectors General of Prisons had to consistently keep these limited purposes in view, for as of now they all seemed to be desirous of doing big business by increasing installation of power plants, appointments of supervisors of jails industries and subordinate technical experts and improved systems of account auditing etc. By then only Burma and the Central Provinces had a Supervisor. The Indian Jail Committee's recommendation of 1920 was cited where it was held that the sale to general public could not be prohibited and in the case of well established special industry such as carpet making it need not be objected to, but in other cases it should be reduced to the minimum.⁴⁵

In another letter dated 8th December 1928, from the Home Department to the Government of Madras, it was conveyed that the appointment of supervisors to jail industries to push the sale of jail products using free labour, was likely to be looked upon as a step towards competition with private enterprise. Also in 1932, a deputation of representatives of Chambers of Commerce at Madras, Calicut, Cocanada, Cochin, Coimbatore, Tellicherry and Tuticorin expressed their fears to the Law Member about the Jail Department competing with private traders. The Government ruled out any possibility of competition and remarked that the apprehension of the possible competition of jails with established industries was more imagined than real (Venkatesan 1990: 254).

Just to focus the debate as it took place in Madras Presidency, the Chambers of Commerce there had opposed the use of power driven machinery in jails. Their answer to the Paper of Interrogatories sent by the Committee of 1919-20 merely mentioned that the provision of machinery was not justifiable. However, a lot of modern machineries were introduced in the due period such as; latest textile machinery in Coimbatore, a wood spinning machinery in Bellary, a Printing Press at Madras Penitentiary was upgraded, a rice hulling machine was installed in Central Jail in Trichinipolly. To improve production, the post of a factory manager was created

⁴⁵ Home Jails, 1930, 48/8/1930, Recommendation of the Fourth Conference of IGs of Prisons 1929 regarding Jail Manufactures, NAI.

in the Central Jail Coimbatore in 1938. (Note: In the meantime the practice of putting convicts to work the oil presses in jails and make them draw the presses like four-footed animal was brought to the notice of the public by political prisoners. K V R Swami argued in the Legislative Council in 1928 against this inhuman method of exacting work. The new ministry formed in 1937 ordered its discontinuance in 1938). However, the employment of machinery in the jails continued to be challenged. G Harisarvottama Rao in the Legislative Council in 1927 argued that training in hand spinning would be more useful to convicts than training in spinning mills. C Venkataramana Ayyengar echoed the views of Rao in 1929 when he said that prisoners employed in spinning factories found it difficult to get in similar institutions when they came out of the prison. Hand-spinning and hand looms had practical implications. They were associated with Mahatma Gandhi and the struggle for freedom. The Congress Government could not help thinking highly of these schemes. It sanctioned in 1938 the introduction of hand spinning and hand weaving in the Presidency Jail for women, Vellore. A 1939 memorandum refers to the Central Jail Cannalore as also carrying on hand-spinning and hand weaving. Jails appear to have borne in mind that they were not factories meant for large scale production and therefore mechanization of their industries was kept within bounds (Venkatesan 1990:173-179 and 180-181).

Therefore to reiterate, the transition from a penal theory of deterrence to that of reformation did not in any major way alter the relation between convict labour policy and private industry. Also, if before 1920, it was largely the European industrialists who were directly challenging the prison industry, post 1920 it was the industrial bodies which represented these industries as well as native industrialists who were raising their concerns against the prison industry. More interestingly, the popular Gandhian ideals of this period were also used not with an honest intention, but to see that the prison industry is kept in check. It would be interesting to know what happened after this period till 1947 as there is very little reporting on the same, but as by and large as the convict labour policy continued to be the same, it can safely be concluded that the differences between the prison and private industry remained unresolved.

4.6 Summary

There is a strong argument that the nature of punishment reflects the kind of economic relations and techniques of governance. This chapter, situated in the context of British colonial India, by making a study of convict labour policy (which is central to the punishment of imprisonment) in relation to private industry, presents a case of how the punishment of imprisonment tried to cope with the conditions necessitated by the colonial economy and its changing political rationalities.

With the birth of the modern prison in the second half of nineteenth century, there was a shift in convict labour policy from that of extramural to intramural factory labour which reflected the post mercantilist governmentality that was being introduced. However as the Indian colony continued to be sought more as a market which of course led to the delaying of the encouragement for the modern Indian industries, for the survival of the existing few European industries, the colonial regime had to constantly alter this new convict labour policy. This led to three distinct strategies. If, in 1877, the policy was one of heightened self assertion of the prison being a rightful competitor in the market, in 1882, it was one of a total withdrawal from the market by reverting back to the policy of extramural labour. None of these extreme positions could be sustained for long as it did not fit into the kind of governmentality that was being introduced by the colonial regime. Finally in 1886, a policy of well regulated prison industry was followed as an attempt to achieve both – to maximise the extraction of convict labour to the extent of its minimal interference with the (European) private industry.

However, the questioning of this policy by the European industrialists in particular and post 1920 (reformation policy) by the industrial bodies in general, continued. The effects of this questioning and the colonial state's accommodative position are reflected in the prison labour policy around; questioning and re-questioning as to what should and what should not constitute convict labour, choosing of what goods should be produced, limiting the kinds of goods produced to one or two, limiting prison production for the public departments and not for the open market, careful assessment before the introduction of machinery in the prisons, regulating appointing of supervisors to monitor production, preventing advertisement, preventing the issuing of price lists or maintaining of catalogues, charging high profits on goods sold to the public so that it can be restricted to bare minimum, and so on. It is the authoritative responses

emerging from the exceptional colonial context which have revealed these effects in detail and which otherwise would be understood as obvious.

Chapter 5

The Political Economy of Reformation and Convict Labour

The previous two chapters focused on the crucial shift from extramural labour to intramural labour in the second half of the 19th century and the considerable contestation that it led to. However, this important shift had not in any significant way altered the over arching penal ideology of the regime and the official subscription continued to stress on deterrence. This chapter will focus on the crucial shift in the penal ideology from that of deterrence to reformation and its effect on convict labour policy in the initial decades of 20th century. It will critically study the colonial imperatives for introducing the same.

1920, as stated in the last chapter, is perhaps the most important year in the history of prison reforms in India as it was in this year that the Report of the Indian Jails Committee (Henceforth IJC, 1920) stated for the first time that reformation of the prisoners was the primary goal of imprisonment. This, it was said, was mainly to keep pace with the general opinion of penologists throughout the world that the objective of punishment was not only to deter but also to have a reforming influence. The general tendency of such modern ideas was towards the view that severity alone had little effect in reclaiming the criminal, and therefore humanising and improving influences were being emphasised upon. This would lead to the prisoners realising the essentially evil results of crime on himself/herself and others, and would result in a real reformation of character. The various reforming agencies were thought to be religion, education, rewards for good work, the hope of early release, encouragement of industry etc.¹

Though the stress on the reformation ideology of punishment happened in India only through the 1920 report, in Great Britain such developments had started taking place since the last decade of the 19th century especially with the Gladstone Committee Report of 1895. The chapter will begin by discussing the IJC Report of 1920 with reference to reformation and convict labour and study the context in which it emerged. Then it will make a study of the reformation policy as practiced in Great Britain and compare it with the Indian experience. As the policy of reformation in India has taken shape around the context of the World War, a section of the chapter will deal with the

¹ IJC 1920, p.34.

role of convict labour in such a historical context. Finally this chapter will look at caste vis-a-vis convict labour post reformation.

5.1 The ideology of reformation and convict labour in India

As seen in the previous section, reformation was being stressed on from the last decade of 20th century in Great Britain. However it took almost 25 years for the emulation of similar policy in the Indian colony. As stated earlier, the Indian Jails Committee of 1920 was the first prison committee of India to state that reformation of the prisoners was to be the primary goal of imprisonment and thereby convict labour had to perform the major reformatory role. This section will try to locate the context in which such a policy was introduced and will study what such a shift in the penal ideology meant for convict labour.

The First World War experience had led to noticeable alterations in the organization of the colonial state and political economy since 1857. The colonial regime faced the problem of supplying a modern war from a base with only a rudimentary industrial infrastructure. The Government of India then realized the weaknesses of its pre war model for India's economic development. The production of war supplies in Government factories was also stepped up and direct requisitions of textiles and leather goods were made from Indian manufacturers. Therefore in 1916 an Industrial Commission was set up which chalked a detailed and subtle plan for Indian industrial development. It advocated that Central Government should play a major role in industrialisation by the investment of social overhead capital, the promotion of technical education and research, the provision of industrial banks and the supply of direct financial and entrepreneurial assistance to private industry where necessary (Bose 2004: 102).

Though the changes in Central Government policy in the 1920s and 1930s did not represent, together or separately, a major new economic strategy, it had created new opportunities for Indian manufacturers. Although the large sections of India's rural populace suffered hardships during the war due to rising cost of food grains and fodder, Indian industrial capitalism—especially in the cotton sector of Bombay and Ahmedabad achieved a breakthrough. Dislocations in transport had resulted in a sharp decline in the import of cotton piece goods from Britain, and

the raising of import duty from 3.5% to 7.5% to meet the government's financial needs in 1917 gave the Indian textile industry its first taste of protection (Bose 2004: 102-103; Tomlinson 1979: 58-59 and 63-64).

This was also the period when not only the military recruitment of Indians had increased, but there were large quantities of food and fodder that was exported to the war zones in the Middle East. The first casualty of the outbreak of war in 1914 was the strict 1:2 ratio of the British and Indian troops in the army. The British Indian army adopted a policy of large scale recruitment of Indian soldiers. In some military campaigns, such as in Mesopotamia in 1915, Indian troops were themselves used as cannon fodder. Nearly 60,000 Indian soldiers were killed fighting for Britain in the European and Middle-Eastern during World War I (Bose 2004: 102).

With regards to punishment, the modern reformist ideas of punishment had a general tendency towards the view that severity alone had little effect in reclaiming the criminal, and therefore humanising and improving influences especially through factory work were to be emphasised upon. Recommendations were made towards greater differentiation in treatment to meet the different ages and types of offenders; the abolition of unproductive labour, and the gradual extension of association between prisoners for productive work and technical instruction; the possibility of prison earnings throughout a sentence. This, it was said, was mainly to keep pace with the general opinion of penologists throughout the world that the objective of punishment was not only to deter but also to have a reforming influence. However Rusche and Kirchheimer (2009) say that it was the universal lack of man power which made it necessary to draw as many people as possible into the labour process, fuelled such reformatory ideas of punishment (Rusche and Kirchheimer 2009:161). As pointed in the last chapter, The Washington Congress of 1910, in the context of opposition to prison labour free labour and private industry held that the amount of competition by prison labour was so small as to be hardly appreciable. Further it said that all productivity from any source was a gain to the community and that the importance of reforming prisoners by labour outweighed all economic considerations.²

² Report of the Punjab Jail Enquiry Committee 1925, p.12.

In similar vein the IJC, 1920 held, “The world is in great need of increased production; should not the labour which is available in jails be employed in the most productive manner? India is on the verge of great industrial development; should not the prisoner in jail be helped and qualified to take his part in this development?”³ It further said, “As communication by road, railway and other means has improved, there has been a growing tendency to reduce the number of prisons and to concentrate prisons at central points, chosen on account of their accessibility, salubrity or other considerations. By collecting prisoners together in large numbers, it has become possible not only to provide better means of employment and to effect great economy and uniformity in administration but also to secure more expert management of prisons. Earlier there were prisons in each district because the land was huge and communication was difficult.”⁴

Thus the changing nature of penal ideology went hand in hand with the increasing number of central prisons due to better means of transport. This further prompted the IJC, 1920 to stress on productive labour. Profit extraction and deterrence through labour were relegated to secondary importance. It also said, “...under such a scheme all forms of purposeless labour such as the treadmill and the crank were to be eschewed.”⁵ Even the scheme of paying of gratuity to convicts was recommended.⁶ It was also proposed that there should be concentration of jail labour on a few large industries in order to make the best use of the available jail staff and to prevent their energies from being dissipated in a number of small industries. It was reiterated that it was necessary to secure a steady market for jail products and this could be most conveniently found in the consuming departments of the state and that this could also help in reducing the pressure on the exchequer.⁷

As the jails were held responsible for supplying articles suitable to the needs of the consuming departments the jails were to be equipped and staffed to be able to turn out articles as good as those procurable in the open market and for which purpose machinery was thought to be

³ IJC, 1920, p. 120.

⁴ Ibid, p.38.

⁵ Ibid, p.118.

⁶ I have looked at this scheme in detail in Chapter III.

⁷ Ibid, pp.118-121.

indispensable. Also as public departments often required large supply of goods at short notice and as they could not be completed if they were to be made by hand, and also hand made goods could seldom compete with machine made goods with some exceptions, machinery was thought necessary for jails. As dealt with in detail in the last chapter, it was clearly stated that such machine labour should be carefully chosen so as to avoid competition with weak and unorganised trades or with budding industries.⁸

Though the Committee emphasised on reformative labour, and such labour by and large is intramural labour, wherever it was possible to work out such an ideology, it is rather striking to note that it did not formally put an end to employing convicts on extramural labour. In fact it came out with a set of principles that were to be followed when prisoners were employed on large public works. It said:

In the first place the question of climate and location are all-important....We consider that no public work gangs can legitimately be started unless the question of the climatic conditions of the site and surrounding country have been carefully examined from medical and sanitation experts.In the second place the work selected must be of such a character that it is concentrated at a single place, and that it would last for a considerable time. If this condition was not fulfilled, suitable buildings cannot be provided and the prisoners then had to be kept in tents or other temporary structures with all the attendant evils of fetters, the belchain at night, bad ventilation and the like. As the efficiency of prisoners would also be lost if they had to walk long distances from the prison and they were not to be engaged building roads, canal, railway tracks etc. For prisoners employed outside the main gate but on jail premises, such as the garden gang, the sweeper gang and the like the practice of imposing fetters was felt quite unnecessary if the prisoners were properly selected.⁹

Thus even when there was a subscription to reformative ideology convict labour continued to be identified as freely available source of labour at the disposal of the state and the state according to its convenience and requirement continues to maintain a reserve of such labour.

With regard to short term prisoners, the Committee held that as there was no time to teach such prisoners a trade, or to put them to anything except such forms of labour which do not require long term training, for such prisoners the only possible employment was unskilled labour. However, if the prisoner was skilled in any trade during admission itself, utilising his/her skill was thought to be obvious. All prisoners with long or short sentences were held liable to be

⁸ IJC, 1920, pp.122-23.

⁹ Ibid, pp.132-39.

called on to take their share in the carrying out of prison services. It was reiterated that it would be unjustifiable to impose on the taxpayer the cost of employing paid-labour to perform such services when convict labour was freely available. If a long term prisoner had to be thus employed, then the period undergone should come at the beginning of the sentence rather than later, as it was thought that when the prisoner was trained in an industry and when his/her reversion to unskilled labour, except as a punishment, would involve a sacrifice of efficiency and some hardships to him/her. This also gave the jail authorities an opportunity of acquiring some knowledge of the prisoner and of learning for what industry his capabilities were most suitable. But the crux of the policy was maintaining prison economy and achieving reformation.¹⁰ Thus no matter to what official ideology the state subscribes to, the utilitarian understanding of convicts as free available labour continues, and the penal institution continues to function as a self sustaining one with costing minimum to the public. Also with regards to women prisoners the reformation policy hardly introduced any new changes in their employment. Women prisoners were generally employed in preparing food; wherever possible they were also instructed in needle work (Venkatesan 1981:154).

In Madras Presidency, the Madras Jail Manual in 1915 itself had declared, “the main objective of prison labour to be the reformation of the prisoner”. One of the important objects of prison labour was to make prisoners pay for their maintenance by making them work. The IJC, 1920 had not approved of this idea because it would amount to exploitation of the prisoners. M K Nayar in the Legislative Council in 1932 said, “The Government owes a duty to the tax-payer..... these prisoners are there and they have to be fed, housed and clothed; all this costs money which ultimately falls on the tax payer; it is therefore necessary that some work must be given to these prisoners so that some compensation for the money of the tax-payer which is being spent on them may be obtained (As quoted in Venkatesan 1981:151).” K Koti Reddy, another member of the Legislative Council concurred with the views of the Government that jails should be a source of income and said, “I personally do not see any reason why the Government should not utilise convict labour for profit (As quoted in Venkatesan 1981: 151)”.

¹⁰ IJC, 1920, pp.118-19.

Relevant rules of the Jail Manual reveal that the Madras Government was more inclined to permit extramural employment under proper safeguards than totally prohibit them. A large number of the prisoners of the District Jail Koraput were employed in a new drainage scheme from 1924. In 1929¹¹ alone an aggregate of 4,480 convicts were employed on extramural work at Koraput. Convicts of the Alipuram Jail were hired to the Military Department in 1923 and 1924 to work on the grass farms. Prisoners were sent in small gangs in compound of headquarters Hospital, Salem, the lawn of Medical Mission School Vellore and grounds of District Court Salem. Therefore a jail industries Committee was constituted in 1924 under P Noyce, which made a thorough overhaul of jail industries and submitted its recommendations in 1925. Though its implementation involved a non-recurring expenditure of Rs 4,36,462 and a recurring expenditure of Rs 78,952, the Government was not very willing in accepting them (Venkatesan 1981:159).¹²

The 1919 Montague Chelmsford Reforms had provincialised jail administration but treated it as a reserve subject to be administered by the Governor General in Council, and not as a transferred subject under a minister chosen from the Legislative Council. With the promulgation of the Government of India Act 1935, the prisons became a transferred subject under the autonomous provinces. The Government of India Act 1935 did away with this ingenious device known as diarchy, removed all distinctions between reserved and transferred subjects in provinces and facilitated the growth of the jail department on popular lines. Thus post 1935 Act, Bombay, Madras, United Provinces and Central Provinces and Berar passed Probation of Offenders Acts during 1936-38. The Committee of Prison Reforms in Mysore 1940-41, the U P Jail Reforms Committee 1946, the Bombay Jail Reforms Committee 1946-48 were set up to improve prison administration.¹³

However even after the recommendations of the IJC 1920, and several other committees as stated above, there was a lack of implementation of the same. Lt. Colonel Barker in his “The

¹¹ As stated earlier The International Penal and Penitentiary Commission of 1929 had also desired that work assigned to prisoners should be instructive in nature. See Chapter IV, pp.25-26.

¹² Though the reformation policy stressed on education, generally speaking prison education did not go beyond the elementary stage which consisted of reading, writing and arithmetic (Venkatesan 1981: 277).

¹³ Report of the Working Group on Prisons in the Country, 1972-73, pp. 3-4.

Modern Prison System in India” points out that even when popular ministries were appointed unto 1937 not much was done towards the implementation of the Committee recommendations. For Karnam, one of the reasons for the same, was the emerging national movement. The problem of overcrowding of prisons, which was especially caused by jail satyagraha movement after 1920 restricted the colonial government’s initiative to modernize the prison industries (Karnam 2004:115).

After 1937 many of the provincial ministries appointed committees with a view to effect further reforms in the jail administration of their respective provinces. Therefore in the ensuing 20 years both under British Government and popular governments many improvements were effected in buildings, staff administration and labour; steps such as classification, educational facilities, after-care work were also taken for promoting reformation. Also several acts such as Borstal Act, Children and Probation Acts, Probation of Offenders’ Act etc. were passed. Also, the Committee appointed by the Punjab Government and the United Provinces Jail Committee had made several recommendations and several steps were taken towards their implementation.¹⁴ In 1939, a Committee was appointed by the Bombay Government to go into the question of whipping as a jail punishment and its recommendations were accepted. Beyond this, there were no further attempts made for reforms.¹⁵

5.2 Convict Labour in the context of World War

India as a colony was not only funding Britain’s imperial interests through the payment of various taxes, but especially through the British Indian army it was also directly protecting Britain’s far flung empire from North Africa to East Asia from the later decades of the 19th century. The Indian Army helped in controlling the Mahdi uprisings of 1885-6 and 1896 in Sudan, the Boxer rebellion of 1900 in China and the Boer War in South Africa during 1899-1902. Indian troops were also used in Egypt in 1882, in Afghanistan in the late 1870 and early 1880s, for the final conquest of Burma in late 1880s, to impose British dominance in Tibet in

¹⁴ Report of the Working Group on Prisons in the Country, 1972-73, pp. 3-4.

¹⁵ Report of the Bombay Jails Reform Committee, 1948, p.4.

1902-3 and to bolster British influence in the Persian Gulf in the first decade of 20th century. During World War I, not only did India's defence expenditure increase by 300%, but Indian troops played a critical role in Mesopotamia and as many as 60,000 Indian soldiers had died fighting for Britain during 1914-1918. In fact a major structural change itself had occurred in organizing the Indian Army. The outbreak of the First World War had lead to large scale recruitment and ratio between Indian and British soldiers had significantly altered (Bose and Jalal 2004: 78-79 and 102). If this, in brief is the story of the utilisation of the British Indian Army as such, this section will study the role convict labour played in the context of the World Wars.

If on the one hand as was seen in the last chapter there is a crucial limitation of reformation through convict labour as its products cannot compete in the open market, on the other hand, the context of World Wars also did impinge on the reformatory ideology of convict labour policy. The outbreak of the war had resulted in issuing special rules almost in every country, and military interests had a decisive influence. The Prussian ministry of justice, for example, had issued decrees in 1916 and 1917 requesting the courts to take into consideration the possible usefulness of the convict in auxiliary war service deciding to remit any sentence. Pending cases were dropped and convictions were set aside as a method of recruiting for the army. Convicts whose sentences had included as a special dishonour, loss of the right to serve in the army often regained the right so that they could be sent to the front. Criminal policy towards those who stayed at home was dominated by the same approach. The universal lack of man power made it necessary to draw as many people as possible into the labour process, and the administration was busy in doing its part to this end (Rusche and Kirchheimer 2009:161).

For the same purpose, in India the Jail Corps was launched in 1916. This was mainly inspired by an experiment carried out in Mesopotamia where in well behaved and short term prisoners in Indian Jails were granted a conditional remission of their sentences and thereby employed as labourers in the subsidiary services of the war front. As this experiment proved to be a success, the British Government decided to extend it on much broader lines. Such a scheme was thought as having the "incidental" advantage of reducing the demand for free labour. Also the prisoners found it advantageous as the unusual favourable terms offered attracted a large number of

volunteers from better class prisoners in Indian Jails. Their cases were carefully considered by the local authorities, with the result that several labour and porter corps were recruited in this manner. The corps were employed in loading and unloading sea and river craft, stacking stores, road and hut making and the like. It was clearly stated that there was no intention of employing them near the fighting line.¹⁶

When the corps were for the first time sent to Mesopotamia, the authorities tried avoiding using the word “Jail” or “Convict”. The corps were called Disciplinary Corps. There were several conditions on which the convict could get enrolled as corps. The Government of India had requested the Governor of Provinces to consider the suspension of sentences under section 401 of the Criminal Procedure Code, and this was done with the effect from the date of embarkation for Mesopotamia, subject to the following conditions:

- a) That he will be enrolled and attested as a follower under the Indian Army Act on arrival in Mesopotamia
- b) That he will, for the period of two years or the duration of the war, be employed there under the Military works services on embankment work, on loading and unloading stores from and into steamers and river craft, or such other works at the Military authorities may direct
- c) That he will behave well, and perform satisfactory service during the period of his employment
- d) That he will not commit any offence punishable by any law in force in British India
- e) That he will not associate with notoriously bad characters or lead a dissolute life.¹⁷

The Government on its part offered the following terms:

- a) The suspension of sentence was to come into effect from the date of disembarkment. The sentences of the prisoners are only suspended and for bad behaviour they would be sent back to their respective jails.
- b) Remuneration of Rs 10 a month of which a portion could be allotted to prisoners' families at the option of the former. Free rations from date of release from jail, free clothing and an advance of Rs 30 would be given and could be deducted subsequently in instalments.

¹⁶ H Jails (Confidential), 1929, 107/29, Formation of a Labour Company in Sind Jails for service in Northern Frontier, History of the Jail Labour and Porter Corps Employed in Mesopotamia During 1916-1919, NAI.

¹⁷ Ibid

- c) If behaviour on service was reported to be satisfactory, he was granted remission on release from military employment of the unexpired portion of sentence. If the services were to be found unsatisfactory, the prisoner was to be returned to jail to complete his term of imprisonment.¹⁸

Apart from these terms there were several concessions that were offered to these corps. The first concession was offered in May, 1917, from the Adjutant General in India who stated that there were a number of ex convicts who were serving in the various Disciplinary corps, the terms of whose sentences would have expired had they remained in jail, but that the condition of their release was not fulfilled until they had served out the terms of their agreement (duration of war or otherwise). In case of such convicts, in order to obviate discontent and to give them a greater opportunity of reform it was considered expedient to treat them as “Free” labourers if their services were to be found satisfactory. The second concession was paying them a grant of 15 Rs per month. This was the pay of Porters at that time who were not recruited from the jails. The third concession was a grant of war-leave to 20% of specially selected convicts during the winter of 1918-19 when the leave season of the forces had closed. Besides those recruited for the corps, there were gardeners, dhobis, syces and sweepers. On June 30th, 1918, the total strength of all 7 corps in the field was 9,603 and including the sweepers, gardeners etc., it was 11,205. Therefore during 1918 there were round 10000 to 12000 jail recruited men serving with the forces.¹⁹

Formation of such corps continued even after the Armistice in anticipation of wars in the future. The Government under the Home Department Resolution No. 3211/2, dated 17th December 1928 undertook to provide jail labour units in the event of general mobilization such as would be necessitated by a war of the first magnitude. The question was for the provision of such events in the event of partial mobilization and a proposal was put forward by the local military authorities responsible for preparing the appropriate scheme of mobilization that Jail labour units should be formed in such a contingency from the jails in the Presidency of Bombay and the province of the Punjab.²⁰

¹⁸ H Jails (Confidential), 1929, 107/29, Formation of a Labour Company in Sind Jails for service in Northern Frontier, History of the Jail Labour and Porter Corps Employed in Mesopotamia During 1916-1919, NAI.

¹⁹ Ibid.

²⁰ Ibid.

Thus it is striking to see, if on the one hand the official subscription of penal ideology was that of reformation, the economic imperatives created by the War (and the Recession as will be presented in the following paragraphs) necessitated the use of convicts to suit the purpose. Therefore the point worth noting is that even when there is qualitative shift from deterrent to reformatory ideology, convict labour continues to be identified as a cheap labour reserve which could be put to the required use by the state.

If on the one hand the prisoners were directly serving as corps, on the other hand during the War period, the prisons themselves became important government factories, using their labour power to a maximum degree. In Great Britain, the English prison commissioners reported for the year ending March 31, 1919, that the manufacture of War stores continued to employ every available inmate, and the was satisfactory, in spite of the difficulties experienced in obtaining materials, the delivery of goods on order was in nearly all cases within the limits of time required by the several Government Departments (Rusche and Kirchheimer 2009:161). Foucault (1979) says:

...as the nation mobilized for war with the Central Powers, that trajectory of thought, and the disciplinary innovations it had prompted, began to undergo a series of subtle but profound changes: Most critically, the new penological mode of prison discipline gradually tore loose from its moorings in the larger, ethical project of social justice to become a vigorously contested instrument of power. Meanwhile, outside the prison walls, the extraordinary circumstance of a war economy presented progressive prison reformers with an unprecedented opportunity to pursue the systematic restructuring of legal punishment at the state, federal, and even international levels. War mobilization revived, within progressive ranks, the dream of full-time, waged, productive labor for all fit and able prisoners; it also prompted the first federal effort to direct the reconstruction of the nation's penal systems as a whole (Foucault 1979: 428-435).

However, in Britain, after the war it was difficult to provide work as numerous prisons were closed. Wakefield prison was reopened, and active steps were taken to secure additional orders for Government Departments. New shops were opened at Bredford, Bristol, Oxford and Shrewsbury and a large sum was spent on additional machinery for the printing shop at Maidstone. In 1926-27 automatic boring machines were installed in the brush shops at Wandsworth and Wormwood scrubs, and new power looms were installed at Wakefield and other such installations were undertaken. In 1931, the economic crisis made it necessary to reduce the staff and also the hours of associated labour. A Directorate of Prison Industries was

appointed in 1934. The problem of providing work was somewhat relieved by a decrease in the prison population and an increase in orders for Government Departments.²¹

In India, as stated earlier, to put it modestly the whole policy of reformation, and in particular, the emphasis on productive machine labour was going hand in hand with World War experience. In fact the IJC which met started working in 1919 was actually called for in the year 1912 itself. But due to the anticipatory war circumstances, it inevitably got postponed till 1919. Also, it wouldn't be an exaggeration to say that the policy shift to reformation itself was a political enterprise, the Wars and the Recession being the important driving forces. Also, as mentioned before, it was clearly stated that production from any front was welcome and in the Indian context the Government was the largest consumer. Interestingly, Venkatesan (1981) points out that when jail supplies to the Military Department had declined in 1919 due to termination of the First World War, the Governor advised the Government Departments that orders could be placed in the open market only when jails were unable to meet the demand so that prisoners could be employed and discipline be maintained. Such Government's instructions had good results and the value of prison manufactures had risen considerably. In 1926, the Director of Public Instruction asked for permission to by-pass this procedure because it involved complication and delay but the Government declined. However the consuming departments did not appear to have appreciated the Government's anxiety. In exasperation, the Inspector General of Madras Presidency wrote in 1931 that it would be much economical to close down the industry and allow the large prison population to remain idle (Venkatesan 1981: 161-163).

This section has specifically dealt with the use of convict labour in the context of the World Wars. The emphasis was specifically in looking at convict labour as cheap reserve of labour. Convict played a dual role: directly assisted at the War front and indirectly produced for the exigencies generated by the War through factory work. If the reformation policy itself had not led towards greater emphasis on modern production, post War, it had only further strengthened the belief in the same. We have already seen that from the 1860s-1870s, under specific colonial context, a characteristic so much associated with reformation i.e. engaging prisoners in modern

²¹ Home Jails, 1938, 12/6, An extract from the Report of the Prison Commissioners and the Directors Convict Prisons for the year 1934, Review of the Past 25 years, NAI.

forms of production, was already introduced in India though under the overarching penal ideology of deterrence itself. Such use of convict labour by the state happened within the context of the crucial shift in penal ideology from deterrence to reformation. However schemes such as payment of gratuity whether in India or elsewhere were correlated with such global events.

5.3 Reformation ideology and convict labour in Great Britain

In Great Britain, the Gladstone Committee of 1895 which is considered to be a landmark in the history of prison reforms introduced a new conception of prison treatment as an instrument of reformation. This was mainly based on classification, employment in association and individualization and it relegated the theory of deterrence, based on solitary confinement and strict uniformity. It observed that while the earlier prison reforms had paid much attention to organisation, finance, order and health of prisoners, and prison statistics, the prisoners however had been treated too much as worthless and hopeless members of the community. Under such a system neither crime nor recidivism had decreased, and that it made for the deterioration and degradation of the prisoners and their eventual release into society neither deterred nor reformed, but brutalised and embittered. Therefore the Gladstone Committee recommended that for the future, reformation and deterrence should be treated as ‘primary and concurrent objects’, and that ‘prison treatment should be effectively designed to maintain, stimulate or awake the higher susceptibilities of prisoners and turn out of prison better men and women, both physically and morally, than when they came in’.²²

As an attempt to achieve the above stated objectives, the Committee recommended greater differentiation in treatment to meet the different ages and types of offenders; the abolition of unproductive labour, in particular the crank and tread-wheel and the gradual extension of association between prisoners for productive work and technical instruction; the possibility of prison earnings throughout a sentence; the provision of more books; and the initiation while offenders were still in prison of aid to their families and preparation for after-care through the discharged prisoners’ aid societies. The Prison Act of 1898, which in many ways than one

²² The Treatment of Offenders in Britain, Central Office of Information, London, 1960, p. 4. See also Home Jails, 1938, 12/6, An extract from the Report of the Prison Commissioners and the Directors Convict Prisons for the year 1934, Review of the Past 25 years, NAI.

marked the beginning of a new era in prison administration, was passed to give effect to the principles of reform recommended by the Gladstone Committee.²³

Some of these recommendations including the recommendations on convict labour were implemented piecemeal. The Prison Act of 1898 which dealt mainly with changes in the nature of prison labour provided for association in labour wherever practicable, for the phasing out of the crank and tread-wheel and the use of oakum picking only as a last resort. The Act also made provisions for the Court to classify into further divisions, those sentenced to imprisonment without hard labour. This was a novel development and was also a reflection of the time that it was more appropriate for the court than the executive to decide the conditions under which an offender should serve his sentence (Edwards 1978: 4).

When Churchill came to power, he not only replaced Gladstone as the Home Secretary but also demanded from Evelyn Ruggles Brise (1895-1921), the Chairman of the Prison Commissioners and Directors, the immediate abolition of solitary confinement.²⁴ In 1910, prisoners serving sentences of hard labour were kept in separate confinement for the first 28 days of their sentence, and up to nine months in the case of recidivists. On March 25th 1911 it was ordered that all convicts except for recidivists should serve only one month in separation (Forsythe 1991: 67-68). Later in 1919, in the case of hard labour prisoners the 28 days separate confinement was reduced to 14 days and was finally the separation period was abolished in 1931. In Local prisons the year 1919 saw the introduction of the red band, or red collar system which had for many years been in force in convict prisons. Under this system certain selected prisoners were trusted to work individually without supervision.²⁵

By the end of Ruggles-Brise's period of office there had been an amelioration of the severity of the convict prison system. So the convict gangs kept at very severe penal labour in the 1870s and 1880s was being no more practiced and even the critical Labour Research Group noted that convicts had started working in workshops at such occupations as tailoring, shoe making,

²³ The Treatment of Offenders in Britain, Central Office of Information, London, 1960, p. 4.

²⁴ Such urgency was also a result of Churchill watching a tragedy called Justice by John Galsworthy where the central character had committed suicide after serving three years penal servitude

²⁵ Home Jails, 1938, 12/6, An extract from the Report of the Prison Commissioners and the Directors Convict Prisons for the year 1934, Review of the Past 25 years, NAI.

carpentry, smithing and that in the later stages of sentence convicts worked on the prison farms and land reclamation schemes. Here, the Labour Research Group noted, convicts were often devoted to the farm animals and, apart from their clothes, could hardly be distinguished from cheerful, hard-working, ordinary farm labourers. Also in the convict prisons where, Stars tended to be concentrated, especially light industrial work in workshops was practiced (Forsythe 1991: 72).

However it is important to note that despite these reforms, prison industries continued to be unsatisfactory. They were of the most elementary character and were performed in a crude, amateurish way. Therefore there were of no educational value and were considered to be of a serious loss to the nation. The “instructors” were rarely trained men, and efficient machinery and equipment were almost entirely lacking. The workshops were frequently poor, and the prisoners worked under conditions which gave them little interest in their labour and no incentive to do well.²⁶

Also the penal view of labour which was supposed to be thrown out as early as 1896, continued to characterise almost all prison work. There were several monotonous processes performed by hand which would be performed by machinery in any up-to-date factory. This was partly due to the difficulty of providing sufficient work for rapid manufacture and of running well equipped workshops by the low-conditioned and constantly changing prison population; but despite all theoretical repudiations it was also due to the punitive conception of the work, and to the system of silence and separation which could not possibly be fitted with any remunerative form of co-operative production. Work was regarded not as a means to an end, certainly not as a craft, but as a prescribed task to be fulfilled as part of the punishment of imprisonment. In fact there were instances where when there was a lack of supply of canvas, completed mail bags were deliberately taken to pieces so that the tasks might be forthcoming.²⁷

So far as the work given to prisoners sentenced to hard labour during the early stages of their imprisonment was concerned, it was stated by the Prison Commissioners in 1896 to be

²⁶ English Prisons today: Being the Report of the Prison System Enquiry Committee, Ed. By Stephen Hobhouse and A Fenner Brockway, Longmans, Green and Co., London, 1922, V/28/6056, p. 109, British Library.

²⁷ Ibid, p.113.

deliberately penal. They remarked that in their opinion it was “of the highest importance that penal labour of a deterrent nature should accompany the early stages of imprisonment”. In fact the Gladstone Committee (1895) itself had recommended that punishment of hard, dull, useless, uninteresting, monotonous labour was necessary. The fact is that though the use of tread-wheel and crank was stopped many of the other tasks imposed had retained their vices. The effect of attempting to make prison labour “deterrent “ with a view to inculcating a distaste for prison was to make labour itself distasteful.²⁸

In criticizing the character of the manual labour enforced in prisons, it should be noted that much of the modern factory work was both monotonous and degrading too, and that from an educative point of view hand work which allowed some initiative and expression was far more valuable than tending to machines and prison labour permits none of these things. The prison workshops could rarely be described as model establishments. In many cases the old tread-wheel buildings were converted into workshops which were dull, ill lit uninviting places. According to the statistics of 1910-11, out of 12,192 prisoners employed on manufactures, more than 20% were engaged in low grade work such as picking oakum, or cotton, sorting wool etc. The restriction upon industries was a main factor in preventing the efficient organisation of work in prison. The Departmental Committee of 1895 instanced the case of mat making which had to a large extent been given up owing to outside agitation against competition of prisoners with free labour.²⁹

For Rusche and Kirchheimer (2003), prison labour in this initial phase of reformation continued to remain a central problem mainly because prison labour had lost its economic significance in countries with a highly developed industrial capitalism. They point that according to the English Commission of the 1890's, the prison population presented no favourable feature whatsoever for the development of industrial labour. That was true a priori of the smaller prisons used for short sentences, since the small number of inmates and the rapid turnover made any form of rational production an impossibility. However, in large prisons, large scale expenditure was necessary if

²⁸English Prisons today: Being the Report of the Prison System Enquiry Committee, Ed. By Stephen Hobhouse and A Fenner Brockway, Longmans, Green and Co., London, 1922, V/28/6056, pp. 113-15, British Library.

²⁸ Report of the Bombay Jails Reform Committee, 1948, pp. 115-16.

²⁹ English Prisons today: Being the Report of the Prison System Enquiry Committee, Ed. By Stephen Hobhouse and A Fenner Brockway, Longmans, Green and Co., London, 1922, V/28/6056, pp. 113-15, British Library.

their products had to compete with the products of private industry. The opposition to this was so strong, both from the business world and from the trade unions that convict labour was generally limited to manufacturing goods for use in the prisons or in government departments (2003: 152-153).

Furthermore, as with the new reforms the jailors had become salaried officials, they had no private economic interest in convict labour which they had in 17th and 18th centuries. The state was satisfied with a partial return of its outlay, at least on the books, and the pedagogical side of prison labour had come strongly to the fore. Convicts were often put to work in the fields, a solution particularly popular in Fascist countries as one of the coercive methods of raising production at a minimum expense. Agriculture or other primitive work was no answer to the problem of reform, for that generally meant that the convict leaves as he entered without any training which would help him resettle. The expense involved, the difficulties of finding a market, and public opinion all contribute to prevent the introduction of an effective program of labour training (Rusche and Kirchheimer 2003: 153).

The Report of the Parliamentary Committee in 1913 however further introduced a radical change and it stated that the purpose of prison system sought was to be predominantly reformatory. The logical corollary of this was to promote industrial training and education so that the prisoners could return to ordinary life.³⁰ There were several reformatory steps taken in the following few decades. Between 1921 and 1939 the prison commissioners argued that there was in progress a steady mitigation of the severity of Ruggles (1895-1921) system and the implementation of new policies designed to reform and train prisoners and borstal trainees more effectively. In 1923 convict separation was suspended and in 1930 it was abolished, separation in local prisons was also abolished in 1931. Insistence on compulsory attendance to chapel, flogging etc. was also considerably reduced. In March 1922 conversation was allowed in prison workshops (Forsythe 1991: 175). It is important to see the reforms in these decades in context of the world wars and the economic depression.

Thus the question that Rusche and Kirchheimer were raising as to the feasibility of introducing productive industrial labour in the prisons in the context of greater industrialisation outside only

³⁰ Report of the Bombay Jails Reform Committee, 1948, p.117.

gets further validated. Despite such a context, the World War situation had encouraged modern production in the prisons. If, as seen before a large percentage of the prisoners in the first decade of the 20th century were still engaged in unremunerative and outdated labour, during the First World War the number of prisoners employed on low grade works was reduced to 2.2%. The table below also indicates how there was an increasing composition of prisoners who were working in the manufacturing sector by the 1930s.

Daily average number of inmates at work³¹

	1929-30	1930-31	1931-32
Manufacturing	6219	6530	6805
Farming	355	352	406
Building	1328	1413	1407
Domestic service	1945	2011	2089

Before 1877, in certain English prisons which were under the control of the local justices, prisoners were paid regular wages for their work, 50% of the profits accruing to the prison by their labour. But after that since the prisons came under the Home office, wages were not being paid to prisoners. However, until 1913 it was the custom to pay them a small gratuity. The gratuity was never regarded as a payment for work done, and was abolished in that year as ineffective both as “a means of charity” and as a means of securing good conduct of the prisoners”.³²

An earnings scheme was once again introduced a few years before the beginning of the Second World War. The earning schemes which were introduced in 1929 at Wakefield on a purely experimental basis and were successful were considerably extended in 1937. Following the

³¹ Report of the Commissioners of Prisons and the Directors of Convict Prisons for the year 1931, London, p.25, British Library.

³² English Prisons today: Being the Report of the Prison System Enquiry Committee, Ed. By Stephen Hobhouse and A Fenner Brockway, Longmans, Green and Co., London, 1922, V/28/6056, p.117, British Library.

Departmental Committee on Employment of Prisoners of 1933, such schemes were introduced everywhere. Earlier a prisoner could become eligible to earn after the completion of a certain period of his sentence but on the general extension of earnings to all convict prisoners this was done away with and every convict could begin to earn and enjoy the privileges which earnings may procure him from the time he reaches the convict prison. These payments though trifling were found to serve as a substantial incentive to prisoners to work more efficiently apart from him having that he has earned and allowing him to think about how he should spend it.³³

However, as pointed out by Rusche and Kirchheimer the system of paying wages was contested on the same grounds as productive prison labour in general and paying convict labour on the same level as free labour. In England, the work performed by prisoners used to be incorporated into the stage system, creating the possibility of shortening the judicial sentence. A report of the prison commissioner in 1929 indicated that this system merely operated as a negative check on misconduct and idleness, and concluded that some form of wage was necessary to induce the inmates to perform the minimum amount of work necessary and to escape the black mark of idleness to the maximum possible productivity. Following this report the system of pay was introduced (1939: 153)³⁴.

Garland maintains that prior to 1895 (when Gladstone Committee Report was published), penal policy was dominated by classical ideas regarding deterrence, uniformity and a belief in a proper proportionality between an offence and its punishment. During the period from 1895 to 1914, however, the Victorian penal system was transformed to the extent that the pattern of penal sanctioning which was established with its new agencies, techniques, knowledges and institutions, amounted to a new structure of penalty. Foucault, Garland contends, was mistaken to consider the expansion of surveillance, normalisation and individualisation, integral to the development of the prison as the primary method of punishment, as being achieved in early 19th century. The legalistic insistence upon uniformity, equality of treatment and proportionality ensured a mass regime which could allow a marginal place to generalised, reformatory practices, but which refused any serious concession to individualisation. The development of specific

³³ The Treatment of Offenders in Britain, Central Office of Information, London, 1960, p.5.

³⁴ Similar analysis are made in Chapter III on the gratuity system introduced in the Indian prisons.

practices of normalisation, classification, categorisation and discrimination between criminal types simply did not occur in Britain until after 1895 (Brown 2003: 116). However it is important to note that Foucault might not be correct about reformatory techniques as taking shape in the beginning of 19th century but the important point that he was trying also trying to make is that prisons from the very beginning instead of being dumping yards for criminals as commonly understood were also like other institutions such as schools and hospitals places of reclaiming individuals. Foucault says:

My hypothesis is that the prison was linked from its beginning to a project for the transformation of individuals. People tend to suppose that the prison was a kind of refuse-dump for criminals, a dump whose disadvantages became apparent during use, giving rise to the conviction that the prisons must be reformed and made into means of transforming individuals. But this is not true: such texts, programmes and statements of intention were there from the beginning. The prison was meant to be an instrument, comparable with - and no less perfect than - the school, the barracks, or the hospital, acting with precision upon its individual subjects (Foucault 1980:39-40).

Broadly speaking the reforms that were carried out in Great Britain beginning from the last decade of the 19th century intended to decrease the number of days spent in solitary confinement, encouraged associated and productive labour, and a system of payment to prisoners was introduced. The context of the World Wars and the economic recession had in several cases expedited if not led such reforms themselves. Though reformation introduced in Great Britain much before than in India, the reformatory form of labour (associated labour) happened to be introduced only in the beginning of the second decade of 20th century.

5.4 Caste, convict labour and the policy of reformation

As seen in the last chapter with the introduction of intramural factory labour in the second half of 19th century, it was believed that it neutralized caste differences and the problem of caste was thought to be resolved. Caste based allocation of labour never-the-less survived especially in the performing of menial and other duties which are essential for the running of the prison, and for which purpose people belonging to lower castes could be employed as stated by the 1864 Prison Conference. However such a policy continued to be practised even after the 1920 Indian Jail Committee report which emphasised on reformation. The rules enforced in Madras totally

prohibited the employment of high caste Hindus on conservancy work. The rules in Bengal, Bihar and Orissa, United Provinces (Delhi), Central Provinces, North West Frontier Province did permit the employment on conservancy work of prisoners who volunteered for it irrespective of caste. It is important to note that it is based on volunteering on prisoners' behalf and not imposed by the prison authorities. The rules in Assam did not prohibit the employment of volunteers, though the Assam Government maintained that it was strongly opposed to it, and in Bombay and Burma the rules stated that conservancy work shall not be exacted from prisoners who are not in the habit of performing such work against their will.³⁵

In the 1930s when Mahatma Gandhi was imprisoned (in Yeravada, Bombay Presidency) and he volunteered to take up conservancy labour and encouraged other inmates to follow while he was in the prison in support of his movement against untouchability, he was not allowed to do so. It was held that such action would be contrary to sound principles of jail administration on the one hand, and on the other hand, such volunteering would lead to serious administrative difficulties, and could later on be turned against the Government itself. It was said, "The depressed classes, or the orthodox, might be eventually persuaded against the Government, the depressed classes on the ground that, in their case the principle of volunteering is not recognised, and the orthodox, on the ground, wholly untrue, that they were being degraded by the Government of siding with Mr. Gandhi against the Orthodox Hindus."³⁶ It was reiterated, "The proper treatment of prisoners in jails does not extend to allowing them to indulge their personal idiosyncrasies, nor was jail the proper place in which social reforms could be advertised. It was inappropriate for jail discipline to allow prisoners to carry on political stunts in jails, and the Governor in Council had no doubt that so far as Congress adherents are concerned the demand for menial labour was nothing but a political stunt and that any concession which might be allowed to them would be abused sooner or later."³⁷ Further it was also said, "It would prove embarrassing in the future as the lower castes could demand that conservancy work should be awarded without any discrimination and also they could demand that conservancy work should not be forced upon unwilling prisoners,

³⁵ Home Jails, 1932, 161/32, Allotment of conservancy work in jails to high caste Hindu prisoners who volunteer to do it, NAI.

³⁶ Ibid.

³⁷ Ibid.

especially those of lower castes.”³⁸ Therefore Gandhi was prohibited as it was thought that the prison would then be perceived as hurting the sensibilities of the native population and that it would be resented.³⁹

It was once again made clear that the Superintendent was the final authority in allotting prison tasks, i.e., while a prisoner may volunteer, it was for the superintendent to say whether or not he could in fact be employed in the way he wishes. And if this principle was relaxed to the slightest degree innumerable administrative difficulties would arise and prison discipline would go to pieces. Moreover as stated earlier even when modern machineries were introduced in prisons, we find that specific labour was assigned to prisoners after asking them about their prior occupation, thus bringing caste based division of labour and through it caste discrimination through the back door. To simply state one example, in the Madras Presidency it was clearly an accepted norm that Brahmins and caste Hindus should not be employed in cobbler’s work (Venkatesan 1981: 154).

5.5 Summary

The IJC, 1920 for its policy of reformation is one of the biggest landmarks in the history of prison reforms in India (So much so that the independent Indian Government even now continues to consider it as a corner stone and refers to it while considering policies on prison reformation). However it is important to take note that the context in which this Committee was appointed and the measures that it suggested was that of the experience of the First War and the ensuing general nature of the Indian economy. This Committee stressed on productive machine labour for the convicts. Though several measures were taken towards achieving this end, these measures had serious limitations. If on the one hand increased production was being emphasised upon, the fear of prison products competing in the open market continued to be a major deterrent for the same. Also the Committee continued to consider employing convicts on extramural labour whenever required. As Rusche and Kirchheimer had once remarked, “The criminologists

³⁸ Home Jails, 1932, 161/32, Allotment of conservancy work in jails to high caste Hindu prisoners who volunteer to do it, NAI.

³⁹ Home Jails, 1932, File 173/32, Letter from the government of Bombay, No.2098/3, dated 11th January 1933, NAI

of the modern reform school have retained the older notion that the standard of living within the prison must be below the minimum standard outside. This did allow for a certain improvement in prison conditions without destroying the line of demarcation from life outside. But the insistence on retaining the line of demarcation set narrow limits to the possibilities of reform and surrendered it to the mercy of every crisis in the market (Rusche and Kirchheimer 1939:151)". Even in the Indian case we find limitations on reforms set by similar conditions. The policy of reformation satisfied the requirements of the War economy. Not only were the prisoners sent to serve physically, but they also engaged in factory production in their respective prisons to support such an economy. What is even more striking is that the popular Governments that were appointed which included Indian representatives, subscribed to similar views. Therefore, it must be noted that there was hardly a fundamental rethinking on the penal policy adopted by the British. Though the Gandhain ideology stressed on reformation, in principle the Gandhian ideals were used to curtail modernization of prison industry.

Chapter 6

Independent India and its Convict Labour Policy

This chapter is a critical review of independent India's approach to convict labour. The focus is on documenting the continuities and discontinuities in convict labour policy from the colonial times to the independent Indian regime. I am more interested in looking at if the Indian state, particularly after its experience of the national movement where several of the national leaders were imprisoned, influenced the independent Indian convict labour policy in any significant way. I will be focusing on the three decades following independence, not only because few files related to convict labour have been transferred to the archives after this period, but also as stated the focus is on documenting the continuities and discontinuities in colonial and independent India's convict labour policy.

To begin with, it is important to note that India in the post independence period accepted to continue with imprisonment as the most civilized form of punishment. Our legal system provided for two kinds of imprisonment, rigorous (that is with hard labour) and simple. As was in the colonial period, every prisoner sentenced to rigorous imprisonment was required to work subject to his mental and physical fitness as determined by a Medical officer. The meaning of hard labour was not precisely defined either in the Indian Penal Code or in any of the Jail Manuals (this was the case even in colonial India). In practice however, it meant that the prisoner must be made to work hard at whatever task he is given. The task (hard, medium, light) was allotted after due consideration was given to the character, length of the sentence, health, and to the prior knowledge of any trade of the prisoner. The prisoners sentenced to simple imprisonment (who constituted the bulk of prisoners) were not required to work as a part of their sentence itself. The term of imprisonment varied from under three months to life, which amounted to 20 years. Besides prisoners were lodged in three types of institutions i.e. Central prisons, District prisons and Sub-jails and the facilities there in varied widely. The constitution of India has included the institution of prisons, at entry 4 in the State List in the Seventh Schedule.

There were a few enthusiastic prison reforms introduced in India within a few years after independence. In the Bombay province for example, fetters, which acted as terror to prisoners, were discarded and convicts were only allowed to be continued in a solitary cell if they were

found violent inside the prison, but even then, this punishment was not awarded without the permission of the highest authority. During illness, proper medical assistance and special diet was given to the convicts. Also a well conducted canteen, run purely on a cooperative basis by prisoners themselves was put in place. It stocked useful articles such as tea, sugar, biscuits, *bidis* and fruits.¹

Free labour in the prisons was abolished in the prisons of Bombay, and every prisoner was paid for work at the rate of Rs. 50 a month, of which four fifth was retained by the Government for his clothing and food, and one fifth was paid to him in cash. New industries such as paper making were introduced and such paper was used in Government offices. Visapur jail (Maharashtra) which was once notorious for very bad treatment of prisoners was being expanded as the training ground for agriculture, dairy and poultry farming under the supervision of the authorities.²

The Government of India had also invited technical assistance from the United Nations Organization, and Dr. W C Reckless spent some time in India in 1951-52 to suggest ways and means of prison reforms. He recommended separation of juveniles from adult jails, separation of courts from police lock-ups, the development of whole time probation and after care services, the establishment of new jails to perform specialized functions, the revision of jail manuals, training for staff etc. The eighth Conference of the Inspector General of Prisons was convened in 1952. The first open prisons were set up about this time in Uttar Pradesh and some other States, and Prison Welfare Officers were appointed in a number of States in later years. Whipping was abolished in 1955 and the Probation of Offenders Act was passed in 1958.³

The United Nations had held the first United Nations Congress on the Prevention of Crime and Treatment of Offenders at Geneva in 1955, as a follow up of the work of the earlier International Penal and Penitentiary Commission. The Indian government approved the Minimum Standard Rules for prison administration recommended by this Congress. These rules offered broad

¹ Report of the Bombay Jails Reform Committee, 1948, pp. 8-9.

² Ibid, p.10.

³ Report of the Working Group on Prisons in the Country, 1972-73, pp. 4-6.

guidelines on which member nations could modify their national practices in the treatment of prisoners. Also for the first time the problem of prison labour was discussed at an international level by the International Penal and Penitentiary Commission. The United Nations' Social Defence Section laid down certain guiding principles for prison administration in 1955. One of the recommendations was that the period of imprisonment should be used as far as possible so that upon his return to society the offender was not only willing but able to lead law-abiding and self-supporting life. The purpose of jail labour as defined by the Standard Minimum Rules for the treatment of prisoners prepared by the International penal and Penitentiary Commission was a) as far as possible to maintain or increase the prisoners ability to earn an honest living upon release and, b) to provide vocational training in useful trades especially for young prisoners.⁴

Several jail reforms committees were appointed in the following three-four decades which include the Bihar and Bombay Jail Reforms Committees (1948), East Punjab Jail Reforms Committee (1948-49), the Madras Jail Reforms Committee (1950-51), the Jail Reforms Committee, Orissa (1952-55), the Jail Reforms Committee Travancore-Cochin State (1953-55), the Uttar Pradesh Jail Industries Inquiry Committee (1955-56), the Rajasthan Jail Reforms Committee (1964), the All India Jail Manual Committee (1959), the Bihar Jail Reforms Committee (1972), the Jail Code Revision Committee, West Bengal (1972) and All India Committee on Jail Reforms (1980-83).⁵ In the following sections, this chapter will critically study the question of convict labour as discussed by several of these committees.

This section studies the general principles of convict labour policy as expressed by the several committees appointed in the post independent period. Firstly, it speaks about the various State/provincial committees which were appointed within a few years after independence. Then it studies the All India Jail Manual Committee of 1957-59 (Henceforth AIJMC, 1959)⁶ which

⁴ M/O Home Affairs- Police I Branch, 1949, No. 231-234, Enquiry by Rajasthan regarding reforms in other provinces.

⁵ Report of the Working Group on Prisons in the Country, 1972-73, pp. 4-6.

⁶ The All India Jail Manual Committee of 1957-58 was the first concentrated effort in coordinating and guiding all progressive correctional administration on a standard basis in independent India. Therefore this Committee is an important landmark in the history of prison reforms in India. The Committee made a detailed scrutiny of prison

will be followed by a study of the All India Committee on Jail Reform, 1980-83 (Henceforth AIC, 1983) which is the second major effort to make an assessment of the prison conditions at an all India level.

After examining the general principles of convict labour through the Committees especially those which were appointed in the first decade after independence, it can be said that their overall emphasis was on productive labour. Penal labour was no more an officially stated objective by any of these Committees. Therefore one can say that independent India's outlook right from the beginning has been on reformatory objective of prison labour. The influence of the Indian Jail Committee of 1919-20 as well as inspiration drawn from the similar experiences of other countries cannot be denied in shaping such an objective. The prison reform committees also emphasized more on providing training in some trades so that it would help the prisoners in post release rehabilitation. Agriculture was largely acknowledged to be the primary occupation of most of the prisoners and therefore emphasis was laid on engaging prisoners in improved techniques of agriculture and allied occupations. The meaning of productive labour that finds important place in the reformatory scheme of independent India will be further elaborated in the following pages.

The AIJMC, 1959 stated the important objectives of the work programmes as follows:

- a) Optimum and meaningful employment of inmates.
- b) Full utilization of the available man-power in prisons for supply of services and goods required by the prison community, government and semi-government departments.
- c) Qualitative and quantitative improvements in prison production.
- d) Supply of capital, working costs, margin of profits and such other aspects as are inherent in the planning and development of an industrial or agricultural organization on sound and business principle.

problems and drafted, along with their report, a Model Prison Manual for the guidance of the state Governments in 1959. Among other things, the Committee reiterated the need for a central Bureau of Correctional Services under the Ministry of Home Affairs to follow up the recommendations with the State Governments. The Ministry of Home Affairs circulated the report of the Committee to the State Governments, seeking their comments. Some of their recommendations were accepted and broad guidelines on prison administration were given to the State Governments.

- e) Development of work programmes and vocational training in terms of imparting skills to inmates and also for changing their outlook towards work as the focal point in their scheme of life.
- f) Availability of resources that is men, money and material. The efficiency of work programme in prisons was proposed to be assessed in terms of human efforts, human costs, human benefits and human satisfaction.⁷

The AIC, 1983⁸ agreed upon most of the ideas as expressed by the AIJMC, 57-58. Thus it is clear that the all the important Committees appointed after independence, at the state level or at the national level emphasized on reformatory and rehabilitative labour for the prisoners.

6.1 The emphasis on agriculture

After the advent of freedom, agriculture and allied activities gained some importance, and in the following decade or so, development of agriculture was treated as an important aspect of prison administration. Though as we have seen some stress on agriculture was being expressed right from the late 1930s when popular ministries were elected, after independence especially with a few open-prisons being opened, the emphasis laid was much more. This, one can say is one of the interesting developments which perhaps is more Indian and less colonial in character.

The colonial regime's policy on convict labour right from the days of its initial imposition was not serious about thinking of agriculture as the possible form of engaging convicts. In the first half of 19th century, when there was a lack of modern prison infrastructure, the colonial regime imposed extramural convict labour towards the construction of public infrastructure, even when it was aware that a significant proportion of the native prisoners belonged to agricultural background. The first prison reforms committee in India, the Prison Discipline Committee of 1838 by emphasizing on intramural labour, itself had rejected the idea of agriculture as the

⁷ AIC 83, pp. 145-146.

⁸ In the history of prison reforms in independent India, the AIC 83, was another important effort to make an assessment of the prison conditions at an all India level. The general observations that they made on prison labour were that in most of the States and Union Territories there existed no proper planning for work and vocational training. Existing opportunities for work were underutilized and new work opportunities were not created. Also, they observed that most of the workshops were lying idle and one third of the agricultural land was left uncultivated. For more on this see AIC, 83, p. 143-146.

possible form of labour for the prisoners. In fact, when it was deciding on the ideal form of employing the convicts keeping in mind the caste question it said:

There is a peculiarity in India which makes the universal introduction of trades unfit for the goals of this country. *The work of agriculture, and labour resembling the work of agriculture, is absolutely prohibited to no caste*, and thus labour on the roads is obnoxious to no feeling of caste, however degrading it may be in other respects. But the case is very different with trades. To force a man of a higher caste to work at any trade would disgrace him forever, and be in fact inflicting a dreadful punishment not only on himself but on every member of his family. It would be looked upon as barbarous cruelty, and excite nothing but indignation against the laws, in the strength of which the most dreadful crime would be forgotten (Italics are my own).⁹

Therefore it is clearly evident that the Committee on Prison Discipline, 1838 (Henceforth CPD, 1838), in its emphasis on intramural labour, was in a way denying the possibility of agriculture even when it was thought that it would not affect the caste sensibilities of the people. More important is also the fact that while the colonial regime identified the native population as predominantly belonging to agricultural background, it extracted labour on public works on the grounds that such work resembled agriculture. Thus the native prisoners had to perform an activity of a different nature from their own labour on the pretext that such activity was not very different from agricultural activity. Also, as pointed out by the earlier chapters (especially Chapter III) the colonial regime from the second half on 19th century especially from the 1860s stressed on industrial labour and the scope of agriculture or work related to agriculture was generally only limited to small prison gardens.

In 1892, the Bombay Government consulted several heads of Departments on the subject of the introduction of various forms of large manufacturing industries in the Central Jail at Yeravada and the new Central Jails which were under construction at Ahmedabad and Hyderabad. The Police Department was asked whether its supply of clothing, carpets, and boots could be manufactured in the Jails. The Military Department was asked whether the carpets and hospital rugs it required could be procured from the jails. The Superintendent of the Government Central Press was asked whether printing of forms and other related works could advantageously be taken up in the jails. The departments consulted doubted the economy of this source of supply, and the Inspector General of Prisons reported that steam machinery would be necessary if the

⁹ CPD, 1838, p. 106.

Jails were to be successful in seeking the patronage of government departments. The Government of Bombay thus came to the conclusion that in view of the large expenditure which would be necessary to admit of any wide extension of jail manufactures, the introduction of these industries had to be in any case postponed. They were of the opinion that an extension of agriculture and the production of articles of food was a more suitable object to which jail labour could be devoted. The objection raised to such employment of prisoners by the Inspector General of Prisons was on the grounds of the relaxation of discipline which would be taken care of by the supervising warders.¹⁰

In response to this letter C J Lyall, the Secretary to the Government of India wrote to the Secretary to the Government of Bombay, Judicial Department as follows:

The Government of India throws considerable doubt upon the propriety of selecting agriculture as a suitable form of employment for long-term prisoners which I would like to point out.

- a) Such an experiment has never been tried in India on a large scale and in UK and America where some experience has been gained, the conclusion arrived at has been uniformly unfavourable to this form of labour. In Ireland agriculture was adopted as an employment suited to the last stage of a convict's confinement, and with the object of reformation as an introduction to free life. This was the characteristic of what is called the Irish system, which in this respect has long since been abandoned. It was found to be destructive of discipline and opposed to the first object of prison administration, viz., that confinement should be a deterrent from crime and as in India the where the necessary supervising agency is in many respects much inferior to that procurable in England and US, the break down will be even more conspicuous.

Though the Jail Committee of 1888-89, recommended farming operations on a small scale in case of district jails, it was for short-term prisoners for whom no other labour was available and whose sentences are not long enough to train them in industrial work.

- b) Agriculture in India is the form of occupation which is most intermittent in its demands on the labour of those who follow it. Agriculture occupations are owing to the seasons often suspended for weeks together. It seems scarcely doubtful that under these conditions agriculture would not be likely to afford continuous employment for a large body of convicts; and if this assumption is correct, the difficulty of finding labour for them at the slack season would remain for solution.
- c) It requires a very large area over which operations have to be conducted and therefore the task of guarding prisoners while they are at work will be very difficult.

¹⁰ Home Jails, Oct. 1892, No.45-46, Proposed employment of prisoners on agricultural operations in the Bombay Presidency, NAI.

It would be difficult to prevent escapes but also to check frequent communication of prisoners with their friends and the introduction of forbidden articles.

- d) His Excellency in Council believes that by determining and introducing separately the most suitable industry for each jail, that labour can be organized among long-term convicts, and confinement made to serve its proper purpose-that of acting as deterrent from crime.¹¹

It must be recollected that the Indian Jail Committee of the 1919-20 (Henceforth IJC, 1920) along with its policy of reformation, especially in the context of the World War had stressed on maximum production which undoubtedly was industrial in character. The important colonial committees including the Indian Jail Committee of 1919-20, clearly stated that it was not in favour of agriculture as it was held impracticable on the following grounds:

- a) The average daily population of Indian Jails was estimated at 1,00,000 which was so big that to provide agriculture related work to all of them was out of question.
- b) The density of population in India was so high that it was difficult to find suitable land available for utilization for an agricultural jail.
- c) There were special difficulties in the way of supervision and guiding the distribution of labour in a farm which necessarily consisted of a wide area.¹²

Moreover as we have seen especially in the third, fourth and fifth chapters, the overall emphasis was on using the prison for producing updated articles for the state consuming departments. More importantly, the stress on agriculture would not have fitted the kind of rationality that the colonial regime was trying to/had introduced in India.

But the committees in post-independent India thought differently about agriculture. The East Punjab Reform Committee of 1949, reported that the labour utilized in the prisons were of two primary classes- maintenance labour (domestic service of the institution- cooking, guarding, sanitation, repairing jail buildings, growing of vegetables etc.) formed one class and agricultural labour and industrial labour formed another class. Maintenance labour alone absorbed 22% of

¹¹ Home Jails, Oct. 1892, No.45-46, Proposed employment of prisoners on agricultural operations in the Bombay Presidency, NAI.

¹² IJC, 1920, p. 132. Note: the views of this Committee resonate the voices of the prior important Committees and their views on agriculture.

convict population available for labour and the Committee expressed that it was a good saving for the State. Thus the Committee thought that this should continue especially when prison labour was sufficiently available for this purpose, whose employment in jail workshop on industries of productive nature was not likely to be as productive as would meet the cost incurred by paid labour from outside. The Committee also pointed out that another substantial decrease from the convict population for purpose of employment resulted from the following- newly admitted prisoners in the quarantine, prisoners awaiting release or awaiting transfer or court attendance, sick and convalescent, in solitary confinement, condemned, aged, infirm, blind and crippled. These on an average formed about 6% of the total population. The undertrial prisoners who formed 26% and the prisoners sentenced for short term formed a little more than 20% also were the prisoners coming under the non labouring class. Therefore only 46% of the convict population was left for employment on trades and industries of a skilled and productive nature.¹³

On the question of agriculture, the East Punjab Jail Reforms Committee said that out of the total 46% of employable prisoners, since about 60% of the prison population was engaged in cultivation, and after release they generally would revert to their ancestral occupation, the Committee emphasised that the staple jail industry should be agriculture and should be introduced on an extensive scale and training in modern agricultural methods should be given. The Committee pointed out that then only 2.5% of convicts were employed in jail gardens.¹⁴ The other state/provincial committees broadly shared similar views on agriculture.

The East Punjab Jail Reforms Committee also held that if convicts were allowed to keep some percentage of the produce for themselves then the convicts would have a very strong incentive to learn and improve their ancestral vocation and reformation would be achieved. Closely allied with agricultural occupation in jails they thought was the establishment of dairy farming. It would not only serve the purpose of pure supply of milk for the requirements of its prison population and of its staff, but would also provide useful instructions in animal keeping to the

¹³ Report of the East Punjab Jail Reforms Committee, 1949, pp. 86-87.

¹⁴ Ibid, p. 88.

convicts of the peasant class. For both these purposes, the Committee recommended that the Central Jails should procure 100 acres of land and District Jail 50 acres.¹⁵

Similarly, in Madras, agriculture and agro-based industries were encouraged as it was recognized that more number of prisoners were engaged in agriculture than in any other profession. Moreover they said that in several countries all over the world, including United States and Russia, prisoners were sent to work on farms. In England, before the first World War, five percent of the prisoners were engaged in agriculture. The jail Department encouraged industries like dairies, kitchen garden, poultry farms, bee-keeping and fish rearing. The Madras Government held that agriculture was ideal but because of its nature it was possible to introduce it on large scale only in open prisons. Setting up of milk dairies was encouraged because jails could be made self sufficient in their daily requirement of dairy product. In 1945, in Trichinopoly Central Jail, an extent of 46 acres of land was brought under cultivation and similar efforts were made in Central jails of Cannanore, Coimbatore, Vellore and Bellary. Fortunately for the Prison Department most of the central prisons had considerable areas land which facilitated its campaign for 'grow more food'. Bee-keeping and fish rearing were encouraged from the 1950s with the object of encouraging 'cottage industries'.¹⁶

The Bombay Jail Reforms Committee recommended that for prisoners coming from the rural areas a model farm should be set up in the Visapur Jail as necessary land along with adequate water was available. The Committee laid down as a principle that prisoners must be taught improved methods in agriculture. Those sentenced on long term should be sent on such agricultural farms and those sentenced for short term could be employed on jail gardens.¹⁷

However, within a few decades after independence it could be seen that agriculture and allied occupations were not successfully practiced in the Indian prisons. The Working Group, 73 also noted that almost 80% of the offenders came from rural areas. Therefore they regarded progressive agriculture as important for their rehabilitation. Also, they expressed that agriculture would help in the self sustenance of the prisons themselves and the per capita cost incurred could

¹⁵ Report of the East Punjab Jail Reforms Committee, 1949, pp.89-91.

¹⁶ The Madras Jail Reforms Committee 1950-51, pp.334-45. Also see, C Venkatesan (2006, pp. 187-190).

¹⁷ Report of the Bombay Jails Reform Committee, 1948, p. 21.

be reduced. Such an agricultural scheme they suggested should be integrated with the Five year plans. Also, they recommended that dairies should be developed on prison farms wherever it was profitable.¹⁸

The AIC, 83 held that though after independence, especially after launching the open-prison movement agriculture and allied activities gained some importance, and for a decade or so, development of agriculture was treated as an important aspect of prison administration, but this emphasis had declined during the 1970s. It restated that since a large proportion of prisoners came from agricultural background agriculture and agro based industries ought to get a priority in the work programmes. At present the problems with agriculture were that land and other sources were not fully utilized. Prison farms attached to central and district farms suffered from under-supply of labour, lack of technical staff and irrigation facilities, obsolete methods and lack of planning. Prisoners sentenced to medium and long terms of imprisonment and prisoner sentenced for life and who had spent some time in closed prisons and who were considered suitable for being transferred to open institutions were to be sent for work on farms attached to closed prisons. Prisoners who were eligible for transfer to open-prisons should first work in such semi-open facilities so that they should be tried under proper supervision.¹⁹

Thus, one of the important shifts in convict labour policy from the colonial to independent India is identifying agriculture as one of the important modes of engagement for the prisoners. As stated earlier, the colonial regime though recognized the fact that most of the native convicts belonged to agricultural background, depending on their political and economic imperatives, they initially engaged them in public works and later in factory production. The excitement for agriculture as it was suitable to the occupational backgrounds of the Indian prisoners, though appreciable, but perhaps, whether one likes to believe it or not is extremely unfeasible to involve most of the prison population on such occupations. The modern prison based on Benthamite principles had its origin in a certain history which required indoor labour. Agriculture then becomes almost a primordial entity which is being tried to be fitted with the modern and

¹⁸ Report of the Working Group on Prisons in the Country, 1972-73, pp. 125-26.

¹⁹ AIC, 83, pp.164-67.

therefore the sustenance of agriculture as a primary method of engaging prisoners becomes all the more doubtful.

6.2 Industrial labour

With regard to industrial labour, if the colonial regime at least from the Committee of 1864 constantly stressed on labour based on modern machinery, the Committees of independent India appointed in the first few years after independence were not definitely upfront on the same. If on the one hand, as seen in the previous section, they stressed on agriculture, their stance on employing prisoners in industrial labour also marks another shift in convict labour policy in the post-independence period.

Several Committees expressed the opinion that employing prisoners in modern factories was not suitable. For example, the East Punjab Committee expressed that in principle the industrial employment must not be very highly technical or requiring very specialized knowledges not possessed, and which could not be acquired by the prisoners during reasonable time of their stay in a particular jail. The industry must be such as would be useful to the prisoner after his release by providing him with means of earning for himself preferably such as the prisoner could start himself with a small capital. The industry must also be fairly remunerative so that the prisoner could feel that he is partaking in an industry which is productive and useful. Power driven industries must be preferred to manual industries except weaving and no industry which is unproductive and sterile and in which the connection between immediate and sufficient gain, and labour is not apparent should be established in jails. It was felt that industries like button making, calico printing, hosiery, rope making, lace and ribbon making, toy-making, paper-making, band sawing, wool spinning and blanket making were suitable industries for introduction in jails. The Committee was also of the opinion that it was economical to centralize all cotton and woolen textile industries as well as leather industry, carpentry and smithy on large scale, printing, tent-making, carpet-making, and metal works industry in larger jails. The District Jails should have smithy, carpentry on a small scale, tin smithy, tailoring, hosiery, calico printing, dyeing, basket-making, button making, book-binding and other cottage and small scale industries. Knitting,

embroidery, tailoring, weaving, spinning and hosiery making would be preferable for women prisoners.²⁰

Though it was held that the nation was on the verge of great industrial development, it is worth noting that the prison itself was not identified as one of the possible industries. Instead the Committee held that jails should become a training school for technicians and encourage modern production. Where ever there was industrial production adequate care had to be taken that to see that such production does not compete with private production. The Committee therefore suggested the introduction of small scale industries such as cotton spinning, woolen spinning, wood-work, manufacture of agricultural implements and dairy farming and provisions suitable for small scale industries. Also hand spinning was thought to be made compulsory for one hour daily for every prisoner after they were in the lock-up in sleeping barracks. Handloom weaving especially *khadi*-weaving was to receive special attention. Manufacture of articles of leather was to be organized on large basis. Production of soaps, disinfectants, boot polish, paints and varnishes should be organized in Central jails.²¹

The Committee's thinking on the question of adopting industrial convict labour policy in independent India is worth probing a little more. Though it reiterated the opinion that prison labour should be productive and should be of a nature that should fetch the prisoners a job post-release, in principle, it retained constraints of non-interference with the market that could also be seen in the colonial Indian policy. Therefore, by and large the nature of trades that were to be encouraged was of a small scale or cottage industrial character.²² The retaining of *khadi* spinning is suggestive of some inspiration from the national movement and particularly Gandhian ideas, but such steps were hardly pursued keeping the intended ideologies in mind.

In Rajasthan, jails industries were classified into four types-textile and subsidiaries, tannery and foot-wear, tin smithy and carpentry. Most of the training was limited to handloom and its minor branches — dyeing, durries, carpets, *Ambar*-yarn, fine-tape, *newar*, *do-suite rexa* cloth and bed-sheets. In spite of the meager man-power available it was stated that jail industries were not

²⁰ Report of East Punjab Jail Reforms Committee, 1949, pp. 92-94.

²¹ Report of the Rajasthan Reforms Committee, 1964, pp. 226-35.

²² Ibid, p. 235.

neglected in Rajasthan. Jodhpur, Jaipur, Udaipur, Bikaner, and Alwar jails had a tradition of quality manufacturers in durries, carpets, shoes etc. and their products enjoyed a good market and wide reputation. All India Khadi and Gramudyog Commission had pleaded with the Jail Department to adopt *Ambar Charkha Khadi* weaving in jails. It was claimed that village industries needed little man-power but they possessed all rehabilitative values. They were introduced in Jaipur (employed 100-125 convicts), Ajmer and Udaipur jails with some success.²³

The AIJMC, 59 expressed the aim of jail industries for industrial education as not something that of a commercial venture but stated that employment, work, and training possibilities should be sufficiently varied and diversified to enable prisoners to be trained, equipped and adopted to the requirements of the labour market in the free community. It said:

The possibilities of employing inmates in various kind of work should be utilized not only for production in terms of State Policy and National Economic Development but also for their value to inmates as means of use, training for occupational adjustments and rehabilitative processes. In view, however, of the limitations in organizing diversified work in jails, there should be set up varied vocational training projects in industrial, agricultural and allied fields, so that the inmates are properly trained and equipped for entering-reentering an occupation or trade in the community after release. For carefully selected inmates, the possibilities of working and training in semi-open and open institutions, nation building activities etc. should be fully employed for purpose of diversification of work and training. Cottage and village industries, small industries, mechanized industries sections, handicrafts, agricultural farms, dairy, cattle breeding, poultry, nursery, horticulture, floriculture, sericulture, manure production, nation building activities such as digging canals and water channels, construction of bunds, dams, roads, Government building etc., projects of reclamation, land development, soil conservation and afforestation; training projects in industries, agriculture and allied field; apprenticeship training on the job training vocational training projects should be encouraged.²⁴

Therefore, it appears that the AIJMC, 59 was clear on the question that the prison should not be used as a commercial venture. Like the other State committees, emphasis was not actually laid on modern industrial training, but on cottage and small scale industries. Since varied industries could not be set up, one had to focus on vocational training. Thus, though the context of the overall Indian political economy was that of the Second Five Year Plan where the Planning Commission emphasized the importance of promoting heavy industries which signaled the shift

²³ Report of the Rajasthan Reforms Committee, 1964, pp. 214-17.

²⁴ AIJMC, 59, pp. 235-36.

in Indian economy's orientation from that of agriculture to industry, the prison continued to be a place where agriculture oriented occupations and cottage industries continued to be encouraged.

However despite the several reform committees appointed immediately after independence and the efforts of the Indian Jail Manual Committee, in October 1971, during the National Correctional Conference on Probation and Allied Measures, the Inspector General of Prisons met again and spelt out the difficulties encountered in the implementation of the prison reform programmes and the revision of the State Prison Manuals. The result was that a report was published by the Ministry of Home Affairs on the same and this was called as the Report of the Working Group on Prisons in the Country, 1972-73. They deplored the lack of priority and inadequacy of the funds for prison administration.²⁵

The Working Group Report also observed that the present prison industries were still organized on 19th century conventions and therefore were out-dated, and therefore modernization of these industries was required. Also, it was thought that such industries should be integrated with national development. The Working Group also recommended the following priorities for prison industries:

- a) Articles required for the maintenance of prisoners
- b) Articles required for prison department other state governments, central governments ministries etc., municipal bodies, cooperative societies etc.
- c) Handicraft articles which have a local/outside market
- d) Articles for public sale which should not involve unfair competition with any outside cottage or small scale industries. Also training of personnel in industrial management was felt necessary.²⁶

The priorities for convict labour the Working Group identify are almost similar to the objectives the colonial regime identified. The only difference is the inclusion of handicrafts and also that when they say articles of prison maintenance that includes the agricultural output produced by the prisoners.²⁷

²⁵ Report of the Working Group on Prisons in the Country, 1972-73, p.9.

²⁶ Ibid, pp.121-23

²⁷ Report of the Working Group on Prisons in the Country, 1972-73, p.124.

On the question whether jail industries should be run in collaboration with a private enterprise the AIJMC, 59 pointed to the forum of United Nations Educational Social and Cultural Organization (UNESCO) which held that “as long as a prisoner worked in a state enterprise, in the capacity of free worker and draws full wages, the dignity and discipline of States’ award is not injured, but as soon as a private enterprise begins to share with the jails its manpower on equal basis, the rehabilitative value of jail life disappears. The State has not only to get a man employed in a work, it has to resuscitate the man’s life. Even in the open camps the prisoner must feel that he is under supervision and the opportunity to work as an opportunity to mend. If the prisoner is good enough and trustworthy to be sent without escort to private contractors for training but to allow private enterprise function in jail premises shall be exploiting jail labour and the real significance of mending the asocial being will be lost.”²⁸ It is heartening to note that the Committee was clear when it came to the question of any collaboration of the prison industry with the private. It is perhaps this outlook and the overall independent India’s prison labour policy that the prison industry appears to completely insulated from the vagaries of the market even now.

Further, the AIC, 83 considered the possibility of introducing products according to market trends so that prison products could reasonably satisfy customers’ expectations. It held that prison work programmes should be organized on sound business-cum-commercial basis. Though it was saying that work programmes should be organized on sound business principles, even this Committee deterred the idea of privatizing prison industry as it compromised with the reformatory objectives of punishment. Also, in view of the fact that the Prison Department, in principle, would not be able to enter competitive open market, the Committee held that it should mainly concentrate on the production of articles and supply of services to government departments, semi-government departments, cooperatives and public undertakings should purchase from the Department of Prisons and Correctional services. For promoting sale, show-rooms should be made open to the public and should be established outside prisons gates and the department should participate in exhibitions to display its products.²⁹

²⁸ AIJMC, 1959, p. 243.

²⁹ AIC, 83, pp.153-61.

The AIC 83, in its review of the general conditions of prison factories said that the prison factories were in deplorable conditions and it was shameful that only in some states such as Andhra Pradesh, Karnataka, Maharashtra, and Uttar Pradesh some industries had been semi-mechanized and mechanized despite India making so much progress in industrialization after independence. The Committee believed in the opinion that the prisoners were generally unwilling workers and therefore it was impossible to plan optimum utilization of prison labour, unless some norms of requirements of man power per unit of work in each section of prison industry and agriculture were worked out. They pointed out that there was a strange juxtaposition of unemployment, under supply and over supply of labour in various prisons because the concentration of prison industries was in central prisons and some large district prisons, and therefore there was no work in district prisons. In some industries there was excess labour supply and in some mainly in agriculture, there was a lack of labour supply. Prison industries and agriculture were run on obsolete patterns and outdated machinery, tools and equipments were used. System of wages and incentives were unattractive. Prison industries were largely run and managed by executive staff such as jailors and deputy superintendents assisted by a handful of technical staff. There were no proper rehabilitation programmes. There was a serious dearth of funds. The main reason that was identified was that prisons had not been included in the mainstream of our national development plan; it had continued to be in the non-plan sector.³⁰ This summarizes well the overall condition of convict labour throughout the country. It not only highlights the peculiar problems of convict labour but also reveals what ailed prison industry in India.

The AIC 83, therefore recommended for the total pattern of diversification of work programme. This the Committee held would emanate through the diversification of industrial production units, agricultural activities, agro-based industries, institutional maintenance shops, work camps and work centres in the community. This would not only help in offering opportunities to the inmates but also help them acquire skills in different trades and crafts and would lead to self confidence and development. Also, since India had a long tradition of handicrafts, it was held that production units in prison industry could be linked with suitable local handicrafts.³¹

³⁰ AIC 83, pp. 143-45.

³¹ AIC, 83, pp. 145-47 and 150-51.

One may also note here certain views on the question of labour for women prisoners. Though all the committees appointed after independence recognized the importance of work for women prisoners not only during the period of incarceration but also in their rehabilitation after release but such concerns did not find any systematic expression in policy framework and their implementation. The committees acknowledged the fact that employment for women offenders was neglected. Many of them were simply found to be idle.³² Also, the overall approach to prison work tended to place the female inmate at a greater disadvantage than her male counterpart. This was also because among women prisoners, the number of undertrials predominated. Long term as well as rigorous imprisonment holders accounted for a miniscule of the total female prisoner population. Thus, it implied that in respect of an overwhelming majority of female prisoner population, the prison authorities had no obligation whatsoever to provide them with any kind of work. Most of the times they were given the tasks of cleaning food-grains, cutting vegetables, spinning *charkha*, grinding spices etc. despite several reform committee's recommendations for providing them with training in crafts such as tailoring, hosiery, bidi-making, manufacture of stationery articles etc.³³ Therefore, to a large extent the response to the question of labour for women prisoners in independent India, like in the colonial period was not only characterized by general neglect but was also gendered.

To summarize, one can clearly mark another important shift in the nature of convict labour policy from that of colonial to the post colonial. If the colonial regime had adopted engaging prisoners in modern factory production at least from the 1860s which suited its overall rationality, the independent Indian state adopted engaging the prisoners in small scale or cottage industry. This also speaks about the extractive nature of the colonial policy. The independent Indian state's stress on cottage and small scale production (and also agriculture) reflects on the well intended rehabilitative convict labour policy. However there were several problems in successfully providing employment for prisoners in cottage and small industries. There was inadequate planning, lack of training facility, and underutilization of the existing facilities. The case of workshops remaining idle reveals to us the problems in successfully organizing small scale and cottage industries in the prison institution as that is one of the features that

³² Report of the Working Group on Prisons in the Country, 1972-73, p.127

³³ National Expert Committee on Women Prisoners, 1986-87, pp. 99-103.

characterized independent India's convict labour policy. Organizing cottage industries involves consistent effort in procuring locally available raw-material, the availability of prisoners with the desired skills, or trainers to train the prisoners in the same, and most importantly marketing the produce. Though the independent Indian state needs to be appreciated for encouraging such trades, unlike the colonial state (of course with due consideration to its intentions), the want of commitment and determination to successfully organize the same is found wanting.

6.3 On expenditures, earnings and wages

Most of the committees appointed after independence stressed on the fact that there was a huge disparity between the cost of maintenance and the earning of the prisoners. For example, in 1944 in United Punjab, the average cost per head was 261.12.3 rupees and the average cash earning per head was 13.9.9 and in 1945 it was 291.7.10 and 5.1.7 respectively (Note: in 1946 the report was not published due to partition and in East Punjab), for 1947 (calculated only from 15/8/47-31/12/47) it was 135.15.0 and 4.3.4 and in 1948 it was 485.13.8 and 2 respectively.³⁴ The table below shows the average cost of maintenance of prisoners in different provinces.

Average annual cost of maintenance of prisoners in different provinces³⁵

State	Year	Expenditure	Income	Average per person in rupees
Madras	1961	1,22,87,770	38,82,119	436.04
Madhya Pradesh	1959	38,85,109	41,002	487.40
U P	1960	1,24,66,662	9,50,248	351.00
Rajasthan	1963	36,99,771	7,42,000	297.92

³⁴ Report of the East Punjab Jail Reforms Committee, 1949, p.95.

³⁵ Ibid.

As the government spent almost about Rs 31 lakhs every year towards the custody and upkeep of about 9,000 prisoners, the East Punjab Committee felt the general public had a right to know why a larger proportion of this outlay could not be recouped through employment of prisoners on productive forms of labour.³⁶ The Benthamite rationale, to which the colonial state subscribed, that the prison to the extent possible should be a self sustaining institution is reflected in the concerns of independent Indian state as well.

The major impediment in making prison labour productive and remunerative, the East Punjab Committee stated, was that a large number of convicts were unskilled, unfit, and there was a limited market for goods produced in jails etc. Therefore for maximum output it thought that the institution of an 'Earning Scheme' should be introduced where by an attempt should be made so that a prisoner is paid a wage comparable to that paid to free labour after deducting a fair charge for his maintenance. However in actual practice there were several difficulties. The Conference of Inspectors General of Prisons of 1929 was of the opinion that the grant of monetary rewards based on the amount of labour performed encountered several difficulties and therefore it was considered to be unpractical.³⁷

Thus the East Punjab Committee felt that it was practicable to lay down a scale of wages that would be applicable to all working prisoners on a level comparable to that of free labour on the same type of work. Therefore, a workable basis was prepared by dividing the work into skilled, semi-skilled and unskilled and remuneration was to be paid respectively. These wages would be calculated after deducting the cost of maintenance of the worker and overhead charges on the trade. However, it stated that it was impolitic to place any burden for the payment of wages from the public revenue, and therefore the Committee stated that the money should come from profit itself. But a concern was expressed that such profit motive should not lead to the exploitation of prisoners for a commercial concern. The prisoners' training towards the end of a good citizen

³⁶ Report of the East Punjab Jail Reforms Committee, 1949, pp. 96-97.

³⁷ Note, how the Conference of 1929 in fact was reverting back even the payment of gratuity which was already recommended by the IJC, 1920. For more on this see Chapter III.

and good health could not be compromised. Thus they should be made to work only for eight hours.³⁸

What is evident from the East Punjab Government's report is that if on the one hand it recognizes the facts that most of the prisoners are unskilled and unfit, and on the other hand realizes that it is difficult to market the prison made products. It is striking that to resolve this problem the Committee suggests to introduce an earning scheme, but nowhere does it express its commitment to impart training to the prisoners in useful skills. And, moreover, it made it clear that prisoners cannot be paid at the cost of public exchequer. This rational is any ways is not different from the way the colonial regime thought about paying prisoners for their work.³⁹

Moreover, such problems as expressed by the East Punjab Committee is a classic example which reveal the problems with the independent Indian state's emphasis on agriculture and agriculture related occupations and other cottage industries as studied in the previous sections. Agriculture, as stated before, because it involves spread of prisoners on large tracts of land cannot be the primary form of engagement for most of the prisoners. And with cottage industries there are not only problems with its marketing, but to identify the most suitable cottage industry, to ensure that raw materials will be supplied on a regular basis, to identify the level of skills in the prisoners and providing them with the required training, all require stronger commitments and investments on the part of the prison institution. In fact, along with several other important reasons,⁴⁰ one of the reasons for the colonial regime voting out the possibilities of introducing such multifarious engagements for prisoners was their lack of feasibility.

The Bombay Jail Reforms Committee of 1948, discussed the question of wages and some aspects of this discussion especially as stated by two distinguished members of the Committee, Miss Gorden and Dr. Irawati Karve are stated below.

Q: Will you allow prisoners remuneration for work done by them?

³⁸ Report of the East Punjab Jail Reforms Committee, 1949, pp. 96-97.

³⁹ For more on this see Chapter III, pp 29-32.

⁴⁰ The important reasons for the colonial regime not opting for multifarious employments were that they wouldn't be sufficiently penal and would be difficult to manage and also that it was interested in using the prison products for its own consuming departments and therefore the stress on 2-3 industries was constantly laid.

A: Dr. Mrs Karve: Here again I am reactionary. I feel the system of remuneration is bad. Prisoners have to be fed and clothed at State expense and if in addition they are going to be remunerated for their work it would mean that you are giving a class of people who have proved themselves unworthy socially better treatment than people outside.

Q: But in the absence of remuneration would it not be slave labour?

A: Dr. (Mrs.) Karve: The labour and the work you take from prisoners should not be in competition with outside agencies such as mills and factories. Government should see to it that goods prepared by prisoners are not sold in open competition in the market. The point is that some work is necessary for the prisoners and they have no right to remain idle.

Q: But would you not agree that remuneration for the work has some inducement value?

A: Dr. (Mrs.) Karve: In my opinion, parole would be a better inducement to work than remuneration. If at all you insist on money remuneration, it might be given to the family members of the prisoner but not to the prisoner himself.

Q: Should the amount of remuneration be the same as wages normally paid outside?

A: Dr. (Mrs.) Karve: I have heard complaints that whenever articles made in Jail are offered for sale they do not sell as articles made outside do. In fact, there is some antipathy to buy prison-made articles. They say the articles are not the product of sweated labour and therefore they cannot be compared with articles made outside. If the wage system is introduced, the tendency will further accentuate.

A: Miss Gorden: I personally feel that all work should be paid. Payment for work is a sort of stimulant to do more and better work. Of course the prisoner should not get full value of the work he does. You can lay down a certain proportion and this would naturally be something less than what we would receive for similar work outside. He should be allowed to use this earned income of money for small amenities such as soap, oil etc., and the amount standing to his credit at the time of his release may be handed over to him. It will be great help to him.⁴¹

The views of Miss Gorden were accepted by the Committee, and the practice of payment of wages to prisoners was started in the Bombay Presidency since 1949. Wages equivalent to one-fifth of the wages of free labourers in the factories of Bombay were paid to the prisoners working on similar trades in jails. The Committee recommended that before the earning scheme materializes the scheme of paying wages or earnings to the prisoners engaged in industries for extra work should be implemented at once. Out of the earnings, 1/4th could be expendable on purchase of fruits, sweetmeats or cigarettes another 1/4th for remitting home to his dependents and 1/2 should form his personal property which will be paid to him on his release towards his

⁴¹ This extract is taken from the Bombay Jail Reforms Committee, 1948, as quoted by R N Datir (1978: pp.314-15).

rehabilitation.⁴² This reveals to us how not only the system and the thinking on making payments to prisoners for their work varied in different provinces⁴³ but more striking is the fact that there was lack of implementation of the policy recommendations of the IJC, 1920. Also important is to see how the colonial rationale that the prisoner should be paid only for the task he performed beyond the prescribed limit is again reflected in the way the independent Indian state's thinking on the issue.

In Rajasthan, for the first time a 'Factory Manufacturing Guide' was issued in 1955. A new system of costing was introduced in 1953, which was revised according to the changing costs of raw materials. This costing system categorised convicts as skilled and unskilled. The former consisted of prisoners employed in industries in which machines were used and even handloom was considered to be machinery. Prisoners engaged in auxiliary works of machineries were also put in the same category and the rest were considered unskilled labourers. A skilled labourer was charged at the rate of one rupee per unit and as there was no depreciation on non-machine work, unskilled labour was charged at 75 paise per unit. Twenty five paise was charged for depreciation and 50 paise for maintenance. Such wage scheme was applied to only three closed prisons. In Jaipur and Jodhpur Central jails after completing the scheduled task, six paise was paid to each worker, who did 25% over and above the scheduled task and double the amount was paid if the extra task was 50% more than the scheduled task, 19 paise for 75% and 25 paise for 100% extra work over the scheduled task, was paid as wages to the working prisoners.⁴⁴

However, the Rajasthan enquiry pointed out that most of the prisoners did not prefer to do extra work. This was mainly because the scheduled task fixed for them was beyond their capacity or due to sheer laziness on the part of the prisoners. It could also be because payment for extra work was almost nominal. The factory manager however was inclined to believe that if the wages for extra work was increased production of the factories in the jails would also increase. Malingering and to find excuses to shirk work would cease. They would find positive allurements to labour and the Commission was willing to listen to him. In October 1962 the Inspector General of

⁴² Report of the Bombay Jail Reforms Committee, 1948, pp. 98-102.

⁴³ In Madras this system was introduced in 1915 itself i.e. even before the recommendation of the IJC, 1920. For more on this see Chapter III.

⁴⁴ Report of the Rajasthan Jail Reforms Committee, 1964, pp. 218-22.

Prisons recommended to the Government that those workers who did one hundred per cent extra work over the scheduled task, that is double of the required task, were to be paid at one rupee per day as wages instead of 25 paise paid for the same at present. The Inspector General of Prisons made this proposal because he was convinced that the workers who did not work for more than 6 hours would get the real incentive to work and produce to their full capacity. If wages were to be paid at the market rate, the task load also had to be the same and in case of lesser work, proportionate amount be paid to them. The Director of Jail industries felt the same.⁴⁵

The progress of jail industries also depended on the training personnel. The Rajasthan Committee also pointed out that though the Director of Jail industries is required to guide and organize the industrial education of the jails, yet he held the rank of Deputy Superintendent only. Therefore he did not have effective control in jails and though they were qualified officers, they did not find the emoluments alluring and many had left jail services for better posts. Therefore the Committee suggested that the grades of these posts may be revised with better emoluments. Regarding industrial staff the committee recommended that a full time officer responsible for the supervision and control of industries should be employed under the control Inspector General of Prisons.⁴⁶

The AIJMC, 59 also emphasised that the system of tasks, wages and costs and accounts methods should be rationalized, and a wage system should be formulated. It laid greater emphasis on training, rehabilitation rather than on commercialization of jail industries. It referred to the International Penal and Penitentiary Foundation Report which said, "The prisoner need not always have vocation for farming or other work in the country, he in fact be taught a method or work involving new way of life even if he has to apply this method to another kind of work after discharge." The Committee therefore held education and discipline as the primary consideration for prison work, and not commerce. However, it makes a distinction between the work of the prisoner and that of a free labourer. It says that prison work should not be considered on par with free work, as wages in free labour was paid for its actual productivity, while the prisoner was paid for productivity and diligence both. But is also stated that some remuneration for jail labour

⁴⁵ Report of the Rajasthan Jail Reforms Committee, 1949, pp. 218-22.

⁴⁶ Ibid, pp. 222-23.

was paid in all advanced States but the system of remuneration differed from state to state.⁴⁷ Thus the idea that prison labour is not entitled for a wage on par with free labour continued to be held. In fact in India even in the 1970s, wage/remuneration was paid for output for over and above the assigned task and there was no uniformity in this in all the states.⁴⁸

The Working Group, 73 pointed out that the prisoners were paid wages for output for over and above the assigned task, and the scheme was not uniform across the states. Thus the Group suggested for a more liberal system of wages based on market rates minus the computed cost of maintenance. They expressed that such a system would provide a greater incentive for higher and better production.⁴⁹

The AIC, 83 said that the system of tasks and wages was not rationalized and also was not introduced in a number of States and Union Territories. The rate of wages varied from Rs 0.10 to Rs 2.00 per day. The system, wherever in existence was operated mostly by convict clerks. In some places wages were linked with prison canteen. Responsibilities regarding measurement of tasks, computation of wages, distribution of coupons through the canteen from the wage account were not clearly defined. The general impact of such hap-hazard application of wage system was that it was gradually losing its utility as an incentive for greater inmate participation in work programmes. The Committee therefore thought that while fixing the wages the minimum wages for the same work outside must be taken into account and the average per capita cost of food and clothing on an inmate must be deducted from the minimum wage and remainder should be paid to the prisoner.⁵⁰

The AIC, 83 also considered the fact that most of the prisoners hailed from extremely poor families and therefore it held that if the earning member of such a family was sent to the prison the entire family suffered great financial hardship. Therefore, it was stated that the rate of the wages should be so fixed that would enable the wage earning prisoner to spend a portion of his wages on his own needs, send some portion for the maintenance of his family, some on post

⁴⁷ AIJMC, 1959, pp. 236-37.

⁴⁸ Report of the Working Group on Prisons in the Country, 1972-73, p.124.

⁴⁹ Report of the Working Group on Prisons in the Country, 1972-73, p.124.

⁵⁰ AIC 83, p.148.

release rehabilitation and pay compensation to the victims of his offence if so ordered by the court.⁵¹

Thus, there are parallels that can be drawn between the colonial and the independent state's thinking on the question of earnings and wages such as how the public exchequer should not be burdened for the maintenance of the prisons, how the prisoners should be encouraged to work but by paying them only for performing working above the prescribed limit, and after deducting the cost of their own maintenance.⁵² However, it is important to underline that the independent Indian state did not, not only emphasized on using prison institutions for their own sustenance but also not so much on making profits through them.

6.4 Challenges and issues in prison industry

In this section, the study will try to figure out other important challenges and issues, apart from those already cited which lead towards a lack of prison reforms in post independent India. The focus is on to particularly identify reasons that could be ailing prison industry.

When Nehru was imprisoned during the national movement in the early 1930s, he expressed his ideas on prison life in *India and the World* thus:

...the positive changes to be brought in the jail administration should not be thought of as involving much extra expenditure. If properly run on *modern industrial lines*, the prisons could not only be self-supporting but could actually make a profit after providing for all the additional amenities suggested. There was absolutely no difficulty in introducing the changes except one-the absolute necessity of having a competent, human staff fully understanding and appreciating the new angle of vision and eager to work it. I wished some of our people studied and where ever possible personally inspect prison conditions in foreign countries. They would then be able to find out how our prisons lag behind them. The new human element is imposing itself everywhere, as also a recognition of the fact that a criminal is largely created by social conditions and instead of being punished, has to be treated as for a disease.⁵³

⁵¹ AIC, 83, p.149.

⁵² Murali Karnam (2004) points out that as late as 1990, the rate of wages paid to prisoners for their work in Andhra Pradesh was Rs 3 per skilled worker and Rs 2 per semi-skilled worker. For more on this see Murali Karnam (2004, p.115).

⁵³ Jawaharlal Nehru, as quoted by AIC, 1980-83, p. 3. Note the italics are my own.

It is indeed striking that such a reflection by such a crucial figure in Indian politics did not actually lead to encouraging modern industries in the Indian prisons after independence. Commenting on the nature of convict labour the common prisoners were put to, C Rajagopalachari when he was imprisoned during the 1920s Non-cooperation movement says,

Slave labour has not been abolished. The whole system of jail administration is but a scheme of slave labour at its worst. Work is extracted from thousands of able-bodied men without being paid for, by the sanctions of pure brute force and cruelties, free from public observation or criticism. Even where cattle may and must be used, as for pressing oil or drawing the kavalai, a gang of men are made to do the work, because the slaves are available in such large numbers. I would not judge the system thus, if there were any idea of reformation along with these brutalities. But not only is reformation absent, but it is almost an article of the creed of all jail authorities that the convict is beyond moral redemption. No attempt whatever is made to reach his higher feelings or his soul. Indeed, nobody seems to believe that any convict has higher feeling all or soul. Therefore I say, it is a mere factory for slave labour, giving the absolute minimum of food, and intending to get maximum work. The slaves are not owned, but hired for a limited period. So there is no abiding interest in their health or morals, but the largest use is made of them and good conduct is ensured only for the master's purpose, during a limited time, by strict overseeing and barbarous penalties, rather than by instruction or example, which are slow and tedious. The officials are typical slave drivers, the convicts are typical slaves. How can there be any moral development or regeneration in these circumstances (Rajaji 1920:19-20).

During the British regime, at the Andamans where the hardest criminals were transported to, the notion about prison labour for political prisoners was excessively inhuman, hard and punitive labour so that the will power could be broken. V D Savarkar writes:

But when the leader and fiery writer was himself sentenced to imprisonment in Andaman Jail and saw its stone walls, and had to faint one day under the grinding labour of running oil-mill, which even two powerful bullocks could not go round easily, then the body avenged itself upon the soul trampling it under foot. His courage failed him and he could no longer bear the hardships of that labour. None was spared, among *political prisoners*, from the inhuman toil. Most of them were unaccustomed to any kind of physical labour, the best part of them were college youths, some had not turned sixteen or seventeen; they were tender in age and body. But they were forced, for months on end, to this grinding work kolu. Their tortures knew no bounds. Among them many had fallen ill, and preferred death to this work.....And to such racking toil was a political prisoner yoked as soon as he crossed into the prison. And worse still, if he really fell ill as the effect of his work, he was sent mercilessly back to it with the reason that he was only feigning it. *Ordinary prisoners who could hardly spell the three 'R's were employed in the cellular prison for light desk-work and they at once became 'Babu'. But political prisoners were shut out from that work and given hard labour the kind of which their hands had never done* (Savarkar, as quoted in R N Datir 1978: pp.320-21, the italics are my own).

Apart from what Savarkar had to say on the kind of labour that he and the others like him were put to, as highlighted above, it is important to underline the differentiation that Savarkar constructs between him, a political prisoner from the other ordinary prisoners. This differentiation throws light on another important feature which could help in understanding why prison reforms as such and thereby convict labour did not form part of an agenda for our national leaders post independence. The political prisoners in Andamans, eventually rebelled by going on strike against inhuman hard labour that was inflicted on them. As a result finally in 1915, the authorities assured them that the strike should be called off as they pledged that kolu would be administered only in rare instances and political prisoners would be allotted lighter work outside the prison walls (Datir 1978: 321).

In the prisons of India, under section 27 of the Prisoners Act, 1894, the prisoners were classified on the basis of sex, age, the law under which confined, stage of investigation and trial, the nature of sentence, criminal antecedents, disease and socio-economic status. Before 1930, apart from classification of prisoners on traditional terms of age, sex and crime, there existed race-based classification between European and Indian prisoners. The political prisoners of the nationalist movement differentiated themselves from ordinary prisoners and demanded special status but raised the issue in the name of racial discrimination. The colonial state, which was not willing to recognize the political status of national leaders, under the basis of superior social status, which was not completely incongruent with the proposals of some of the nationalist leaders created A, B and C classes. They were classified by the sentencing court, but finally subjected to confirmation and approval by the government. If the court did not specify anything related to the class of the prisoner, he/she would automatically be considered as belonging to class C. The important criteria for the treatment of prisoners as A and B classes among other things were that if those prisoners by their social status, education or habit of life, were accustomed to a superior mode of living and not been convicted of serious offence against property, women and children. Non-habituality of the offender was the only criterion that differentiated A class from B class. These two classes were considered as superior classes of prisoners and C class was an ordinary class. The two classes viz, A and B on the one hand and C on the other are broadly differentiated in every aspect of prison life (Karnam 2004: 161).

The prison tasks were assigned to A and B classes of prisoners after due consideration on medical ground and with careful regard to the capacity, character, previous mode of life and antecedents of the prisoner. They were employed on light-work such as book-binding, envelope making, sewing and cane work, spinning, cot tape and ordinary weaving, gardening and any suitable work according to their education and rehabilitation work. Prison sanitary and sweeping gangs constituted of C class prisoners who performed the menial works such as washing sweeping, and cleaning in the cells of A and B classes (Karnam 2004:165).

Ujjwal Kumar Singh (1998) says that the colonial regime considered such separation of the nationalists from other prisoners was expedient for prison discipline in the context of the Non-cooperation movement. On the other hand, nationalist prisoners viewed their segregation from the ordinary as an ideological victory, a battle won against the colonial government. This act of segregation was seen by the non-cooperators as their virtual recognition as a separate class of prisoners. Thus ordinary prisoners occupied only a marginal place in the nationalist narratives. In order to carve out their political identity, the nationalist distanced themselves from the ordinary inmates of the prison. The quest for separation often involved the middle class nationalist prisoners agitating for preferential treatment in jail. Gandhi on the other hand lamented about the same ‘...now when they have swaraj in jail, enjoy some freedom, these freebooters in the army of swaraj are fighting among themselves just as robbers fight for a share of the booty (Gandhi, as quoted in Singh 1998:85). Such classification of the prisoners on the basis of classes is another important reason that has resulted in the lack of prison reforms in India.

Another important reason for lack of reforms identified by the prison reform committees themselves was that the subject of prisons did not find a place in the development programme of the country drawn up in the first three Five Year Plans. However, in the Fourth Five Year Plan, the Planning Commission had set up a Working Group to prepare schemes in the field of Social Defence to be included in that plan but the Planning Commission could not agree to the recommendations of the Working Group. Even in the Fifth Five Year plan attempts were made to include prison administration in that plan but to no avail. Therefore the Working Group expressed that additional priority was necessary for funds for prisons by the state and that prisons should no longer be divorced from the national development process. Thus a sum of Rs 100 crore was suggested to be allotted as stated in the Interim report in the Fifth Five Year Plan for

improving prison infrastructure, staff accommodation, modernization of industry and agriculture in prisons, scientific and technical facilities for security and professional training for staff.⁵⁴

Thus, if one could identify the biggest cause that ails prison reforms in general and prison industry in particular it is perhaps as stated above the failure to include prisons in the overall development plan of the country. It is striking that immediately after independence it was not even thought that one could include prisons in the development plans. It is only in the third decade that there was a realization that though prisons as such came in the State list, it was important to give grants to this institution under the national development plan.

The AIC, 83 once again identified the inadequacy of funds as the major problem that ailed the prison industries. The availability of manpower in prisons and the possibilities of their optimum utilization in work programmes, which is supposed to be the central activity of such institutions, and which were indeed great assets the Committee said were unfortunately not fully appreciated or utilized by the departments dealing with prisons in the secretariats or by the Finance Departments of the States or Union Territories (UTs). It reiterated that the Department of Prisons was not treated as a development department and no attention was paid to augment production in prison industries and agriculture. If this was properly appreciated, the Committee held, there would be no paucity of funds for the development of work programmes in prisons. This was the principle reason why in most of the States and UTs prisons have not been included in the Five Year Plans. If the economic aspect of work programmes is properly and scientifically planned, the Committee said there was no reason why the industrial and agricultural activities of prisons should not be reasonably organized.⁵⁵

Thus to summarize, several reasons can be identified for lack of development and implementation of convict labour policy in independent India. Firstly, the major shifts in the nature of convict labour policy in the form of encouraging agriculture, and cottage and small scale industries in India, did not work well due to the lack of well mapped out policy framework and also due to lack of determination to implement the envisaged reforms. Secondly, one can say that the class based division of prison population, which segregated the majority of the prison

⁵⁴ Report of the Working Group on Prisons in the Country, 1972-73, pp.9-10.

⁵⁵ AIC, 83, pp. 150-51.

population from the few belonging to superior class to which most of the national leaders belonged also contributed to this factor. Thirdly, the non inclusion of Prison Department in the overall development plan also contributed in the lack of implementation of the prison reform policies. Fourthly, as Murali Karnam (2004) identifies unlike the colonial state the postcolonial state with its agenda of mixed economy directly involved in production and neglected prison industries (Karnam 2004: 114-115). Thus, if the colonial state had to respond to the challenges posed to prison industry by the private industry, in postcolonial India (at least until the first four decades after independence), the state had to deal more with the problems of promoting state owned industries against the private industries rather than the prison industry.

6.5 Summary

The main objective of this chapter was to identify similarities and differences between the colonial and the postcolonial Indian state's attitude towards convict labour. This study has figured out certain continuities in the thinking on convict labour policy between the colonial and the postcolonial regimes, such as: both the colonial state and the independent state claimed the complete right over the life of the prisoner and his labour; the postcolonial, like the colonial, broadly also considered the prisoners to be unwilling workers, thus reinforcing the criminal-idle ideology; whenever the question of setting up any industries in the prisons emerged, the postcolonial state like the colonial expressed its concerns that such industries should not compete with the private; the discussion by the various committees on paying wages to the prisoners has also shown how time and again it is expressed that the prison has to be self generative requiring minimum possible investments as this would unduly cost the tax payer, thus further validating the utilitarian principles of 'less-eligibility' and 'relative standards of living'.

The study has also pointed out at certain discontinuities between the colonial and independent Indian state's thinking on convict labour. It has shown there is a marked shift in the nature of convict labour from that of colonial emphasis on modern factory production to the postcolonial state's emphasis on engaging prisoners in agriculture and small scale and cottage industries. Thus the postcolonial state of India recognized the sociological background of the Indian prisoners and fine-tuned its convict labour policy accordingly. However, the enthusiasm towards

prison reforms gradually dissipated over the decades. However noble the policy framework, there seems to be a lack of will power to implement policies as revealed in the official reports.

Chapter 7

Conclusion

This thesis, by making a historical study of convict labour which is central to imprisonment, has attempted to understand the political economy of modern punishment. Right from the initial years of its imposition by the British on the Indian colony till the first few decades after independence, the study has reviewed the changing nature of convict labour policy and has identified reasons for the same. The history of convict labour policy in modern India has travelled a long journey from that of extramural labour beginning from the last decade of the 18th century to emphasis on intramural unproductive penal labour in the late 1830s. Within intramural convict labour policy, there was another shift in the 1860s from unproductive to productive intramural factory labour. After independence, the Indian state emphasized on labour in agriculture and in small scale and cottage industries. All these shifts in the convict labour policy are characterized by interesting and varied rationalities based on the political and economic imperatives of the state and the meaning of punishment/imprisonment has altered accordingly.

From the 1790s till the 1860s, with the existing minimal prison infrastructure, the East India Company regime emphasized on extramural convict labour especially on works of public importance. Thus, convict labour aided the ambitions of the colonial regime by basically constructing public roads which were useful in the movement of troops (for further colonization) and to facilitate trade and commerce. Though in England, the 'houses of correction' had witnessed a phase of reforms from the late 18th century, and the convicts there were engaged in intramural labour, in India the colonial regime continued to extract extramural labour from the convicts. The first Committee for prison reforms in India was appointed in 1836. Its recommendations for unproductive intramural labour through the tread-mill and the crank were however not implemented. The Company regime was preoccupied with its expansionary motives and the problems arising from the policy of financial retrenchment imposed by the Home government. The mercantilist colonial governmentality is well reflected in the prison system of these decades as the colonial regime focused more on using convict labour productively to suit its political and economic necessities than on building an effective disciplinary scheme focusing on all aspects of prison life.

An important shift in convict labour policy came in the early 1860s when several new central prisons were built. With the emergence of the modern prison the colonial state laid emphasis on employing convicts on productive intramural factory labour for producing for the various state departments including uniform clothes and shoes for the army and police departments and basically stationery products consumed by the various state departments. This shift to intramural labour also went hand in hand with several disciplinary mechanisms that were introduced in this period, including the system of remission, appointing of convicts as officers, payment of gratuity etc. Most of these disciplinary mechanisms were firmly intertwined with labour. With these mechanisms and intramural labour, the punishment of imprisonment had moved away from punishing by extracting convict labour on public works as was done in the initial decades of 19th century. It now moved to punishing through both discipline and producing for the various consuming state departments. However, it is important to note that this shift in no way altered the over-arching penal ideology of deterrence. Therefore unlike Foucault's assumption of associating reformatory penal ideology with discipline (except for payment of gratuity which was introduced post reformation), in the colonial context, punishing through discipline was practiced under the penal ideology of deterrence. Thus, without the reformatory 'incentives', and with introduction of new kind of labour i.e. factory labour, punishment in this phase was more exploitative in nature. More important is also the fact that at a time when there were few modern industries, the prison, through the imposition of intramural labour, was introducing the natives not only to modern forms of punishment but also to modern forms of wage labour, although without wages.

This system of punishing through engaging in productive labour was markedly different from the way convicts were made to labour in England. Therefore the convicts were by and large engaged in unproductive forms of intramural labour i.e. on the tread-mill and the crank and also on the public works despite suggestions for productive industrial labour (including Bentham's suggestions made towards the end of 18th century). One of the reasons that can be identified for the same is that in the initial decades of the 19th century the liberal reforms that were being carried out especially under the influence of the Utilitarians were challenged by the Conservatives. Another reason was also the influence of the Evangelicals who endorsed cellular form of imprisonment along with hard labour. But, in the 1870s, the main reason for not introducing productive intramural labour was the apprehensions of prison labour competing with

free labour and private industry. Thus during the 1860s and 1870s public works was introduced as an important form of labour for the convicts.

In imposing productive intramural labour in the Indian colony in the 1860s, the colonial character of the state becomes starkly visible. This reflects not only on the shift of the colonial governmentality but also on the nature of the colonial state. The colonial state had now begun to consolidate itself in India and had begun realizing the importance of the Indian colony as a crucial market for its finished products for retaining its economic supremacy amidst challenges by other European countries and America. Convict labour, despite strong opposition from the private industry as it was in England, carried forward the political and economic imperatives of the colonial state by producing for the state departments. The contestation between the prison and private industry (basically European) was amplified by the peculiar colonial context where the prison anticipated modern industry and due to the effect of such sequential modernity the subtle and interesting correlations between modern punishment and economy were clearly revealed. Such influences on convict labour were mostly seen around on regulating the introduction of machinery in the prisons, on defining the meaning of productive labour in prison conditions, on fixing the prices of the prison products, in seeing through that the minimum of products reach the open market by making the government the largest consumer of such products, on regulating the appointing supervisors to assist prison production, on denying permission to advertise or issue price lists of the prison products etc.

One important development in the history of prison reforms in India came in the 1920s, when deterrence was given up as the primary penal ideology of the colonial state and reformation was accepted in its place. However, the character of intramural productive convict labour did not change much with this shift in the penal ideology as the colonial state continued to extract labour from the convicts. Rather, the context of the World Wars and the economic slump had further increased faith in such engagement of the convicts. Even in England, though the Gladstone Committee of 1895 had recommended for productive intramural labour, it was the context of the First World War which led to the implementation of most of the recommendations of the Committee. In India, the convicts were not simply used to produce for the war related exigencies, but the convicts themselves through the system of Porter Corps were directly involved in performing war related activities. Thus the argument that prison labour performs the role of a

reserve of labour power and acts as an ancillary to the free labour market within the overarching penal ideology of reformation gets further validated.

Independent India witnessed another important shift in the nature of convict labour policy. Though the existing prison industries were continued with, the emphasis of convict labour policy shifted to engaging prisoners in agriculture and handicrafts production. This was mainly because of the due consideration by the Indian state of the fact that most of the prisoners belonged to an agricultural background unlike the colonial state which extracted labour without such considerations. Small and cottage industries was thought of as another mode of engaging the prisoners as they required relatively smaller amount of capital and this would help in rehabilitating the prisoners post release. Such a policy could not however be sustained though it was well intended. Agriculture, because of its nature involves spread of prisoners on large tracts of land and therefore is not suitable to the modern prison conditions which require close monitoring of the prisoners. Thus agriculture could not but be a mode of engaging few 'well behaved' prisoners. Also, because of its seasonal nature, agriculture could not ensure full time employment for the prisoners. The cottage industries though could have a high reformatory and rehabilitative potential, the history of prisons in independent India shows how there is a lack of determination on the part of the policy makers of the state to engage with and implement the same. Prison Department on the whole continues to receive less priority and is not included in the country's overall development plan.

Throughout its journey convict labour, of whatever kind it may be, has played a central role in the punishment of imprisonment. Convicts labour performed by prisoners can be grouped under different categories.

- a) Maintenance and prison upkeep: Some convicts are engaged in everyday tasks such as that of cleaning and cooking which are considered to be menial by the prison officials. These tasks are not only performed by convicts but also by other prison inmates including under-trials and detainees.
- b) Goods produced for self-consumption: Convicts, especially those sentenced for short term are also engaged in activities like growing grains and vegetables for self consumption. They also make furniture and manufacture stationery articles such as paper,

books, ink etc., for use by the prison administration. Some of them also manufacture textiles and stitch uniforms for prisoners themselves. Some others also perform the labour of keeping a watch over other prisoners and thus help in economizing and the smooth functioning of the prison. Thus most of this labour is directed towards the sustenance of the prison institution itself.

- c) Goods produced for other state departments and public sale: Convicts especially those sentenced for long term are engaged in producing goods required by the other government departments such as that of furniture, stationery, durries etc., and a minimum number of goods are produced for sale to the public. However, during the time of crisis for instance, a War situation and when there is a requirement of additional labour, then once again convict labour is used to satisfy this additional requirement.

These basic features of convict labour characterize it across variant penal ideologies. As this study covers a long historical period, the broad focus of this study has been on the important shifts in convict labour policy and thus the limitation of this study is also that it has excluded the regional variations within the convict labour policy of each period.

Further as evident from this study, convict labour, be it of any character, is broadly guided by certain politico-economic (at times also sociological) considerations, which can be delineated as follows:

- i) The Utilitarian theory on which modern punishment is based, clearly states that the task of punishing the law breakers should be met with incurring minimum costs. In the Indian context, whether it was the Company regime, the British Government, or the Indian state after independence, all efforts were directed towards effectively punishing with incurring minimum costs. Effectively punishing through incurring minimum costs can be further understood by studying the utilitarian principles of less eligibility and relative standard of living. The prisoner as a law beaker is considered to be the least eligible citizen of the state and while undergoing punishment his general conditions of living cannot be better than the worse off law abiding free citizen. These considerations even in the Indian context have played a crucial role in determining the nature of convict labour.

- ii) The colonial characterization of the Indian society as caste based, and the utilitarian principle of punishing economically which also results in legitimizing appropriation of labour from the prison through his/her previously acquired skills, gets translated into considering the caste identity of a prisoner in allotting him with particular kind of labour in the Indian context. This study shows how throughout the various shifts and stages of convict labour policy, the menial tasks of the prisoners are awarded to the prisoners belonging to socially backward castes. The concept of sequential modernity further helps in understanding how caste considerations survive even in the modern penal institutions.
- iii) Convict labour and its products, in principle, cannot compete with free labour and the products of the open market, as this is seen as going against the free enterprise principle. Otherwise, a least important area of study as most of time this principle is taken for granted, the peculiar colonial Indian context where unlike Europe, the prison anticipated modern industry and therefore there were serious oppositions to the same. This study has shown how both the European private entrepreneurs and later the bodies representing Indian industries opposed modern production in prisons and how the punishment through labour is constantly fine-tuned to pacify such contestation.
- iv) The tension between convict labour and private enterprise leads the state appropriate convict labour and its products wherever possible. However, it should be noted that the state not only uses convict labour to avoid its contestation with the private, but also it uses it to serve its purpose wherever necessary. Convict labour in principle acts as a reserve of labour power for the state and the state puts it to use whenever there is lack of free labour or to avoid expenses incurred in engaging free labour.
- v) Prison industries are required not to be multifarious. The state ensures that across prisons there exist least varied prison industries not only because it entails more costs on the part of the state and becomes difficult to manage, but also because it affects the penal character of prison labour.

All the above principles result in directing convict labour policy more and more towards the sustenance of the prison institution itself. Therefore, by and large convict labour is of a self sustaining character. It is important to note that even if there is a marked shift in penal ideology

from that of deterrence to reformation these principles influence the character of convict labour. They assume more or less significance also according to the political and economic requirements of the state.

From this study the colonial character of convict labour policy can also be deduced. The following points reveal such character.

- a) As pointed out earlier, the colonial regime used convict labour to further its own interests. The imposition of imprisonment along with convict labour not only revealed the superior power of the British to the natives but the labour of the convicts was used for economic purposes as well.
- b) Though the British rulers constantly borrowed from their own experience in Great Britain there are instances where convict labour policy followed in India differed greatly from that of Great Britain. At one stage (early 19th century), the East India Company made the convicts to labour on public works in India at a time when in Great Britain intramural convict labour policy was implemented.
- c) In the next stage (beginning from 1860s) the colonial Indian Government shifted to productive intramural labour, while in Great Britain a mixed policy was followed that of labour on public works and of unproductive intramural labour on the treadmill and the crank. On certain occasions to exploit convict labour, the colonial regime in India overlooked its overall ideology of laissez-faire, as we have seen how from the 1860s till the end of its rule in India, the colonial regime went forward with production in prisons amidst considerable opposition from private entrepreneurs producing similar products, whereas in Great Britain the convict labour policy adopted public works to deal with a similar situation.

By making a historical study of convict labour with a view to understand the political economy of imprisonment in the Indian context this thesis, shows how the nature of imprisonment itself altered according to the changing politico-economic necessities of the state. If the focus of the politico-economic studies of punishment has been to see how different modes of production generate different forms of punishment, this study by making a historical analysis of convict labour policy has shown how imprisonment itself copes with changing economic conditions.

This is primarily because the punishment of imprisonment is not only effective in isolating the offender from the larger society but because it can engage offenders in productive/unproductive labour depending on the necessities of the state and economy. In the Indian context, such a study has not only helped in understanding the history and political economy of modern punishment but it has also enriched our understanding of the nature of the state, both colonial and postcolonial.

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SYNOPSIS

Prison and Convict Labour in Colonial and Postcolonial India

This thesis is primarily a historical study of convict labour policy in India which is central to the punishment of imprisonment. Beginning from the late 18th century British colonial India when for the first time imprisonment with hard labour was imposed, this study analyses the evolution of convict labour policy and the different political and economic rationalities that resulted in important shifts within it.

In the process of the narration of the evolution of convict labour policy, the study attempts a comparison between the policy adopted in India and Great Britain and look for differences and similarities between the two. In India as labour was closely associated with caste, the study looks at how the colonial regime dealt with it when it came to imposing a certain kind of labour on convicts. It further probes whether shifts in the political rationalities of the colonial regime which lead to shifts in convict labour policy affected the colonial stance on caste *vis a vis* convict labour. Finally this thesis discusses Independent India's approach to convict labour policy and look for the colonial continuities and discontinuities within it.

Studying prison and convict labour

- 1) Convict labour is central to the punishment of imprisonment. It is largely around this labour that modern penal ideologies of deterrence and/or reformation take shape. It acts as an instrument which helps in maintaining discipline and thereby renders imprisonment more manageable. Also, apart from helping the prison institution sustain itself, convict labour acts as a cheap reserve of labour power which is readily available for appropriation by the state. If convict labour was identified as a cheap reserve of productive labour, then such labour could be used in several productive/exploitative ways in the colonies. That labour plays such a crucial role in the functioning of the prison, and that it was imposed on the Indian colony, makes the evolution of convict labour in India an interesting area of study.

- 2) Also as imprisonment was introduced in a society which not only saw very few of the western modern developments such as industrialization and values of citizenship, liberty etc. and also as such institutions were introduced piecemeal, convict labour in British colonial India is likely to acquire a different form, from that of the experiences of metropolitan modernity which witnessed a concurrent development of modern institutions.
- 3) Moreover, because the natives were subjects, unlike citizens of the metropolitan modern, who on several occasions challenged the growing influence of liberalism, it is interesting to explore whether there were instances of experimentation in more liberal reforms in convict labour than in Great Britain itself.
- 4) Also, as penal institutions reaffirm state power and represent its repressive face, the study of the prison and specially convict labour deserves attention. Study of convict labour in the Indian context though has received some attention, there is still a wide scope to explore the same

Methodology

Though informed by the different perspectives on punishment, in figuring out the broader historical explanations for different convict labour policies and the changes within it, this study adopts a political economy approach. It explores how the convict labour policy reflected the political and economic imperatives of British colonialism. As imprisonment is believed to be indicative of a more humane form of punishment and as convict labour is central to it, adopting such a methodology would help in understanding how the political and economic rationalities of state power impinge on the character of such punishment.

Important studies on convict labour such as those of Michael Ignatieff (1978) and Alex Lichtenstein (1996) and Chitra Joshi (2009) have by and large studied convict labour more as a continuation of forced labour in the context of its formal abolition and have located it in the transition from feudal to capitalist modes of production. This study apart from taking this into consideration, also studies convict labour in the context of the consolidation of the capitalist system itself. David Arnold's study looks at the prison that emerged in British India as a material

adjunct to the colonial purpose says that convict labour in British colonial India was a way of mobilizing scarce labour. My study further probes how convict labour helped in acting as a material adjunct and looks at the question of mobilizing scarce labour in greater detail. Other important studies on convict labour in British India especially those of Satadru Sen (2000) and Aparna Vaidik (2009) are in the context of transportation of convicts to the Andaman Islands. My study focuses only on convict labour as practiced through the punishment of imprisonment and not through transportation.

The study of George Rusche and Otto Kirchheimer (1980) looks at convict labour from the perspective of the labour market. They argue that when demand for labour is more and supply is less, as was the case in the mercantilist period, the state and its penal institutions are less ready to dispense with the valuable resources which their captives represent, and are more likely to put their offenders to work in one form or the other. The current study argues that with the emergence of imprisonment as punishment, even in times of excess labour supply, physical exclusion of the prisoner does not seem necessary. This is because imprisonment effectively aids the economy, as it not only succeeds in isolating the criminal from the normalised society, but also generates conditions of engaging convict labour in productive activity or lack of it.

However in understanding certain disciplinary mechanisms which were closely knit with convict labour such as systems of remission, convict warder and payment of gratuity this study will be using the Foucauldian framework of looking at punishment through the prism of discipline and where power is largely seen as diffused and not simply as flowing from the broader political and economic rationalities. Also as identifying the “colonial difference” in convict labour policy might not capture the changing objective of power itself, this study will also draw from David Scott’s (2000) idea of colonial governmentality.

This study which is largely an analysis of archival documents relies on both, statutory records and episodic records dealing with convict labour. The statutory records include reports of the various committees and commissions and also periodical reports on prisons by the Government of India and other prison authorities in different provinces. The episodic records include correspondence between the government and the prison authorities and vice-versa. Most of these documents are collected from the National Archives of India, Tamil Nadu State Archives and

from the India Office Records at the British Library, London. A few visits to prison in Karnataka and conversations and unstructured interviews with prisoners and prison authorities on convict labour helped me to refine my thoughts and approach the question of convict labour from a different dimension.

Chapterisation

This thesis is organized into seven chapters. It begins with an Introduction to the study of convict labour which states its objectives, purpose, perspectives, methodology and chapterisation.

The second chapter *The Genesis of the Prison and Extramural Convict Labour : The Mercantilist Rationality* presents an introduction to the imposition of punishment of imprisonment with hard labour in the later decades of the eighteenth century by the Company. It acted as a symbol of the imposition of law and the punishment which was considered “superior” to the preexisting Indian forms of punishment. In fact the Company itself continued to impose such forms of punishment such as whipping, branding, payment of fines etc. as imprisonment came to be accepted as the most common form of punishment to be imposed only in the late 1830s.

It is worth noting that the ‘houses of correction’ in Great Britain during the same period had witnessed several stages of reforms under the leadership of John Howard and Elizabeth Fry and there the stress was by and large on intramural convict labour. Emphasis on extramural convict labour in the first half of 19th century through the formal institution of the Public Works and even before that reflects the mercantilist rationality of the Company regime and convict labour served the colonial requirement of building infrastructure that allowed for the easy movement of troops and for purposes of commerce.

Overall imprisonment in this period stressed more on labour than on other modes of prison discipline such as rationing of food, dress or imparting moral training or education etc. On the question of caste, the colonial authorities as early as 1796 held that to compel high-caste convicts to work on the roads alongside 'common criminals' would be for both, them and their families 'much more severe than a sentence of death' (Arnold 1994:77). Also as this would be seen as a human regime of punishment, it was believed that this would enhance the legitimacy of the legal system instead of making the offender an object of pity. (Singha 1998: 231-232). Of the

prisoners confined for definite periods in District Goals, a certain number were employed in keeping their goals clean, and in other necessary work of that sort; but these were selected on consideration of the caste of the prisoners so employed. In general, only those who were physically unfit for out-door labour, and the small number of low-caste men necessary for keeping the goals clean were employed within doors.

It is important to note that the colonial discourse on convict labour hardly pays any significant attention to the question of employment of female convict labourers. Most of the reference to their employment is expressed in terms of passing remarks. In the period of our reference, women prisoners were rarely sent on outdoor work but were engaged in “feminine” activities of cleaning food grains and spinning.

With regard to European convicts the Company regime held that to employ European convicts in a similar way as the natives would be cruel. And if not cruel it would be impolitic as it was necessary for their national character' to 'stand high in the estimation of the inhabitants of India. As such separate prison wards were reserved for Europeans and at Ootacamund a jail was built exclusively to house European(and Eurasian) prisoners and from the very beginning till the whole of colonial period they were engaged in light intramural labour.

If the second chapter was about the genesis of imprisonment itself and convict labour in that period, the third chapter *The Birth of the Modern Prison and Intramural Convict Labour in Colonial India: Inducing Convicts to Discipline and Labour* studies convict labour after the birth of the modern prison in the second half of nineteenth century. The new political rationality that guided the establishing of modern central prisons can be largely traced to the liberal current which spearheaded the movement for administrative, legal and penal reforms in India, the influence of Utilitarians and in general in the colonial enterprise's overall policy in India which moved in the direction set by the development of the British economy. This was also aided by the new kind of knowledge that the colonizers were producing of the colonized. When the Indian Government began to proceed with the construction of railways, roads, telegraphs, irrigation works, docks and public buildings, growing demand for a wide range of goods was generated that led to the emergence of the three 'great consuming departments'- the Railway, Military and the Public Works Departments as well as the Civil Departments which purchased

their requirements. These increasing necessities generated by emerging colonial governmentality prompted the Government to think on lines of using the prison for supplying to some of its departments.

With the emergence of the modern prison there was a shift in convict labour policy from that of extramural to intramural factory labour which served the requirements of the consuming departments and also reflected the post mercantilist governmentality that was being introduced. Also the notion of labour had now changed from merely producing a deterring effect to a principle means of enforcing discipline.

More importantly given the fact that there were only few modern industries with latest machinery in India, on the one hand the prison can also be seen as an initiator in introducing modern form of wage labour. On the other hand, it is interesting to see that the Utilitarian theory around which the modern prison system is based, is also based on individualism. But as this theory legitimises extraction of labour on the basis of previously acquired skills by the convict, the Superintendent in the Indian prisons granted tasks to prisoners based on the same, which invariably resulted in bringing caste distinctions in allotting labour.

With the modern prison and intramural convict labour, the system of remission, appointment of convicts as warders and payments of gratuity to prisoners were introduced. These systems were increasingly made self-rewarding and self-perpetuating and to avail the benefits of which one had to prove ones good conduct and labour. As these forces are embedded in wider disciplinary practices their influence on prison labour is overwhelming and their study helps us to understand how actually power reaches the individual convicts. For example in the system of remission, marks were awarded for good conduct and labour on the basis of which the convict would get his sentence remitted. Approximately if the convict followed all prison rules and regulations, and did the necessary amount of labour or two years then his sentence would get remitted by 58 days.

One of the most striking facts is also that convict labour policy in Great Britain at around the same time was quite different from what was being practiced in India. In fact with due qualifications one can say that colonial Indian convict labour policy at this stage was more

liberal than in Great Britain itself where emphasis continued to be laid on unproductive intramural labour through the treadmill and the crank, and labour on the public works.

The fourth chapter titled *Contestation to Intramural Convict Labour: Prison and Private Industry* studies the contestation that arose to intramural labour right from the 1870s especially by the few European entrepreneurs who were producing similar products and who constantly complained to the authorities about how the prison made goods were competing in the market. This contestation against productive convict labour lead to three distinct shifts in colonial prison labour policy *vis-a-vis* private industry. They are:

- 1) Firstly it was the prison Conference of 1877 which openly asserted the prison industry as being a rightful competitor in the market.
- 2) As the colonial regime soon realized the problems with such assertion and therefore through the 1882 Resolution it decided on a total withdrawal from production by switching on to extramural labour
- 3) However as the switch over to extramural labour could not be sustained as it was a mismatch to the governmentality of the colonial state and it passed another Resolution in 1886 which decided on having a well regulated prison industry.

These shifts reflect interesting strategies adopted by the colonial regime to effectively manage the prison industry and they also reveal subtle links between the nature of punishment and economy. However the questioning of this policy by the European industrialists in particular and post 1920 (reformation policy) by the industrial bodies in general, continued. The effects of this questioning and the colonial state's accommodative position are reflected in the prison labour policy around; questioning and re-questioning as to what should and what should not constitute convict labour, choosing of what goods to be produced, limiting the kinds of goods produced to one or two, limiting prison production for the public departments and not for the open market, careful assessment before the introduction of machinery in the prisons, regulating appointing of supervisors to monitor production, preventing advertisement, preventing the issuing of price lists or maintaining of catalogues, charging high profits on goods sold to the public so that it can be restricted to bare minimum, and so on.

The third and fourth chapters broadly focused on the crucial shift from extramural labour to intramural labour in the second half of the 19th century and the considerable contestation that it led to. It is also important to note that this major shift had not in any significant way altered the over arching penal ideology of the regime and the official subscription continued to stress on deterrence. The fifth chapter *The Political Economy of Reformation and Convict Labour* focuses on the crucial shift in the penal ideology from that of deterrence to reformation which happened with the Indian Jail Committee of 1920, and its effect on convict labour policy in the initial decades of 20th century. It critically studies the colonial imperatives for introducing the same.

The context when this major shift came about was after the post First World War experience when there were noticeable alterations in the overall organization of state and economy since 1857. Most important was the fact that the colonial state faced the problem of supplying a modern war from a base with only rudimentary industrial infrastructure. This realization of the weakness of the pre-war model resulted in the first Industrial Commission which was set up in 1916 which chalked a detailed and subtle plan for industrial development in India.

First of all it should be noted that reformation became a penal ideology in India almost 25 years later than when it was introduced in Great Britain. As stated earlier the Indian Jails Committee of 1920 was the first prison committee of India to state that reformation of the prisoners was to be the primary goal of imprisonment and thereby convict labour had to perform the major reformatory role. Emphasis was laid on productive labour. Profit extraction and deterrence through labour were relegated to secondary importance and all forms of purposeless labour such as treadmill and the crank were to be eschewed under such a scheme. Even the scheme of paying of gratuity to convicts was recommended. As the jails were held responsible for supplying articles suitable to the needs of the consuming departments the jails were to be equipped and staffed to be able to turn out articles as good as those procurable in the open market and for which purpose machinery was thought to be indispensable.

With this overarching penal ideology of reformation, convict labour was used for War purposes in two ways. Firstly convict labour was producing articles in the prison factories as necessitated by the War. Secondly and much more directly well behaved and short term prisoners in Indian Jails were granted a conditional remission of their sentences and thereby employed as labourers

in the subsidiary services of the war front through the Jail Corps that was launched in 1916. Such use of convicts was practiced in other countries including Great Britain. Though reformation policy was introduced in Great Britain in 1895 most of the implementation of such policies happened only at the time of the First World War. The most important point to be noted here is that not only the introduction reformatory policies are political but also that reformation and use of convict labour as available source of cheap labour can go hand in hand.

The sixth chapter *Independent India and Its Convict Labour Policy* is a critical review of independent India's approach to convict labour. The focus here is on documenting the continuities and discontinuities in convict labour policy from the colonial to the postcolonial regime. I will be limiting my study to the three decades following independence not only because few files related to convict labour have been transferred to the archives after this period but also because the latest major attempt at an all India level towards prison reforms was made in 1983.

To begin with it is important to note that the independent Indian state accepted to continue with imprisonment, simple and rigorous as the most civil form of punishment. The most important discontinuities with regards to convict labour are basically two:

- 1) Firstly, as most of the prisoners came from agricultural background, in Independent India's convict labour policy agriculture and allied activities gained some importance, and in the following decades, development of agriculture and allied occupations was treated as an important aspect of prison administration. This one can say is one of the interesting developments which perhaps is more Indian and less colonial in character. Broadly the colonial regime beginning from the 1860s stressed on industrial labour and agriculture or work related to agriculture was generally only limited to small prison gardens as it was held to be impracticable and it did not suite the overall ideology of the prison. This excitement for agriculture though suitable to the occupational backgrounds of the Indian prisoners which was found in the initial decades needs to be questioned especially on the grounds of the feasibility to involve most of the prison population on such occupations. The modern prison based on Benthamite principles had its origin in a certain history which requires indoor labour. Agriculture then becomes almost a

primordial entity which is being tried to be fitted with the modern and therefore on itself the sustenance of agriculture as a primary method of engaging prisoners is doubtful.

- 2) Secondly, with regard to industrial labour if the colonial regime at least from the Committee of 1864 constantly stressed on industrial labour based on modern machinery, the convict labour policy in independent India have emphasized more on cottage and small scale industries and one of the important stated rationales was that post-release employment in such sectors was more easier to find then in modern industries which at that time were not existing in large numbers and also it was more easier for convicts to start their own enterprise which required small investments.

However the conditions of convict labour continued to be deplorable in both these sectors. Most of the agricultural land continued to be underutilized and old and outdated methods continued to be followed. Similar was the case with prison workshops which witnessed lack of investment in physical infrastructure, using outdated methods of production and so on. The Committees of 70s and 80s apart from pointing out at these failures, identify another greater cause that ails prison reforms in general and prison industry in particular. This was the failure to include prisons in the overall development plan of the country. As prisons as such came in the State list, it was said that it was important to give grants to this institution under the national development plan.

Regarding whether jail industries should be run in collaboration with a private enterprise the Committees have held that as long as prisoners work in a state enterprise in the capacity of free worker and draw full wages, the dignity and discipline of States' award of punishment was not injured. But as soon as a private enterprise begins to share with the jails its manpower on equal basis, the rehabilitative value of jail life disappears. Therefore the convict labour policy in India can be seen as being largely insulated from the broader economic policy shifts that the Indian state has witnessed.

The concluding chapter is a detailed review of the political and economic rationalities that have influenced convict labour throughout its evolution. The history of convict labour in modern India has travelled a long journey from that of extramural labour beginning from the last decade of the 18th century to emphasis on intramural penal labour beginning from the late 1830s. Within

intramural labour there was a shift in colonial thinking from unproductive intramural labour of the initial days to productive intramural factory labour beginning from the 1860s. In independent India we find the emphasis shifted from factory labour of the colonial rule to that of agriculture and cottage and small scale industries. All these major shifts we have seen are characterized by interesting and varied political and economic rationalities.

Throughout its journey, convict labour of whatever kind it might be, has played a central role in the punishment of imprisonment. Convict labour performs at various levels. At one level we can see that certain amount of convict labour is necessarily of maintenance character where the prisoners are engaged in everyday menial tasks such as that of cleaning, cooking etc. At another level convict labour is of a self sustaining character which includes the construction and maintenance of physical infrastructure of the prison, growing grains and vegetables for self consumption, making furniture and manufacturing stationary articles such as paper, books, ink etc., for use by the prison administration, manufacturing textiles and stitching uniforms for prisoners themselves, few prisoners also perform the labour of keeping a watch over other prisoners and thus help in the smooth functioning of the prison. At the third level convicts are engaged in construction of physical infrastructure for the state, producing articles required by the other government institutions such as that of furniture, stationary, durries etc., and the minimum of articles are produced for sale to the public. These basic features of convict labour continue to characterize it even when there are major shifts in penal ideologies from that of deterrence to reformation. During the times of crisis such as War convict labour is used to satisfy this additional requirement. In India convicts were used not only to produce factory made goods but also used as porter corp.

More important is the fact that whether the nature of convict labour is extramural or productive or unproductive intramural labour, and/or whether it is performing under the penal ideology of deterrence or reformation, there are certain principles which influence convict labour. They are:

- a) Achieving the task of effective punishment and putting the convicts to labour with incurring minimum costs.

- b) In the Indian context, the above mentioned principle gets translated into taking into consideration the caste identities of the prisoners as they are made to labour according to previously acquired skills by them.
- c) The principles of less eligibility and relative standard of living whereby prison life is made markedly more unpleasant than the conditions of life experienced by the lowest strata living in free society. It ensures that all efforts to reform the punishment are inevitably limited by the situation of the lowest socially significant proletarian class.
- d) Convict labour is also seen as a reserve of cheap labour which can be appropriated by the state
- e) Convict labour and the products of convict labour should not compete in the free market or labour market
- f) Convict labour cannot be of a multifarious character not only because it becomes difficult to manage but also because it affects its penal character.

Lastly I would like to say that by studying convict labour this study has shown how the nature and meaning of punishment alters according to the political and economic imperatives of the state. Because convict labour operates under such principles and the limitations set by these convict labour largely remains to be of a self sustaining character.